

HIGH COURT OF CHHATTISGARH, BILASPUR

FA(MAT) No. 28 of 2019

- Shrimati Aditi (Anshu) W/o Shri Shakti Manik, aged about 31 years, Occupation Nil, Resident of Baniyapara, Dhamdha, Tahsil Dhamdha District Durg Chhattisgarh.

---- Appellant

Versus

- Shri Shakti Manik S/o Balak Das Manikpuri Aged About 31 Years Engineer, In Bhilai Steel Plant, Bhilai, Resident Of Quarter No. 1, Street No. 50, Sector - 8, Bhilai Tahsil And District, Durg Chhattisgarh.

---- Respondent

For the Appellant :- Mr. Vinod Kumar Sharma, Appellant.
For the Respondent :- Mr. Chakresh Tiwari, Respondent.

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

Order on Board by Vimla Singh Kapoor, J.

13.07.2020

This appeal is directed against judgment and decree dated 29.06.2019 passed by Family Court, Durg in Civil Suit No.774/2017 rejecting the application filed by the appellant/wife under Section 13 of the Hindu Marriage Act seeking dissolution of marriage by a decree of divorce.

2. The case put-forth by the appellant/wife is that her marriage with the respondent/husband herein was solemnized on 10.07.2016 as per the Hindu rites and rituals. After marriage they are said to have been on a honeymoon trip and after return from there, the respondent/husband kept her in a quarter allotted to him by Bhilai Steel Plant where he was working as an engineer. It is alleged by the appellant/wife that as her husband used to get back home in late night in a drunken condition and as his torturous attitude towards

her became unbearable, she decided to leave his company on 09.08.2016 and went to live with her mother and brother. It is thus apparent that the parties lived together just for about a month after entering in matrimonial bond.

3. Learned Family Court by the judgment under challenge referred to above did not find any substance in the case put-forth by the appellant and therefore, dismissed her application filed under Section 13 of the Hindu Marriage Act. Hence this appeal.

4. Counsel for the appellant/wife submits that the judgment impugned refusing the decree of divorce in favour of the appellant is contrary to the provisions of law and therefore, liable to be set aside. He further submits that as the respondent/husband did not file any written statement rebutting the allegations made against him, the case put-forth by her should have been taken as proved and thereby it should have granted a decree of divorce in her favour.

5. On the other hand, counsel for the respondent/husband supports the judgment impugned to be just and proper submitting that the allegations made by the appellant/wife are vague and he at no point of time put the wife to any physical or mental torture as alleged.

6. Heard counsel for the parties and perused the documents available on record.

7. From the pleadings and documents on record it is apparent that the appellant and respondent herein lived together from 11.07.2016 to 08.08.2016 and thereafter on 09.08.2016 the appellant came to live in her parents' house. The allegation made by her that her husband used to come home late night in a drunken state and abuse her filthily, cannot be construed to be cruelty meted out to her. As regards physical torture, except the appellant herself, no one has stated anything to substantiate the same. As regards the evidence of her brother who has supported the stand of physical torture at the hands of respondent/husband, it cannot be given much weightage because this witness himself has not seen the incident of beating or torture and has come to know about the same through his sister (the appellant/wife herein), and merely being a hearsay witness, his testimony cannot be attached much significance to grant a decree of divorce in her favour. Another basic requirement for granting a decree of divorce is that the appellant/wife must have been in desertion at the hands of respondent/husband for a continuous period of two years immediately preceding the presentation of the divorce petition. However, in this case the appellant/wife said to have visited the respondent/husband in the month of August, 2016 expressing his readiness to live with him but on account of his refusal to do so, she decided to file a suit for divorce on 13.11.2017. Meaning thereby the appellant/wife has not remained in desertion for a continuous period of two years, and therefore, she is not entitled to claim a decree of

divorce against the respondent/husband. The argument put-forth by the appellant/wife that in the absence of any written statement being filed by the respondent/husband, the allegations of cruelty and torture should have been taken to be proved, is without any substance and is hereby turned down for the simple reason that first of all the burden of proof lies on the appellant/wife, which she has failed to discharge. More importantly, it is apparent from the record that from 02.02.2018 to 02.02.2019 the matter was being fixed to explore the possibility of reconciliation but on most of the dates either of the parties remained absent. On 10.05.2019 the matter was fixed for final arguments for 16.05.2019 and then after hearing the arguments it was fixed for judgment. Eventually on 29.06.2019 the application filed on behalf of the wife seeking dissolution of marriage has been dismissed. Since initially the matter was being dealt with for reconciliation, the application under Section 13 of Hindu Marriage Act could not have been straightaway dismissed especially when the respondent/husband did not file any written statement. Secondly, the point raised by the appellant/wife for return of Stridhan and for grant of permanent alimony has not been considered by the Family Court. In these circumstances this Court is of the considered opinion that the matter is required to be remanded to the concerned Family Court with a direction to decide the case on its own merits after giving proper opportunity of hearing to the parties, in particular the respondent/husband who remained absent in the earlier proceedings. This has to be done by the Family

Court as expeditiously as possible preferably within a period of 6 months from the first listing of the case. To ensure compliance of this order due assistance by both the parties is expected before the Court below on the dates so fixed by it to avoid any unnecessary lingering of the case. Order accordingly.

8. Appeal is thus allowed in the aforesaid terms and the ex-parte judgment under challenge herein is hereby set aside.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge