

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 125 of 2019**

- Smt. Anusuiya Kosare W/o Shri Heeradhar Kosare, D/o Shri Mehttru Chaturvedi, aged about 45 Years, R/o Village - Thanod, Tahsil Anjora, District Durg, Civil And Revenue District Durg (C.G.)

---- Appellant/Non-applicant**Versus**

- Heeradhar Kosare S/o Late Premlal Kosare, aged about 52 Years, R/o Village - Dumardihi, Tahsil Utai, Tahsil And District Durg Chhattisgarh.

---- Respondent/Applicant**And****FAM No. 126 of 2019**

- Heeradhar Kosre S/o Late Premlal, Aged About 56 Years, R/o Village Dumardih, Police Station Utai, Tahsil And District Durg Chhattisgarh.

---- Appellant**Versus**

- Smt. Anusuiya Kosre W/o Heeradhar Kosre, Aged About 45 Years, D/o Mehataru Chaturvedi, R/o Village Thanoud, Police Station Anjora, Post Office Thanoud, District Durg Chhattisgarh.

---- Respondent

For Applicant in FAM No.125/2019 and Respondent in FAM No.126/2019	:	Mr. Manoj Kumar Sinha, Advocate.
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For Respondent in FAM No.125/2019 and Applicant in FAM No.126/2019	:	Mr. Ajit Singh, Advocate
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**Hon'ble Shri Justice P. Sam Koshy &
Hon'ble Smt Justice Rajani Dubey**

Order on Board by Rajani Dubey, J

08/11/2021

Heard.

1. Since both the appeals arise out of the common judgment and decree, they are being disposed of together by this common order.

2. The aforesaid First Appeals (M) have been preferred against the judgment and decree dated 25.03.2019 passed by the 3rd Additional Principal Judge, Family Court, Durg, in Civil Suit No.174A/2013, whereby the application of the husband - Heeradhar Kosare filed under Section 13 (1) (A) of the Hindu Marriage Act, 1955 (for short 'the Act, 1955) for dissolution of marriage by decree of divorce has been allowed awarding Rs.5,00,000/- as permanent alimony in favour of wife- Anusuiya Kosare.

03. Appellant - Anusuiya Kosare in FA(M) No.125/2019 is wife and Appellant - Heeradhar Kosare in FA(M) No.126/2019 is husband and they are respondent in respective appeals.

04. Brief facts of the case are that husband Heeradhar Kosare (appellant in FA(M) No.126/2019) had filed an application under Section 13 (1) (A) of the Act, 1955, for dissolution of marriage by decree of divorce before the Family Court, Durg, on the ground that his wife Anusuiya Kosare left his house without any reason, they have been residing separately for last 13-14 years and she is not willing to reside with him.

05. Wife Anusuiya Kosare denying all the allegations in her

written statement stated that she was subjected to cruelty by her husband and compelled her to leave his house. Her husband threatened to oust her from his house and has also performed second marriage with another woman. It has been also alleged that she was continuously ill-treated by her husband Heeradhar Kosare and forced her to leave his house. Now, she is living with her two sons in her parental house. Her husband is an alcoholic and a debauchery person and he has filed the civil suit only to flee from his liability.

06. The learned Family Court, after appreciating oral and documentary evidence, allowed the application of husband Heeradhar Kosare and dissolved the marriage dated 29.07.1995 solemnized between them granting permanent alimony to the tune of Rs.5,00,000/- in favour of wife Anusuiya Kosare.

07. Mr. Manoj Kumar Sinha, learned counsel for the appellant (wife) in FA(M) No.125/2019 and respondent in FA(M) No.126/2019 submits that the learned Court below has not taken into consideration the documents adduced and reply submitted by the appellant wherein it has been specifically stated that she was brutally beaten by husband Heeradhar Kosare and threatened to oust from his house. Learned counsel argued that the appellant has proved the fact of second marriage being performed by husband with another woman and living with her and, therefore, there is no possibility for the appellant to live with her husband under the

same roof. Learned counsel further argued that the finding of the learned Court below with regard to desertion of respondent-husband by the appellant wife herein is far from truthfulness. It has been further argued that the respondent-husband is working as Technician in Bhilai Steel Plant and has performed second marriage, therefore, he is under obligation to maintain his first wife till she remarries. Thus, the amount of Rs.5,00,000/- granted as permanent alimony may be enhanced suitably.

08. Learned counsel for the appellant (husband) in FA(M) No.126/2019 and respondent in FA(M) No.125/2019 submits that the amount so awarded by the learned Court below is on higher side. The appellant has been paying sufficient amount to the wife for last 19 years in proceeding under Section 125 and 127 of Cr.P.C. Learned counsel further submits that respondent wife herself is not seeking any final amount as she is able to maintain herself and whether the appellant is required to pay maintenance as awarded in maintenance proceeding or he has to pay Rs.5,00,000/-. It is next submitted that considering the age of the appellant and his responsibilities, the amount of Rs.5,00,000/- awarded by the learned Court below is improper, therefore, the impugned judgment and decree dated 25.03.2019 may be modified so far as it relates to payment part of Rs.5,00,000/-.

09. Heard learned counsel for the parties and perused the material available on record.

10. It is not disputed before the learned Court below that marriage between the parties was solemnized on 29.07.1995 according to Hindu custom and ritual prevailing in their society. It is also not in dispute that after marriage they lived together in the house of appellant husband and two sons namely Prasanna Kumar and Manoj Kumar, aged 20 and 18 years, respectively, born out of their wedlock and at present children are living with wife.

11. Husband Heeradhar Kosre filed an application under Section 13 (1) (B) of the Act, 1955 on the ground that wife Anusuiya Kosare left his house without any cogent and sufficient reason, deserted the husband and is living separately for long period.

12. In this background, the question for our decision in the present appeals is whether the learned Court below is justified in granting the decree of divorce on the ground of desertion and, whether in the facts and circumstances of the case, a decree for dissolution of the marriage between the parties should be passed on the ground or grounds as contemplated under [Section 13\(1\)](#) of the Hindu Marriage Act.

13. [Section 13\(1\)](#) provides several grounds for obtaining divorce by either party to the marriage whether solemnized before or after the commencement of the Act. For facility of reference, Section 13 (1)(b) of the Act, 1955, is reproduced herein under :-

:13. Divorce. - (1) Any marriage solemnised,

whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party ---

[(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

14. It is well settled that 'Desertion' for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without other's consent and without reasonable cause. Desertion is not the withdrawal from a place but from the state of things. Desertion therefore means withdrawing from the matrimonial obligations that is to say not permitting or allowing and facilitating the cohabitation between the parties. It is not a single act complete in itself. It is a continuous course of conduct to be determined under the facts and circumstances of each case. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, (i) the factum of separation, and (ii) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly, two elements are essential so far as the deserted spouse is concerned (i) the absence of consent and (ii) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to from the necessary intention aforesaid.

15. As regards desertion is concerned, wife has stated in her written statement that she was subjected to ill-treatment by husband Heeradhar Kosare and was forced to leave the house, but we find from the record that no such oral or documentary evidence has been adduced by the wife to substantiate her plea which could prove this fact that husband used to brutally assault her and as a result of which she left the matrimonial house. Not a single witness has been examined in this regard. So far as performance of second marriage of husband Heeradhar Kosare is concerned, wife Anusuiya Kosare has only filed one document, which is copy of admission register (Ex.D-1) of school and entry at Sl. No.714 thereon shows the name of child as Laxmi Narayan Kosare, S/o Heeradhar Kosare and mother name is written as Smt. Mongra Kosare, who got admitted in class six on 17.04.2017. But this document nowhere specifically proved that husband Heeradhar Kosare performed second marriage as the author of the document, in his evidence, has not stated whether any other person named Heeradhar Kosare lives in this village or not. Husband Heeradhar Kosare has stated in his plaint that wife left his house 13-14 years ago and wife herself has admitted that she is not residing with her husband yet. Thus, the factum of desertion for a continuous period has been established in this case.

16. The learned Court below has rightly recorded that burden of proof is on the wife to prove that she has sufficient

reason to live separately from her husband, but wife has not been able to prove in her oral or documentary evidence that she has sufficient cause which could justify her desertion from husband. Wife has alleged that her husband has performed second marriage with another woman but this fact has also not been proved by her that when the second marriage of her husband was performed and after that marriage she left her matrimonial house. On consideration of the entire facts and circumstances, we are of the opinion that the finding of the learned Court below in allowing the application of divorce filed by the husband is based on proper appreciation of oral and documentary evidence. We do not find any illegality or infirmity in the impugned judgment and decree of the learned Court below.

17. Husband Heeradhar Kosare filed FA(M) No.126/2019 specifically challenging alimony amount granted by the learned Court below to be on higher side and prayed for setting aside the same, whereas wife Anusuiya Kosare filed FA(M) No.125/2019 for enhancement of alimony amount.

18. Before the learned Court below, both the parties did not file any document relating to income of the husband Heeradhar Kosare but it has come on record that husband Heeradhar Kosare is working as Technician in Bhilai Steel Plant. It is not disputed before the learned Court below that wife Anusuiya Kosare is not working, therefore, she is unable to maintain herself and husband has also admitted that he is

paying maintenance amount to wife in other proceeding. Thus, considering the fact situation of the case, the learned Court below granted permanent alimony to the tune of Rs.5,00,000/- in favour of wife Anusuiya Kosare, which, in the opinion of this Court, is just and proper. The trial Court has not committed any error of law in granting permanent alimony in favour of wife.

19. In the result, the matrimonial suit should be decreed as done by the learned trial Court. The appeals are, therefore, dismissed but having regard to the circumstances we make no order as to cost.

20. Let decree be drawn accordingly.

Sd/-

(P Sam Koshy)

Judge

Sd/-

(Rajani Dubey)

Judge