

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 835 of 2019

- Rahul Pathak, S/o Shri A.K. Pathak Aged About 34 Years R/o Juna Bilaspur, Kila Ward, Near Hatri Chowk, In Front Of Abhilash Enterprises Bilaspur, Tahsil and District-Bilaspur, Chhattisgarh. (Plaintiff).

---- Petitioner

Versus

- Smt. Shivangni Pathak, W/o Shri Rahul Pathak, Aged About 24 Years, D/o Shri Sharad Pandey, R/o Ramayan Nagar, Koni, Bilaspur, Tahsil and District-Bilaspur, Chhattisgarh. (Defendant).

---- Respondent

For petitioner	:	Mr. Saurabh Sharma, Advocate.
For respondent	:	Mr. Amiyakant Tiwari with Mr. Bharat Gulabani, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

27/02/2020

Heard.

1. This petition has been brought being aggrieved by the order dated 5.11.2019 passed by the learned Principal Judge, Family Court, Bilaspur in Civil Suit No.194A/2019 dismissing the application of petitioner filed under Order 1 Rule 10 of CPC read with Section 13 of the Hindu Marriage Act, 1955.
2. Petitioner has filed a civil suit under Section 13 of the Hindu Marriage Act, 1955, praying for dissolution of marriage alleging that respondent is a lady of independent thoughts, who had illicit relation with one Roshan Yadav before her marriage. Subsequent to marriage, the respondent made friendship with one Neelanjan Bose, crossed all the limits of decency and had intended to elope with him. Therefore, on this basis, the applicant moved an application under Order 1 Rule 10 read with Section 13 of the Hindu Marriage Act, 1955 prayed for impleadment of said Roshan Yadav & Neelanjan Bose as a party to the

proceeding. Learned Family Court has wrongly appreciated the prayer made by the applicant and rejected the application by holding that there is no necessity of impleadment of the persons named in the application as party in the case.

3. It is submitted that it has been held by this High Court in the case of Bhaktvatsal Singh Rajput v. Mrs. Vandana Rajput, reported in (2018) 3 CGLJ 281 that even though an adulterer is not a necessary party but he is a proper party and his/her presence in the case is proper for the complete adjudication of the issue raised. Therefore, rejection of the application by the learned Family Court is improper. Hence, it is prayed that this Court may interfere and grant relief to the petitioner.
4. Learned counsel for respondent submits that even if the pleadings from the petitioner's side are taken as it is, the position which emerges out is only that the respondent had friendship with said two persons. There is no specific allegation of adultery, therefore, proposed parties are neither necessary nor proper party at all in this case.
5. I have heard both the parties and perused the documents on record.
6. On perusal of application filed under Section 13 of the Act, it is seen that there was a disagreement/dispute between the petitioner and the respondent. Petitioner made allegation against the respondent that she had illicit relation with Roshan Yadav before her marriage and there is no further allegation in the application regarding continuation of that relationship of the respondent with said Roshan Yadav.
7. Section 13(1)(i) of the Hindu Marriage Act, 1955 provides for dissolution of any marriage if one of the spouse, after the solemnization of marriage, had voluntary sexual intercourse with any person other than his or her spouse. Therefore, specific requirement for impleading a person as a proper and necessary party is this that the question of adulterous relation should be after the performance of marriage and not before it. Therefore, the proposed respondent Roshan Yadav is not at all a necessary party in this case.

8. Other allegation that is narrated in the application is this that the respondent has a Facebook friend in the name of Neelanjana Bose with whom she used to have conversation; she had also crossed all the limits of decency and that she had planned to elope with said Neelanjana Bose. There is no specific pleading in the application that the respondent is having adulterous physical relation with said Neelanjana Bose and that being so, the ratio laid down in the case of Bhaktvatsal's case(supra) does not appear to be applicable in this case. Therefore, I am of this view that the learned Family Court has not committed any error in passing the impugned order.
9. Accordingly, the petition fails and is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge