

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 160 of 2019**

- Santosh Kumar Deshlahre S/o Shri Gairdlal Deshlahre Aged About 36 Years R/o Village - Bhawani Nagar (Jora), Police Station Telibandha, District Raipur Chhattisgarh.

**.....Appellant****Versus**

- Smt. Lalita Bai Deshlahre W/o Santosh Kumar Deshlahre Aged About 31 Years R/o Village Pachela, Police Station Vidhansabha, District Raipur Chhattisgarh.

**.....Respondent**

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|----------------|---|---------------------------|
| For Appellant  | - | Shri S.P. Sahu, Advocate. |
| For Respondent | - | None for the respondent.  |

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**Hon'ble Shri Justice Prashant Kumar Mishra**  
**Hon'ble Smt. Justice Rajani Dubey**

**Order On Board****By****Hon'ble Shri Prashant Kumar Mishra J.****09/02/2021**

1. I.A. No.3, is an application for condonation of delay under Section 5 of the Limitation Act.
2. No one appears for the respondent despite service of notice on I.A. No.3.
3. On due consideration, delay of 52 days in filing the appeal is condoned.

4. Accordingly, I.A. No.3 is allowed.
5. Heard on admission.
6. This appeal is directed against trial Court's order dismissing the appellant's application under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights.
7. The parties were married on 17-04-1998 and have one son and two daughters out of the wedlock. On perusal of the order passed by the Family Court, it appears on some dispute, the respondent/wife returned to her parental house in April, 2014 alongwith her children and refused to join the marital cord. She also lodged a complaint in Mahila Thana on 25-04-2015.
8. According to the appellant, the respondent has left the marital house and abandoned his company without any lawful reason, therefore, she deserves to be directed to restitute the conjugal rights. On the other hand, respondent specifically pleaded that appellant has developed illicit relation with another woman and he is residing with the said woman and have one Son born out of the said illicit relation. Therefore, it is difficult for her to join the company of the appellant.
9. While dismissing the prayer for restitution of conjugal rights, the trial Court has observed in paragraph 17 of the order that despite there being specific assertion in her examination in chief to the above fact, the appellant has not cross-examined the respondent on this material aspect, therefore, the allegation that the appellant is residing with another woman

has remained uncontroverted in evidence.

10. Having heard learned counsel for the appellant at length, we are not in the position to take any different view of the matter.
11. If the husband keeps another woman with him, it provides a justifiable reason for the wife to refuse to live with the husband. In such a situation, a decree for restitution of conjugal rights has rightly been disallowed by the trial Court.
12. The appeal has no substance. Accordingly, It deserves to be and is hereby dismissed.

SD/-

**(Prashant Kumar Mishra)**  
Judge

SD/-

**(Rajani Dubey)**  
Judge

Amardeep