

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA(MAT) No. 93 of 2019**

- Smt. Saroj Verma W/o Roshan Verma Aged About 28 Years Caste Kurmi, R/o Village Latuwa, Police Station City Kotwali, Baloda Bazar, District Baloda Bazar, Chhattisgarh, Present R/o Smt. Saroj Verma, Wife of Roshan Verma, Caste Kurmi, D/o Shyam Lal Verma, R/o Village Sitapar, Post Office Hathband, Tahsil Simga, District Baloda Bazar Chhattisgarh

---- Appellant

Versus

- Roshan Verma S/o Late Sukdev Verma Aged About 30 Years Caste Kurmi, R/o Village Lutwa, Police Station-City Kotwali, Baloda Bazar, District Baloda Bazar Chhattisgarh

---- Respondent

For Appellant	:	Shri D. Kushwaha, 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**11/02/2020**

Heard.

This appeal is directed against impugned judgment and decree dated 29/08/2019 passed by the Family Court, Baloda Bazar in HMA No.71A/2019 by which, the learned Family Court has granted decree of restitution of conjugal rights in favour of the respondent / husband.

2. An application for grant of decree of restitution of conjugal rights was filed by the husband on the pleadings *inter alia* that the parties were married by following Hindu rites and rituals in the year 2003 and the parties were also blessed with two daughters out of their wedlock. On 13/12/2015, the wife left the matrimonial house

along with her brother and minor daughter – Ku. Mansi. Thereafter, she has not returned and is residing in her parental house. Despite efforts made, when the wife did not come back, notice was given and then also, when the wife did not come back, the husband approached the Court for decree of restitution of conjugal rights.

3. Opposing relief claimed by the husband, the appellant / wife filed a written statement stating that she has been subjected to frequent assault and beating by the husband who is frequent consumer of liquor and *ganja*. In her pleading, it was stated that it was because of the cruelty committed on the wife that she had to leave the matrimonial house.

4. Learned Trial Court framed issues on the aspect as to whether the appellant / wife has withdrawn from the society of the husband without any reasonable excuse. The appellant having not led any evidence to prove reasonable excuse for withdrawing from the society of her husband, decree of restitution of conjugal rights was passed which is under challenge.

5. Learned counsel appearing for the appellant would argue that as the respondent has moved application for grant of decree of restitution of conjugal rights, it was the burden of the respondent / husband to prove that there was no reasonable excuse for the wife to withdraw from the society. He would further submit that proper opportunity of leading evidence was also not granted by the Trial Court and this seriously prejudiced the appellant / wife.

6. As far as submission with regard to non-affording of proper opportunity to lead evidence is concerned, after going through the order sheets of the proceedings before the Court below, this ground appears to be completely frivolous. After framing of issues, the respondent / husband led his evidence and thereafter, on 09/03/2018, the appellant was granted time to lead evidence and the case was fixed on 13/04/2018 for recording evidence of the appellant / wife. Though, she filed

affidavit under Order 18 Rule 4 CPC, thereafter, neither she appeared nor any evidence was produced before the Court on subsequent dates i.e. 13/04/2018, 19/06/2018, 25/07/2018 and on all subsequent dates upto 29/04/2019. In between, opportunities were granted to the appellant to lead evidence but every time, adjournment was sought and the Court below, adopting liberal approach, granted sufficient opportunity to lead evidence. This Court finds that on 27/08/2019, learned Family Court again made efforts to bring about settlement between the parties but the appellant did not agree for any settlement. Therefore, the argument that the appellant was not granted proper opportunity to lead evidence, has no legs to stand and is, therefore, rejected.

7. The provisions contained in Section 9 of the Hindu Marriage Act provide for grant of decree of restitution of conjugal rights when either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other. Aggrieved party has been provided with the remedy to file petition for restitution of conjugal rights and the Court, on being satisfied with the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may grant decree of restitution of conjugal rights. The explanation appended to the said provision lays down the rule of evidence that where question arises whether there has been reasonable excuse for withdrawal from the society, the burden to prove reasonable excuse shall be on the person who has withdrawn from the society.

8. Applying the aforesaid provisions of law to the facts of the present case, it is a clear case as is reflected from the pleadings of the parties that the wife has withdrawn from the society of the husband. On petition being filed by the husband complaining about withdrawal from the society of the husband, as per explanation appended to Section 9 of the Hindu Marriage Act, the burden was on the wife to prove reasonable excuse. Though in the written statement, she had come out with

the statement that she had withdrawn from the society of the husband and left him and went back to her parental house for the reason that she was being subjected to cruelty and beating by her husband in a state of intoxication, this was not sufficient . No amount of evidence was led by the appellant / wife to discharge this burden of proof. In the absence of there being any such evidence led by the appellant / wife that she had reasonable excuse for withdrawing from the society of the husband, the Court below did not commit any illegality in granting decree of restitution of conjugal rights in favour of the respondent / husband.

9. The appeal has no merit and is, accordingly, dismissed. Let appellate decree be drawn accordingly.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge