

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 85 of 2016**

- Onkar Das Manikpuri S/o Late Chherku Das, Aged About 26 Years R/o Darrabhata Seepat, Police Station- Seepat, Tahsil And District- Bilaspur, ChhattisgarhApplicant, Chhattisgarh

---- Petitioner**Versus**

- Smt. Yogita Manikpuri W/o Onkar Das Manikpuri, Aged About 25 Years R/o Belsari, Police Station- Takhatpur, District- Bilaspur, ChhattisgarhNon-Applcant

---- Respondent

For Appellant	Mr. Anup Majumdar and Mr. Saket Pandey, Advocates
For Respondent	Mr. Atul Kumar Kesharwani, Advocate

DB: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mrs. Justice Rajani Dubey****Order on Board by Prashant Kumar Mishra, J.****18/1/2021**

1. Heard.
2. This appeal under Section 19 (1) of the Family Courts Act, 1984,

would call in question the impugned judgment and decree dated 20.1.2016 passed by the Family Court, Bilaspur (CG) in Civil Suit No.491-A/2012, dismissing the appellant's application under Section 13(1) (ia)(ib) of the Hindu Marriage Act, 1955 (in short "the Act, 1955") for dissolution of marriage solemnized between the parties on 8.5.2006 and for grant of decree of divorce.

3. It is not disputed that the parties were married at village Darrabhata, Bilaspur on 8.5.2006 and have twin children Santdas and Ku. Laxmi born on 2.9.2007.
4. In his application under Section 13 (1) (ia) (ib) of the Act, 1955, the appellant pleaded that from the very beginning, the respondent's behaviour was indifferent towards him and his family members and she used to raise quarrel over small/trivial issues and thus, causing cruelty on the appellant. It was pleaded that she always used to threaten to implicate the appellant and his family members in false criminal case and had also lodged a false criminal case in the Police Station. Soon after giving birth to the twin children, she went to her parental house for post delivery care but thereafter, refused to join the company of the appellant. The appellant further pleaded that despite several efforts including convening of the meeting of Caste Panchayat, he did not succeed in bringing her back, therefore, it also amounted to 'cruelty' apart from 'desertion' of the appellant.

5. Per contra, the respondent contested the suit on the pleadings that the entire expenses of the delivery and post child care was borne by her parents and she never used to commit marital cruelty on the appellant. On the other hand, the appellant used to commit cruelty by raising quarrel by taking benefit of her handicapped condition. She further stated that if the appellant conducts himself properly, she is still ready to join his company. According to her, the appellant has filed the present petition for divorce to save himself from providing maintenance to her and her children. She has specifically pleaded that in the proceedings for grant of maintenance, the appellant promised to take her back but never came to her house to bring her back to the marital house.
6. In the course of trial, the appellant examined himself as PW-1, one Balvinder Singh Chabda as PW-2 and one Jivrakhan as PW-3, whereas, the respondent examined herself as DW-1 and her father Sukrat Das as DW-2.
7. Upon appreciation of evidence, learned trial Court has found that the appellant has failed to prove the grounds constituting 'mental cruelty' and 'desertion'.
8. We have seen the record and heard learned counsel for the parties at length.
9. The appellant has not provided any specific detail of the nature of cruelty committed by the appellant. In his statement, he would state that the respondent used to raise quarrel on trivial

issues and threaten him and his family members for implication in false criminal case. However, admittedly, the respondent has never lodged any criminal complaint in a Police Station against the appellant or his family members. On the contrary, the parties approached the Caste Panchayat for reconciliation for living together. However, despite failure of the reconciliation proceedings, the respondent did not file any criminal complaint against the appellant.

10. In this view of the matter, the trial Court has rightly held that the allegation of issuance of threat by the respondent for falsely implicating the appellant and his family members, is not proved.

11. Although the allegation of indifferent behaviour of the respondent-wife and her quarrelsome nature have also been projected as instances of cruelty but it is the settled law that ordinary wear and tear of day to day marital life does not amount to 'cruelty' and for constituting 'mental cruelty', it has to be proved that because of such cruelty, it has become difficult for the spouse to live together.

12. No such instances of cruelty have been either pleaded or proved. In fact, in the entire plaint, there is no statement that because of the indifferent and quarrelsome behaviour of the respondent-wife, it has become impossible for the appellant to live the marital life.

13. In so far as the ground of desertion is concerned, the appellant

has failed to prove any such fact, which proves the ingredients of *animus deserendi* on the part of the respondent to leave the marital life with a view to not to join the company of the appellant and abandon him for the remainder of the life.

14. To substantiate the ground of desertion, the appellant states that the respondent has left his company for about 5 years back and has never tried to return to her marital house to join the company of the appellant. Per contra, the respondent states that she was willing to join the company of the appellant but he did not reach her to bring her back to the marital house to live together again.

15. In para 17 of his cross-examination, the appellant admits that the proceedings for grant of divorce initiated by the respondent-wife ended in settlement, wherein, both of them agreed to live together after the appellant shifts to rented accommodation. However, the appellant admits that he never obtained a rented accommodation nor went to the respondent's house to bring her back. Thus, the ingredients of *animus deserendi* on the part of the respondent, are not proved and rather it was the appellant who failed to bring her back to the martial house despite settlement during maintenance proceedings.

16. Having seen the evidence available on record, we are satisfied that the findings recorded by the trial Court holding that the appellant has not been able to prove the grounds for grant of

divorce under Section 13(1) (ia) constituting 'cruelty' and under Section 13(1) (ib) constituting 'desertion', are neither perverse nor off the record without supported by any evidence.

17. Therefore, the appeal being bereft of substance, is liable to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Rajani Dubey)
Judge

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