

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 22 of 2017

Sujit Chakraborty S/o. Late Gopal Chandra Chakraborty, aged about 49 years, R/o. 80 Purba Sinthi Bye Lane Damdam, in the house of Shyama Choudhary, in front of Yuvak Sangh, Dumdum, Kolkata (W.B.)

---- Appellant (Defendant)

Versus

Smt. Chandrani Chakraborty, W/o. Sujit Chakraborty, aged about 34 years, R/o. Indrajit Das Gupta, Dhyansingh R-03, Vinoba Nagar, Bilaspur, District Bilaspur (C.G.)

---- Respondent (Plaintiff)

For the Appellant	:-	Mr. J.K. Shastri, Advocate
For the Respondent	:-	Mr. Kishanlal Sahu, on behalf of Mr. Akhilesh Kumar Yadav, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Hon'ble (Smt.) Justice Vimla Singh Kapoor, J.

17.03.2020

This appeal is directed against the judgment and decree dated 02.01.2017 passed by Additional Principal Judge, Family Court, Bilaspur (CG) in Civil Suit No. 31-A/2016, by which the learned trial Court has granted decree of divorce, allowing the respondent's application filed under Section 13 (A) of the Hindu Marriage Act, 1955 (for short "the Act").

2. The appellant/non applicant and the respondent/applicant are husband and wife and they are governed by Hindu law, as such, the Hindu Marriage Act, 1955.
3. The respondent/applicant herein filed a suit for dissolution of marriage by a decree of divorce under Section 13 of the Act on

the ground of physical and mental cruelty committed by the present appellant/non-applicant, before the Additional Judge Family Court, Bilaspur. Marriage between the parties was solemnized on 18.06.1997 at Siyalda, Kolkata (WB). After marriage, behaviour of the appellant/non-applicant with respondent/applicant was not proper. His behaviour was indecent. On the ground of physical and mental cruelty, the respondent filed application for dissolution of marriage by a decree of divorce.

4. In his reply to the suit for divorce, the appellant/non-applicant denied all the allegations made in the suit and pleaded that she told the appellant that she is going to see her sick mother, but she went at Bilaspur with her lover Indrajeet Das Gupta and she is maintaining illicit relation with him.
5. On the basis of pleadings of the parties, issues were framed and after affording opportunity of adducing evidence and hearing the parties, learned Family Court has decreed the suit for divorce. Therefore, the appellant has challenged the decree before this Court.
6. Counsel for the respondent/wife supported the impugned judgment and decree which is under challenge in appeal.
7. Heard counsel for the parties and taken into consideration the pleadings, evidence and documents on record. Wife, examined as PW-1, has deposed in her evidence about the cruelty meted out to her by the husband which remained uncontroverted. The

husband, examined as defence witness, has stated in his written statement as also in the paragraph 4 of his affidavit filed under Order 18 Rule 4 CPC that on 02.02.2014, the wife had gone to his relatives house at Bilaspur. He himself has admitted in paragraph 16 of the said affidavit that he had informed the police regarding his wife having gone missing vide report dated 23.08.2014, given at Police Station Damdam Kolkatta. In paragraph 18, he has also admitted that for a period of 8-9 months of his wife having shifted to Bilaspur, he did not initiate any kind of proceeding against her in any court of law. Aritra Dutta (DW-2) has stated in paragraph 10 of his evidence that his mother came to know about the quarrelsome activities between the appellant and the respondent from neighbours. Thus, from the evidence of DW-2, it is apparent that on account of dispute between the parties, the wife left the house of the husband and came down to Bilaspur. Cruelty on the part of the husband is fully proved. Though, the husband has stated that he had filed the application under Section 9 of the Hindu Marriage Act at Barasat Kolkata for restitution of conjugal right which is still pending, but neither he has filed copy of the said application nor that of the order if any, passed therein. Thus, the husband has failed to prove the factum of initiation of proceeding for restitution of conjugal right in any Court of law. Further, the evidence of the husband itself alleges that the wife had illicit relationship with a boy of Bilaspur but he has utterly failed to prove the same by producing any clinching evidence. Thus DW-2

has not been able to prove the same. Such serious allegations made by the husband against his wife itself is indicative of cruelty at the hand of the husband.

8. Consequently, for the afore-stated reasons and consideration, the appeal fails and is hereby dismissed. Decree be drawn-up accordingly.
9. Parties shall bear their costs of the suit as well of the appeal.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge

Ajay