



**HIGH COURT OF CHHATTISGARH, BILASPUR**

**FAM No. 237 of 2019**

Judgment Reserved On : 19.09.2023  
Judgment Delivered On : 25.09.2023

- Ravishankar Shrivas S/o Late Ramjhul Shrivas Aged About 45 Years R/o Village Pavna, Post Taga, Tahsil Akaltara, Police Station Pamgarh District - Janjgir Champa, Chhattisgarh. ---- **Appellant**

**Versus**

- Smt. Sarita Sen W/o Shri Ravishankar Shrivas Aged About 32 Years D/o Shri Jhumak Sen, R/o Mukam And Post Maro, Police Station Nandghat, Tahsil Nawagarh, District -Bemetara, Chhattisgarh. ---- **Respondent**

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For Appellant : Shri Ritesh Giri, Advocate  
For Respondent : Ms. Nirupama Bajpai, Advocate.

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**Hon'ble Shri Goutam Bhaduri &  
Hon'ble Shri Deepak Kumar Tiwari, JJ**

**C A V JUDGMENT**

The following judgment of the Court was passed by **Deepak Kumar Tiwari, J.**

1. Challenge in this Appeal is to the judgment and decree dated 28.6.2019 passed by the Judge, Family Court, Janjgir in Civil Suit No.71-A/2018 whereby the application/suit preferred by the appellant/husband for grant of decree of divorce was dismissed. The husband is in Appeal before this Court.
2. Facts of the case are that the parties were married on 19.5.2005 at village Maro, District Bemetara. After some time of the marriage,



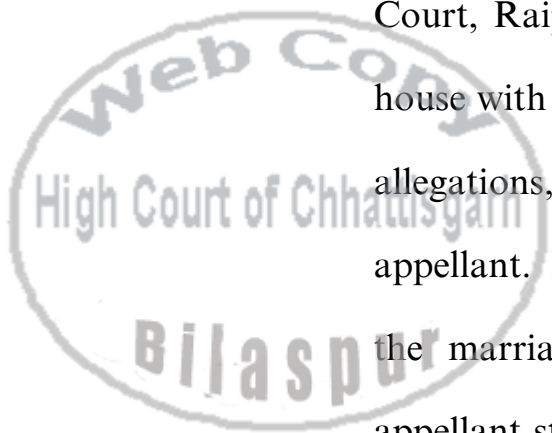
behaviour of the respondent/wife was changed and she started raising quarrel on petty issues. She created pressure on the appellant to reside separately from his parents and started neglecting his parents. The respondent/wife was also not discharging the domestic responsibility. When the appellant tried to convince her, she used to become angry and also started behaving rudely. It has been further alleged that without his consent she used to frequently go to her parents' house and resided there for 3-4 months without any reason. When mother of the appellant called, she also started blaming her as witchcraft and due to her black magic, she had no issues. In the month of June, 2009, she left the matrimonial house voluntarily and refused to return back. After 5 months, when the appellant along with his father and other relatives had gone to take back his wife, on the advise of her father and other relatives, she returned to her matrimonial house. In the month of December, 2009, she again called her brother and expressed that she does not like the appellant and was also not inclined to live with him and left the matrimonial house voluntarily without any cause. Though the appellant has tried several times to bring her back, but she refused to come. When the appellant called his wife to attend the marriage function of his younger brother, she refused to come. In the year 2012 mother of the appellant and in the year 2015 father of the appellant expired, at that time also, the appellant had gone to take back his wife, but she was not willing to return.

3. The respondent/wife has filed an application for maintenance before



the family Court, Raipur under Section 125 of the CrPC, in which vide order dated 20<sup>th</sup> September, 2017, maintenance amount of Rs.5500/- per month was granted to her. The respondent/wife is residing separately since December, 2009 and thereafter no physical relation was made and there was no chance of any re-union. So, it was prayed to allow the suit and decree of divorce be granted.

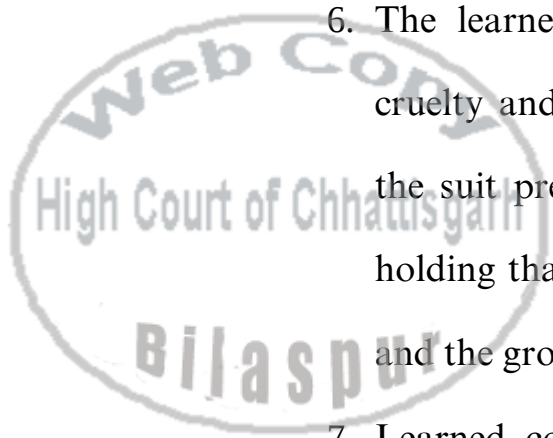
4. While denying the aforesaid contention of the appellant/husband, it is pleaded by the respondent/wife that during the Counseling proceeding before the first Additional Principal Judge, Family Court, Raipur, she had agreed to return back to her matrimonial house with the appellant, but the appellant himself, by making false allegations, refused to keep her. She is willing to reside with the appellant. It has been further pleaded in the reply that till 5 years of the marriage they both had lived happily and thereafter the appellant started harassing her and did not take her at the place of posting of the appellant. The appellant used to doubt her character and under the influence of others, he used to harass her. Since 2010 the appellant started neglecting her, so in such circumstances, she is living in her parental house. The appellant has also made allegation that she had relations with his younger brother Ramashankar (PW-4) and used to beat and abuse her. Neither the appellant had any intention to take back his wife nor has he filed any application for restitution of conjugal rights nor for the said purpose any social meeting was convened. In the counseling proceeding, he has categorically stated that he would not keep his wife with him. The





petition has been filed for grant of decree of divorce on the false ground, therefore, the same deserves to be dismissed.

5. In the proceeding before the family Court, the appellant/husband has examined himself as PW-1, his neighbour Rameshwar (PW-2), Govind Das (PW-3) (uncle in village relation & friend of PW-1), and his younger brother Ramashankar (PW-4) whereas the respondent/wife has examined herself as NAW-1, her brother Kamlesh Shriwas (NAW-2), Ashok Kaushal (NAW-3) and Jitendra Tiwari (NAW-4).
6. The learned family Court has framed the issue with regard to cruelty and desertion and after evaluating the evidence, dismissed the suit preferred by the appellant for grant of decree of divorce holding that he has failed to prove that he was treated with cruelty and the ground of desertion was also not proved. Thus this Appeal.
7. Learned counsel for the appellant submits that the evidence on record would show that the wife has treated the appellant with cruelty and also deserted him since 2009. Therefore, the evidence has not been appreciated by the family Court in a proper manner. Learned counsel prays to allow the Appeal and grant decree of divorce in favour of the appellant.
8. On the other hand, learned counsel for the respondent/wife would support the impugned judgment on submission that cause of action arose in the month of December, 2009 when it was stated by the appellant the respondent/wife refused to return back, though in the counseling proceeding held on 13<sup>th</sup> October, 2010 vide Ex.-D/1 & D/





2, the respondent/wife has clearly expressed her desire that she is willing to join the company of her husband and willing to reside at the place of posting of her husband. However, the appellant himself is not willing to take her back and stated that the wife has neglected him, so, he wants time to consider her proposal. The impugned judgment is well merited and does not call for any interference.

9. We have heard learned counsel for the parties at length, perused the judgment and record with utmost circumspection.

10. In order to appreciate the arguments advanced on behalf of the parties, we have examined the evidence available on record.

11. The appellant (PW-1) has stated that his marriage was solemnized with the respondent on 19<sup>th</sup> May, 2005 and for some days of the marriage behaviour of the respondent was good. After some time, her behaviour was changed and she started creating pressure on the appellant to reside separately from his parents. He has further deposed that in the year 2012 his mother and in the year 2015, his father expired and on 16<sup>th</sup> May, 2010, marriage of his younger brother Harishankar was solemnized. In the month of December, 2009, when his parents and his brother were residing along with him, the respondent started raising quarrel by saying that he should not make any expenditure on the ancestral house of the village and started creating pressure to live along with her at the place of his posting and left the matrimonial house. In cross-examination at para-19 the appellant has denied the fact that during the counseling proceeding before the Counsellor the respondent has expressed her

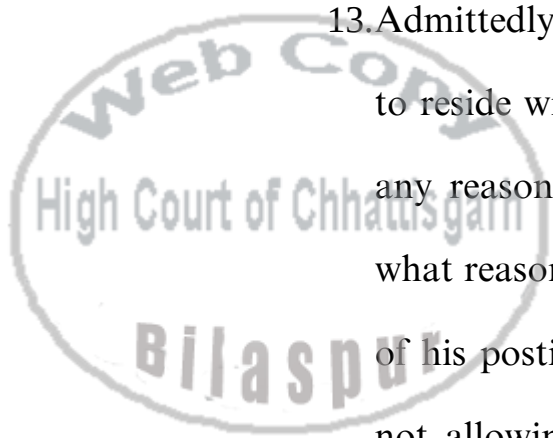




desire to reside with him and he himself refused to keep her.

12. The respondent/wife has produced and proved the said proceeding vide Ex.-D/1 & D/2 wherein on 13.10.2010, when the matter was pending before the first Additional Principal Judge, Family Court, Raipur, though the wife has categorically expressed her desire to go along with her husband if he keeps her at the place of his posting, the appellant himself did not agree for the same. But in cross-examination at para-19 he categorically has denied such fact, which took place before the Court and has not stated any reason.

13. Admittedly, the appellant/ husband himself refused to allow his wife to reside with him at the place of his posting and he has not stated any reason therefor in the petition or in his deposition as to for what reasons he is not willing to keep his wife with him at the place of his posting. When the conduct of the appellant was at fault in not allowing his wife to reside with him and in such compelling circumstances, if the wife is living separately at her parental house and the appellant/husband has also not made any effort or called any social meeting and not taken any steps for filing any application for restitution of conjugal rights, mere assertion in the plaint that the wife is residing separately since December, 2009 for any sufficient cause, is not found to be proved. Further, mere submission of the appellant that he had tried to bring back his wife when his father and mother expired and even at the time of marriage of his younger brother, it can be said that the appellant has not discharged his burden to prove the said fact for the reason





that in the year 2010, the appellant has categorically refused to bring back his wife. Even in his submission before the Court below he has stated that he is not willing to keep the respondent with him, as he apprehends some threat to his life if he keeps her.

14. In **Samar Ghosh Vs. Jaya Ghosh**<sup>1</sup>, the Hon'ble Supreme Court has indicated illustrative cases where inference of mental cruelty can be drawn. They are reproduced as under:-

“**101.** No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

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1 (2007) 4 SCC 511





(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have







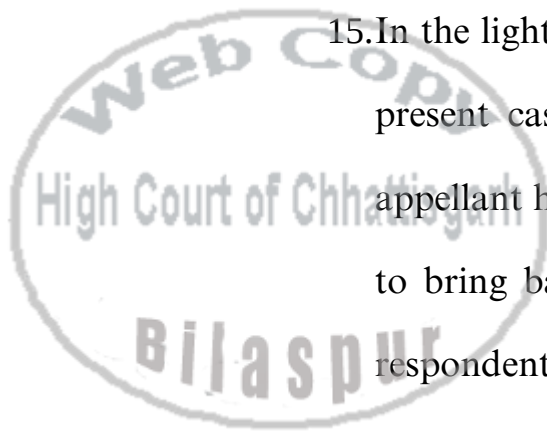
intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(*xiii*) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(*xiv*) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

15. In the light of aforesaid observations, if we examine the facts of the present case, we find that as per the pleading of the plaintiff, the appellant himself has stated that after December, 2009, he had tried to bring back his wife, which is belied by the stand taken by the respondent/wife during the counseling proceeding, as in the said proceeding, the respondent/wife had expressed her desire to join the company of the appellant and it was the appellant who refused to keep her. It is obvious that if the wife insists to stay with the husband and without any extraneous reason or official cause, if husband refuses to keep her at the posting place, it cannot be said to be a cruelty by the wife towards the husband for such insistence. During the matrimonial ties, the reciprocal respect and regard to each other and company is necessary.

16. In the circumstances, this Court is of the considered view that any past relations with the parents and behaviour of the appellant was





already condoned by the conduct of the appellant and the finding recorded by the learned family Court is based on material available on record and no interference is called for in the said finding.

17. With respect to permanent alimony, it is admitted that the appellant is working as Shiksha Karmi Grade-I and the respondent/wife is getting interim maintenance of Rs.5500/- per month in a proceeding under Section 125 of the CrPC. Considering the present market rates and inflation and to further avoid multiplicity of proceedings, we deem it apposite that Rs.15,000/- be granted as monthly maintenance to the respondent/wife henceforth. Accordingly, the husband shall pay an amount of Rs.15,000/- as monthly maintenance to the respondent/wife. The appellant shall make regular monthly deposit of aforesaid maintenance amount to the account of respondent/wife. The said maintenance amount is inclusive of all other maintenance granted to the appellant/wife and the same shall be set off and adjusted. In every 3 years, there shall be an increase @ 5% on the aforesaid amount.

18. In the result, the Appeal being devoid of any substance deserves to be and is hereby dismissed.

19. Parties shall bear their own costs.

20. A decree be drawn up accordingly.

Sd/-  
(Goutam Bhaduri)  
Judge

Sd/-  
(Deepak Kumar Tiwari)  
Judge