



HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on 27.03.2024
Judgment Pronounced on 25.04.2024

FA (MAT) No.55 of 2022

- Smt. Sarojlata Rajak, W/o Vikas Kumar Rajak, D/o Shri Ramlal Bareth, aged about 40 years, R/o Bhartiya Nagar Railway Line Near National Convent School, Bilaspur, Tahsil & District Bilaspur (C.G.)

----Appellant/Applicant in the Court below

Versus

- Vikas Kumar Rajak, S/o Lt. Shri Moolchand Rajak, aged about 48 years, R/o Bajrang Colony, N.K.J.Katni, Tahsil & District Katni (M.P.)

---- Respondent/Non-Applicant in the Court below

For Appellant	Shri Surendra Kumar Dewangan, Advocate
For Respondent	Shri Aman Pandey, Advocate.

Hon'ble Shri Justice Goutam Bhaduri &
Hon'ble Shri Justice Radhakishan Agrawal

CAV Judgment

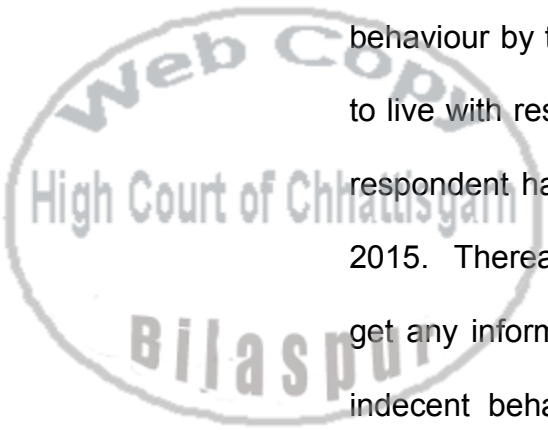
Per Radhakishan Agrawal, J

1. This First Appeal filed under Section 19 of the Family Courts Act, 1984 has been filed by the appellant/wife against the judgment and decree dated 05.03.2022 passed by Additional Principal Judge, Family Court, Bilaspur in Civil Suit Case No.661-A/2019, whereby the application filed by her under Sections 13(1)(i-a) & 13(1)(i-b) of the Hindu Marriage Act, 1955 has been dismissed.
2. The facts of the case in brief are that the appellant filed a Civil Suit on the grounds of cruelty and desertion enumerated under Section 13(1)(i-a) & 13(1)(i-b) of the Hindu Marriage Act, 1955 (for short, the Act of 1955) before the Family Court, Bilaspur, inter alia, stating that their marriage was solemnized



as per Hindu rites and rituals on 07.03.2014 and after marriage, appellant joined the company of respondent and started living at Katni to lead happy marital life. It is pleaded in the plaint that after marriage of 7 days, the respondent abused in filthy language taking her mother and sister's name and further had quarrels over trivial issues. It is further pleaded that the respondent treated her with cruelty for bringing insufficient dowry. It is specifically alleged by the appellant that the appellant maintained illicit relations with one woman (AST) for the last 10 – 12 years and on account of which, he started assaulting her while hurling abuses in filthy language and he even used to threaten to kill. The appellant is fed up with the above attitude of the respondent and is also afraid of being brutal and mental behaviour by the respondent and it was harmful and painful for the appellant to live with respondent. It is stated by her that the indecent behaviour of the respondent has prompted her to leave him and to live separately from July, 2015. Thereafter, the respondent did not come to get the appellant nor did get any information from him. It is further stated by her that on account of indecent behaviour of the respondent, she has been deprived of marital happiness which has caused great trauma to her. Further pleading of the appellant is that the appellant through her advocate sent a legal notice to the respondent on 30.09.2019 alleging therein that the respondent did not come to take her back since July, 2015. Since there is no cohabitation between them from July, 2015, therefore, the appellant has been compelled to file a suit seeking divorce on the grounds of cruelty and desertion.

3. The Civil Suit was resisted by the respondent/husband by filing written statement. Denying the allegations levelled against him, it is specifically pleaded that he is always discharging his matrimonial duties whereas it is the appellant/wife, who has left the matrimonial home and kept avoiding to come and stay with him on one pretext or other whenever he went to the appellant to bring her back. Despite this, even his relatives went to bring her back, but





all his efforts went in vain, which has forced him to file a suit for restitution of conjugal rights under Section 9 of the Act of 1955 before the Family Court, District Katni (MP) wherein the appellant appeared, but only with a view to avoid living with the respondent, the appellant has filed the civil suit seeking decree of divorce from him. It is categorically denied by him that he has no illicit relations with the said woman (AST) and further pleaded that in reply to her letter dated 30.09.2019, he has also sent a letter on 21.10.2019 advising her to seek divorce. It is alleged by him that the appellant is a married woman and had already taken divorce from her first husband and by suppressing this fact his marriage was got solemnised with her and on knowing the said fact, he asked her about the same, upon which, she started quarrelling with him, however, he forgot the said thing and started living his married life with the appellant. The respondent has further pleaded that he suffered from paralysis on 11.08.2017 and he needed to take care of him, the information of which was sent to her on several times, but the appellant did not come to him nor did show any interest to join the company of the respondent whereas the respondent is still ready to keep the appellant and live a married life with her. On these grounds, he prayed for dismissal of the suit filed by the appellant.

4. Both the parties led evidence in support of their pleadings. The learned Family Court, on the basis of evidence and material available on record, has framed three issues and negatived the same and in consequent thereto, dismissed the application seeking decree of divorce filed by the appellant on the ground that the appellant has not been able to prove the grounds as enumerated under Sections 13(1)(i-a) and 13(1)(i-b) of the Act of 1955.
5. Shri Surendra Kumar Dewangan, learned counsel for the appellant would submit that the learned Family Court had committed an error of law in not granting decree of divorce in favour of the appellant/wife. It was submitted that

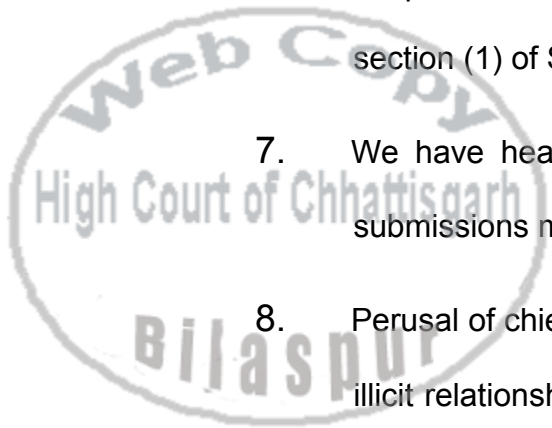


the learned Family Court ought to have held that there was cruelty and desertion on part of respondent/husband and the appellant was entitled to a decree of divorce on that count.

6. Per contra, Shri Aman Pandey, learned counsel for the respondent would support the impugned judgment and decree and submit that husband has not deserted his wife and it was the husband, who come to Bilaspur along with his friend and two other relatives to take back his wife, but the wife refused to come and join the company of the husband. He would further submit that even if all the allegations leveled against the husband had been accepted, they were in the nature of 'normal wear and tear' in a matrimonial life of a couple which would not fall within the mischief of clauses (i-a) & (i-b) of sub-section (1) of Section 13 of the Act.

7. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record carefully.

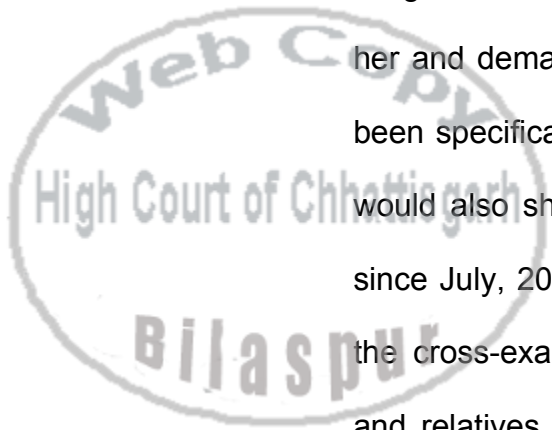
8. Perusal of chief examination of the P.W.1 Sarojlata would reveal that owing to illicit relationship of the respondent with one AST, there was every possibility of her life being in danger and her life could have been lost at any time and under such circumstances, the appellant lived with the respondent upto July 2015 and thereafter, she left her matrimonial home. Perusal of her statement would also reveal that since the respondent did not come to take her back, therefore, she has sent a letter of information on 30.09.2019 through her advocate and in reply thereto, the respondent has also sent a letter advising her to seek divorce. She was subjected to cross-examination and it is clear on perusal of it that despite she was being treated with cruelty, no report or complaint was lodged in the police station in that regard. Although it has been admitted by her that she did not have any knowledge with respect to filing of application under Section 9 of the Act of 1955 by the respondent and that he suffered from paralysis from 11.08.2017, her cross-examination





would also reveal that the respondent is still ready and willing to lead marital life with her whereas the appellant did not want to join the company of respondent looking to the circumstances prevailed over there. P.W.2 Dr. Harish Rajak supported the version of P.W.1 Sarojlata, but he specifically stated in his statement that owing to difference of opinion the appellant is living separately.

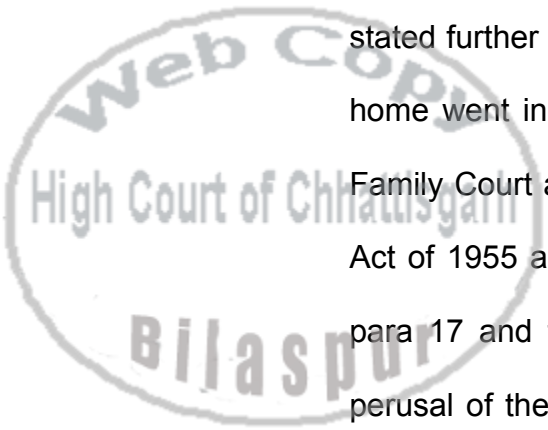
9. Perusal of statement of D.W.3 Vikas Kumar Rajak would show that after her wife leaving the matrimonial home, first of all, his parents tried to bring her back, but she kept avoiding by making false excuses or the other. The appellant always does not want to live with him as she has levelled false allegations of illicit relationship with another woman, committing assault on her and demand of dowry. However, the allegation of illicit relationship has been specifically denied by the respondent. Further statement of respondent would also show that although this witness did not receive any information since July, 2015 from the appellant, but her denial made in paragraph 17 of the cross-examination shows that the respondent and his family members and relatives had come to take her. The appellant has only stated in her pleading and affidavit that the respondent did not come to take her back whereas the respondent has accepted the suggestion of the appellant in para 15 of his cross-examination by stating that he and his brother had gone to her maternal home on 2 – 3 occasions to bring the appellant back. In support, D.W.2 Deepak Kumar Rajak, brother of the respondent, has stated that he along with D.W.1 Jahir Khan and respondent went to the house of the appellant to take her back, but the appellant has refused and in the year 2016 also she did not even come to the house of the respondent despite an invitation was sent to to her for inauguration of the house of respondent and in this way, the appellant, on one pretext or other, has been deliberately avoiding living with the respondent. Moreso, in the year 2015 as well as in the year 2016 the appellant had come to take her on the inauguration of





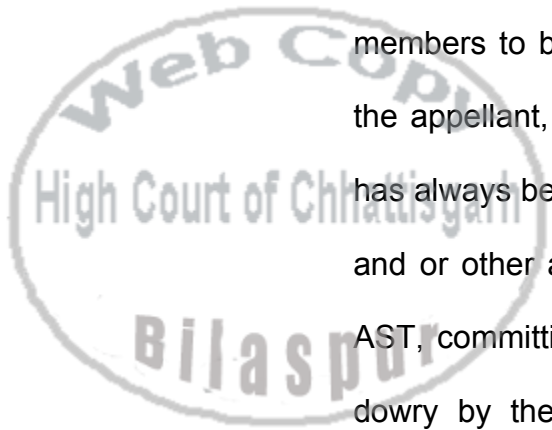
house, but she did not come. Apart from the above, the respondent has stated on oath that on 11.08.2017 he was attacked by paralysis and information of the same has been sent to the applicant on several times that he needs special attention and care at this time, however, she did not come nor has taken any interest to visit him. When the respondent asked this fact to the appellant, then the appellant has stated that she has no such information, as per para 18 of her cross-examination whereas the respondent has brought on record all those documents in relation to his treatment on account of paralysis and even the same has been displayed during the course of evidence. Despite that the appellant has shown her ignorance of the facts and has stated that she does not have such information. It has been stated further by him that since all his efforts to bring her back to matrimonial home went in vain, then he was compelled to file an application before the Family Court at Katni, for restitution of conjugal rights under Section 9 of the Act of 1955 and this fact has also been denied by her in cross-examination para 17 and further denied her presence before the Court whereas from perusal of the certified copy of Vakalatnama (Ex.D.8) filed in the application under Section 9 of the Act of 1955 before the Family Court, Katni, it emerged that the appellant appointed one Promod and other advocates as amicus curiae to assist in the case. Moreover, a perusal of the order sheets of the Family Court, Katni would also show that one Pramod Mishra, Advocate has appeared on behalf of the appellant in that case.

10. What is reflected from the above evidence is that when the appellant had left her matrimonial home without any rhyme or reason, the respondent/husband had made efforts to bring her back to live in Bilaspur with him and also informed her over phone about his physical condition and the factum of filing an application under Section 9 of the Act of 1955 before the Family Court, Katni for restitution of conjugal rights.





11. We are reminded of a well-found saying that "a house is built with bricks and stones but a home is built with love and affection". A matrimonial home cannot be built by bricks and stones but only built by love, affection, respect and caring etc. between the spouses. A review of the statement of respondent shows that from the beginning he has initiated measures to bring her back since she left the matrimonial home and also tried to re-establish the marriage and marital life by filing application under Section 9 of the Act of 1955 whereas the statement of the appellant shows that the appellant left the husband since July, 2015 and since then she did not join the company of the respondent nor did show any interest to re-establish her marital life despite there being vast efforts made on behalf of respondent and his family members to bring her back. If we examine the pleadings and statement of the appellant, then an inference can easily be drawn that the appellant/wife has always been kept avoiding the company of the respondent on one pretext and or other and her allegations with respect to his illicit relations with one AST, committing *marpeet* on her on several occasions and also demand of dowry by the respondent levelled by her against her husband are bald allegations as no evidence and material was placed on record to show the attitude and manner of the respondent, therefore, those allegations would not amount to cruelty. Therefore, the learned Family Court, considering the evidence and material available on record has come to the conclusion that the appellant has been unable to prove her case against the respondent/husband with respect to cruelty and desertion as enumerated under Sections 13(1)(i-a) & 13(1)(i-b) of the Act of 1955. We are of the considered opinion that the findings recorded by the learned Family Court are correct findings of fact based on evidence and material and the same are neither perverse nor contrary to the record, therefore, do not call for any interference.





12. Consequently, the appeal, being devoid of merit and substance, is dismissed.
13. A decree be drawn up accordingly.

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(Radhakishan Agrawal)
Judge

Anjani

