

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 229 of 2018**

- Ashish Shrivastava S/o Late J.P. Shrivastava, Aged About 36 Years R/o Vinay Sadan, Kota, Ward No. 12, Post Pt. Ravi Shankar Vishwavidyalay, Raipur, Tahsil And District Raipur Chhattisgarh. Permanent Address Village And Post Pandari Pani, House Of Sanjay Chauhan, Police Station Parpa, Jagdalpur Chhattisgarh

---- Appellant**Versus**

- Smt. Komal Sinha W/o Ashish Shrivastava, Aged About 31 Years C/o Arun Sinha, R/o M.I.G. 98, Pt. Ravi Shankar Shukl Nagar, Chowki Manikpur, Tahsil And District Korba Chhattisgarh

---- Respondent

For Appellant	:	Shri Anumeh Shrivastava, Advocate
For Respondent	:	None, though served.

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board**14/07/2020**

In view of prayer for urgent hearing, this appeal is heard finally.

The present appeal is directed against impugned judgment and decree dated 24/08/2018 passed by the Family Court, Korba in Civil Suit No.72-A/18 by which, the appellant's application for grant of decree of divorce has been rejected.

2. The appellant / plaintiff filed an application under Section 13 (1) of the Hindu Marriage Act for grant of decree on the pleadings *inter alia* that the marriage of the appellant was solemnized with the respondent on 23/11/2010 according to the Hindu rites and rituals. On the very next day, after marriage, when ceremonies were

being performed at home, the respondent started exhibiting abnormal behaviour, which fact was reported to her parents, whereafter, the father of respondent came along with sons and then he disclosed that his daughter is suffering from mental disease for the last two years. At this stage, the appellant and his family members seriously objected as to why this fact was suppressed and not disclosed before marriage. Thereafter, the respondent was taken away by her father in the name of providing her treatment. Thereafter, she was not immediately sent back and upon enquiry made, it was disclosed that the respondent was getting treatment and has been cured to much extent. Thereafter, the appellant brought his wife back to Korba and there, they started living in their matrimonial life and out of their wedlock, a child was born on 14/01/2013. In the meantime, from July 2012, the respondent / wife had again started showing signs of mental sickness. In the parental house, the child was born. Though the appellant made several efforts to bring his wife back, but her parents did not send her back. For all these reasons and the incident, the appellant's father fell sick. The respondent never came to attend the ailing father. The appellant's father finally died on 20/07/2013 and at that time also, the respondent did not come to attend the last rites and rituals nor anybody from her family attended. It was, thus, pleaded that the respondent is residing in her parental house since 31/07/2012 without reasonable cause. It was also pleaded that the applicant had filed an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights and an order was also passed directing the respondent to resume marital cohabitation but the respondent did not return. She had also moved an application for grant of maintenance which was rejected for want of prosecution. The appellant was not allowed to meet his daughter. The marriage was solemnized by suppressing the fact that the respondent is suffering from mental disease. In these years, there is no cohabitation between the parties. Therefore, on this ground, decree of dissolution of marriage was sought.

3. In the proceedings, the respondent, though served, did not appear, with the result that she was proceeded ex-parte. The appellant filed his affidavit in evidence which remained uncontroverted. However, learned Trial Court dismissed the suit giving rise to this appeal.

4. Learned counsel for the appellant argued that the respondent having not denied any of the pleadings and evidence of the appellant making out a case of desertion and cruelty, learned Trial Court ought to have granted him decree. He would submit that there is specific affidavit of evidence given by the appellant that the appellant and his family members did not disclose regarding mental illness and the respondent left the matrimonial house six years before and not returning back despite efforts made. She is not attending any ceremony or funeral in the family, not allowing the appellant to meet his daughter and has thus, committed cruelty as well as it is a case of desertion also. He would argue that even though decree on the ground of desertion was not specifically sought, pleadings and evidence clearly make out a case of desertion.

5. we have heard learned counsel for the appellant and perused the records.

6. In the present case, it has been clearly pleaded and it has also come in the evidence that the respondent / wife has deserted the husband since 31/07/2012 and thereafter, several efforts were made to bring her back but she did not return. These pleadings are not controverted. Despite service of notice, the respondent did not appear before this Court.

7. It is not a case where there is no evidence at all. Whatever has been pleaded and led in evidence has remained uncontroverted. There are specific pleadings and evidence that even after death of appellant's father on 20/07/2013, the respondent did not turn up nor attended any of the last rituals. It has also been

stated in evidence that the respondent has left the matrimonial house without any reasonable cause since 31/07/2012. This specific evidence has also remained uncontroverted. The appellant has also deposed that he had moved the application under Section 9 of the Hindu Marriage Act for grant of decree of restitution of conjugal rights and it was alleged that despite efforts made, the respondent is not returning to the matrimonial house.

8. It is, thus, apparently clear that the respondent neither appeared in the civil suit nor appeared on moving application under Section 9 of the Hindu Marriage Act. The application was rejected for want of prosecution. Even in this appeal, she has not appeared. In para 9, 10 and 11, learned Trial Court has rejected complainant's case. As far as mental illness part is concerned, the same was rejected on the ground that the appellant has failed to produce any documentary evidence nor examined the doctor who treated the respondent. As far as cruelty aspect is concerned, it has been stated that no specific evidence has been brought. One of the reasons for the learned Trial Court to reject complainant's version is that even after getting ex-parte decree of restitution of conjugal rights, the respondent did not come back, has been rejected on the ground that no other independent witness has been examined. The evidence with regard to efforts made to bring the wife back have been discarded on the ground that no application for execution of decree of restitution of conjugal rights was made. The reasons assigned by the learned Trial Court to discard the uncontroverted pleadings and evidence are not acceptable. The appellant has not only specifically pleaded but also led specific evidence. The evidence and pleadings have remained uncontroverted. There is specific evidence led by the appellant that he had moved an application for restitution of conjugal rights and ex-parte decree was granted in his favour but despite that, the respondent did not return back to the matrimonial house. He has clearly stated in affidavit that he had gone to the house of the respondent / wife, but she did not

return. Specific pleadings and evidence has been made that the wife has left the matrimonial house since 31/07/2012 and is not coming to the matrimonial house. Specific pleadings and evidence that the father of the appellant died on 20/07/2013 but even thereafter, the respondent or any member of her family did not come to attend any of the last ceremony, has remained uncontroverted. The appellant's pleadings and evidence that he is not even allowed to meet his daughter, has also remained uncontroverted. As there were specific pleadings proved by uncontroverted piece of evidence, it was not necessary for the learned Trial Court to search for other evidence. Present is not a case where oral evidence has been controverted and it became necessary for the complainant to prove his case by bringing other reliable, oral and documentary evidence.

9. In the case of **Abhilash Kumar Gupta v. Smt. Shweta Baldev Gupta**, AIR **2019 Chhattisgarh 154**, this Court relied upon uncontroverted pleadings and evidence of cruelty and desertion to hold that the complainant succeeded in proving its case of desertion and cruelty. In para 12, 13 and 14, it was held as below -

“12. The aforesaid pleadings have been proved from overwhelming evidence led by the appellant and other three witnesses. All the allegations which have been pleaded in the pleadings have been specifically stated in affidavit under Order 18, Rule 4, CPC which include the allegation of taunting and openly declaring the appellant as an impotent person, quarreling and assaulting the mother, thrown chilly powder in the eyes. Similar is the evidence of other three witnesses, who have clearly stated regarding the aforesaid act.

13. It has been specifically pleaded and proved that on 04.08.2012, the respondent left the matrimonial house. Those pleadings and evidence have remained uncontroverted. It was for the respondent to prove that she had reasonable cause in not residing with husband ever since 04.08.2012.

14. Thus, from the aforesaid pleadings and uncontroverted evidence led by the appellant, both the allegations of cruelty as well as desertion are fully made out and the appellant was entitled to decree both on the ground of cruelty and desertion.”

The situation in the present case is also similar. Therefore, there is no reason why complainant's evidence should be rejected only on the ground that other evidence has not been led by the complainant.

10. Even though specific ground of desertion has not been taken, from the pleadings and uncontroverted testimony of the appellant, it is clear that the respondent / wife has deserted the appellant since 31/07/2012. It has been categorically pleaded and proved that the respondent has left the matrimonial house and thereafter, she did not return. Specific evidence is, therefore, that even after death of appellant's father on 20/07/2013, the respondent or any member of her family did not turn up to attend any of the last ceremonies. Pleading that despite there being decree of restitution of conjugal rights, the respondent did not come back, despite the appellant approached her house to bring her back, has remained uncontroverted. Even the appellant was not allowed to meet his daughter. It is clear that the respondent / wife has completely deserted the appellant since 31/07/2012. Therefore, the appellant is entitled to decree of divorce on the ground of desertion also.

11. In view of above, the impugned judgment and decree cannot be sustained and set aside. The appellant's application for grant of decree of divorce is accordingly allowed. The marriage between the appellant and the respondent is dissolved. Let appellate decree be accordingly drawn.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge