

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 133 of 2017**

- Justin Lakda S/o Late Paskal Lakda, Aged 39 Years R/o Namankala Ambikapur, Tah. And Distt. Ambikapur Posted At Suhela Bhatapara Chhattisgarh

---- Petitioner**Versus**

- Smt. Vandana Kujur Aged 28 Years R/o Ratba, Tah. Bagicha, At Present Kasabel Janpad Panchayat Kasabel, District Jashpur, Chhattisgarh

---- Respondent

For Appellant

Mr. Ravindra Agarwal and Mr. Anand
Kumar Gupta, Advocates

For Respondent

None, though served.

DB: Hon'ble Mr. Justice Prashant Kumar Mishra &**Hon'ble Mrs. Justice Rajani Dubey****Order On Board by Prashant Kumar Mishra, J.****26/2/2021**

1. Heard.
2. This appeal is directed against the judgment and decree dated 27.3.2017 passed in Civil Suit No.16 A/2015 by the Family Court, Jashpur.
3. At the outset, when we enquired as to the present marital status of both the parties after passing of the impugned decree of dissolution of marriage, Mr. Ravindra Agarwal, learned

counsel for the appellant fairly submitted that the respondent has remarried before about 2 years from now.

4. The impugned decree of dissolution of marriage between the parties has been passed on the ground of desertion. Despite the respondent having remarried, the appellant wants to pursue the appeal for the reason that the tenor of the finding recorded by the trial Court on the issue of desertion is capable of being inferred that the appellant is incapable to perform sexual intercourse. This finding of the trial Court hinders the appellant's effort to remarry, therefore, it is argued by learned counsel for the appellant that the subject finding deserves to be set-aside.
5. Having examined the record particularly the plaint averments, we are of the considered view that respondent Vandana Kujur has nowhere pleaded that the appellant is incapable of cohabiting with her. Similarly, in her deposition also, she has not made any statement that the respondent is incapable of performing sexual intercourse. The plaint averments and her statements may amount to the appellant's indifference towards his wife but in the absence of any pleading and statement by the wife, it cannot be stated that she has made any allegation that the appellant is incapable of performing sexual intercourse.
6. If the respondent-wife has not come up with such case in the plaint nor any issue was framed by the trial Court in this regard, the appellant's apprehension that the finding of the trial Court

creates an impression as if the appellant is incapable of performing sexual intercourse, is ill-founded.

7. The finding on desertion is otherwise based on the appellant's admission in his deposition that he has not met his wife for last more than 2 years preceding the date of filing of the suit and that they had no physical relationship for last 4 years preceding the date of filing of the suit. Thus, the finding on the issue of desertion does not appear to be perverse.
8. Considering the state of pleadings and evidence on record, we are satisfied that the trial Court has rightly decreed the suit on the ground of desertion. The decree is affirmed subject, however, to the observation in the earlier paragraphs that there is no finding by the trial Court that the appellant is incapable of performing sexual intercourse.
9. The appeal stands disposed of.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Rajani Dubey)
Judge