



2024:CGHC:40909-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FAM No.250 of 2019

1 - Chintaram Sahu, Son Kanwal Prasad Sahu, Aged About 53 Years,
Occupation Messenger, State Bank Of India, Branch Saraipali, District
Mahasamund, Chhattisgarh

Appellant

versus

1 - Smt. Kamla Sahu, Wife Of Chintaram Sahu, Aged About 46 Years,
Occupation Business, R/o Ward No.14, Behind Budh Vihar,
Mahasamund, District Mahasamund, Chhattisgarh

Respondent

For Appellant	:	Mr. Shikhar Sharma, Advocate
For Respondent	:	Mr. Gajendra Sahu, Advocate

Hon'ble Smt. Justice Rajani Dubey
Hon'ble Shri Justice Sanjay Kumar Jaiswal

Judgment on Board

17.10.2024

Per Rajani Dubey J.

1. The present appeal has been filed by the appellant against the judgment and decree dated 17.05.2019 passed by the learned Family Court, Mahasamund, Camp Court Saraipali in Civil Suit

No.31-A/2015, whereby the application under Section 9 of the Hindu Marriage Act filed by the appellant has been rejected.

2. Brief facts of the case are that the marriage of the appellant was solemnized with the respondent in the year 1983 according to Hindu Rites and Rituals and out of their wedlock, two children were born, one of whom got expired and one got married and presently is living with her wife along with respondent at Mahasamund. The appellant because of his job as Messenger in SBI was transferred to Saraipali and is living there since 2007. After his transfer to Saraipali, the respondent cohabited only for 20 days and thereafter left the house of the appellant and started living at Mahasamund. The appellant tried to get back her, but all the efforts made by him were went in vain. Ultimately, he filed an application under Section 9 of the Hindu Marriage Act before the Family Court, which has been rejected by the impugned judgment and decree, against which the present appeal has been filed.
3. Learned counsel for the appellants submits that the impugned judgment and decree passed by the learned Family Court is erroneous and bad in law. The learned Family Court ought to have considered the fact that appellant is willing to keep the respondent wife with him. The learned Family Court ought to have considered the fact that there is no fault on the part of appellant and the respondent by herself is staying in the house at

Mahasamund with her son and is not willing to co-habit with the appellant to complete her marital obligations. The learned Family Court ought to have considered the fact that inspite of several attempts made by the appellant to bring the wife with him at Saraipali, where he is presently living because of his job, the respondent/wife has denied to cohabit with him. The appellant is presently facing severe problems relating to his health issue and even after that he had to live alone at Saraipali and he is in need of respondent No.1 to cohabit with him, to which the respondent is willfully denying to complete her marital obligations. The learned Family Court ought to have considered the fact that the respondent/wife without any sufficient reasons is staying away from the appellant. He further submits that during the pendency of this appeal, the appellant has retired and now he is suffering from paralysis and is continuously paying Rs.6,000/- to his wife in the maintenance case. Therefore, the appeal may kindly be allowed.

4. Learned counsel for respondent supports the impugned judgment and decree passed by the learned Family Court and submits that the learned Family Court has minutely appreciated the oral and documentary evidence available on record and rightly dismissed the application of the appellant.
5. Heard learned counsel for the parties and perused the material available on record.

6. It is clear from the record of the learned Family Court that the appellant husband filed application under Section 9 (ii) of the Hindu Marriage Act for restitution of conjugal rights against the respondent wife. The learned Family Court after appreciation of oral and documentary evidence available on record dismissed the application of the appellant by the impugned judgment and decree.
7. It is clear from the statement of the respondent wife that she is living with her son, who is handicapped and she is living with him to take care of him. The appellant husband was transferred to Saraipali in the year 2007 and till 2014, he was going to Mahasamund regularly and thereafter he stopped going there. The appellant also admitted in his cross-examination in para 11 that he was transferred to Saraipali and he regularly visited Mahasamund but for last 3 years, he was not coming to Mahasamund and it is true that he himself is living at Saraipali. The learned Family Court minutely appreciated the oral and documentary evidence properly and found that the appellant has failed to prove this fact that the respondent wife voluntarily deserted her.
8. Section 9 of the Hindu Marriage Act provides as under:-

“Section 9. Restitution of conjugal right.

(1) When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the

statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

(2) *Explanation.*—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society."

9. The learned Trial Court framed considerable points No.1 & 2, which are as under:-

"1. क्या प्रतिवादी/पत्नी ने अक्टूबर 2008 के बाद से बिना किसी युक्तियुक्त प्रतिहेतुक के वादी/पति से अपना साहचर्य प्रत्याहृत कर लिया गया है ? - "प्रमाणित नहीं "

2. क्या वादी/पति दाम्पत्य अधिकारों की पुर्नस्थापना का अनुतोष पाने का अधिकारी है ? - "प्रमाणित नहीं "

10. The learned Family Court minutely appreciated the oral and documentary evidence adduced by the appellant and the respondent and found that the appellant has failed to prove this fact that the respondent wife without any sufficient/reasonable excuse withdrawn from the society of the appellant, as such the appellant is not entitled for decree of restitution of conjugal rights and thereby dismissed the application of the appellant. The finding recorded by the learned Trial Court is based on proper appreciation of oral and documentary evidence adduced by both the parties, which is neither perverse nor contrary to the record, as such we do not find any illegality or irregularity in the judgment and decree passed by the learned Family Court.
11. Accordingly, the appeal is dismissed.

12. A decree be drawn up accordingly.

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Sanjay Kumar Jaiswal)
Judge

Nirala