

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 13 of 2018**

- Smt. Aarti Mishra W/o Shri Sanjay Kumar Tiwari Aged About 32 Years R/o Jeenat Veehar Phase-Chuchuhiyapara, Thana Torwa, District And Tahsil Bilaspur (Chhattisgarh)

---- Appellant**Versus**

- Sanjay Kumar Tiwari S/o Shri Brijbali Tiwari Aged About 40 Years R/o Maharshi School Road , Mangala, Thana Civil Lines District And Tehsil Bilaspur (Chhattisgarh)

---- Respondent

For Appellant	: Ms. Priya Mishra, Advocate
For Respondent	: Shri Kalyan Kalamkar, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Smt. Justice Rajani Dubey****Order On Board****Per Rajani Dubey, J****15/02/2021**

This is an appeal under section 19 of the Family Courts Act 1984 at the instance of wife against the judgment and decree dated 29.11.2017 passed by the Additional Principal Judge, Family Court, Bilaspur in Civil Suit No. 249-A/2016, decreeing the petition filed by the husband for dissolution of marriage.

2. Brief facts of the case are that the husband (plaintiff-respondent) filed a suit before the Family Court, Bilaspur under Section 13 of the Hindu marriage Act, 1955, hereinafter referred to as

"the Act" for dissolution of the marriage between him and the wife (defendant) by a decree of divorce on the allegations inter alia, that the plaintiff and the defendant were married in accordance with the Hindu Vedic rites on 30.04.2004 and soon after the marriage, the respondent/plaintiff was subjected to cruelty and mental torture by his wife. It is alleged that the defendant/wife went to her father's place every now and then without informing the husband and has disassociated herself from the husband since then. He has alleged that the aforesaid conduct of the wife has resulted in cruelty on him and from the year 2014 she is residing with her parents of her own accord without any sufficient reason.

3. The respondent/husband has filed the application for Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act and in the said case, the parties have entered into compromise and they started living together for sometime. However, again some dispute arose between them and she started mentally torturing him and since 02.03.2014, they are residing separately. It is alleged that the wife/appellant has filed a criminal complaint against the father and other family members of the respondent.

4. Appellant/wife has denied all the allegations of respondent/husband and stated that the husband and his family members used to harass her and they have not accepted her therefore she came away and took shelter in her father's house.

5. Learned trial court after perusal of the aforesaid pleadings and evidence, allowed the application and dissolved the marriage dated 30.04.04 between the parties. Hence, the present appeal.

6. Learned counsel for the appellant submits that the learned trial court committed error on facts of the record that the appellant has lodged FIR on 20.07.2014 for commission of cruelty against her which was not considered by the court below on the ground of technicality of the Evidence Act. She submits that the learned trial court did not consider the documents submitted by the appellant and the suit for divorce was not maintainable on the ground of *res judicata*. She submits that the learned trial court has further committed error by appreciating the evidence of witnesses adduced by the respondents and the appellant. She submits that the plaintiff/respondent has failed to prove the grounds provided under Section 13 of the Hindu Marriage Act therefore, the decree of divorce is void and is liable to be set aside.

7. On the other hand, learned Counsel for the respondent supported the impugned judgment and decree and submitted that the trial Court has rightly arrived at a conclusion that appellant has deserted the respondent and living separately without any reasonable cause and she herself left the matrimonial home and residing separately and the respondent has proved the ground of cruelty.

8. Heard rival contentions of counsel for the parties and perused the material available on record.

9. The plaintiff/respondent has filed application before the trial court for divorce on the ground of cruelty. In support of his case, he has examined himself and two other witnesses supported by documents which are exhibited as Ex.P-1 to P-32. In his deposition he has categorically stated about each and every incident, the

documents related to his father's treatment, some complaints and agreement between the parties which shows that appellant/wife is not willing to stay with her in-laws and therefore the respondent /husband agreed to live with the wife/appellant separately in a rented house. It has also been admitted by the appellant/wife in her cross-examination that father of the respondent/plaintiff was suffering from paralytic attack and has overcome from the same. However, from the exhibited documents Ex.P-28 and P-29 it reflects that he left the said premises on 2.3.2014 due to cruelty meted out to him by his wife/appellant.

10. Likewise, her brother Shubham Mishra (NAW-2) has also admitted in his cross-examination that his sister i.e. the appellant was residing in her father's house since the year 2014-2015. He has also admitted that the appellant has filed a criminal complaint against the respondent and his family members before the court below.

11. Thus, after appreciating the oral and documentary evidence of both the parties, we find that the husband has proved that the wife was ill-treating him and made cruelty on him. We have considered the entire evidence on record. Admittedly, the marriage of the petitioner and the respondent was solemnized on 30.04.2004. Besides other allegations and counter allegations, there is no chance of it being retrieved and it is better to bring it to an end. Though an attempt was made for reconciliation but without any success. The record of this appeal shows that the matter was sent to the Mediation Centre also, but the parties could not come to terms. Under such circumstance, we are satisfied that whatever be the reasons, this marriage has broken down and the parties can no longer live together as husband

and wife. Thus, this court finds no infirmity in the impugned order as there are absolutely no grounds to interfere with the findings of the trial Court. The appeal being devoid of merits is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Rajani Dubey)
Judge