



2024:CGHC:42298-DB  
NAFR

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**FA(MAT) No. 285 of 2023**

**Judgment reserved on : 11.09.2024**

**Judgment delivered on 25.10.2024**

Smt. Kiran Tiwari D/o Late Shri Kamal Kishore Tiwari, W/o Kamlesh Tiwari, Aged About 30 Years R/o Vill- Amora, Tah Nawagarh, Dist. Janjgir Champa (Chhattisgarh) Present Address Sahu Chaoul, Link Road, Tahsil Janjgir, District Janjgir Champa (Chhattisgarh)

**Appellant**

**versus**

Kamlesh Tiwari, S/o Shri Radhe Hari Tiwari, Aged About 57 Years, R/o Vill- Amora, Tah. Janjgir, Dist- Janjgir Champa (Chhattisgarh) Present Address House of Smt. Saroj Sharma W/o Shri Ashok Sharma, Ward No.15 Bajor Para, Behind Raja Babu Lakdi Tall, Tah. Janjgir, Dist. Janjgir Champa (Chhattisgarh)

**Respondent**

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For Appellant	:	Mr. Ravindra Sharma, Advocate
For Respondent	:	Mr. S. B. Pandey, Advocate

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

**CAV Judgment**

**Per Rajani Dubey J.**

1. The present appeal has been filed by the appellant against the judgment and decree dated 06.05.2023 passed by the learned

Judge, Family Court, Janjgir, District Janjgir-Champa in Civil Suit No.212-A/2022, whereby the appellant's application seeking divorce has been rejected by the learned Family Court.

2. Brief facts of the case are that the marriage between the parties was solemnized on 05.05.2011 as per Hindu Rites and Rituals, but soon after the marriage, the respondent husband and his family members started committing cruelty with the appellant. The respondent had also suppressed his actual age at the time of marriage and made false statement that he is a government servant, as such she was living separately. Thereafter the respondent filed application under Section 9 of the Hindu Marriage Act before the Family Court, Janjgir-Champa and vide order dated 26.09.2018, the decree was granted in favour of the respondent and the appellant was directed to cohabit with the respondent within 2 months therefrom. The 125 CrPC application was also filed by the appellant, but the same was dismissed by the Family Court, as the compromise took place between the parties. Subsequently, the appellant filed application under Section 13 (1) (b) of the Hindu Marriage Act before the learned Family Court, which has been dismissed vide 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 is erroneous in law and facts both and the

same is liable to be set aside. The learned Family Court has failed to consider that the appellant and the respondent are living separately immediately after their marriage and there is no chance of their cohabitation. The learned Family Court has also not considered that the respondent had suppressed his actual age at the time of marriage and made false statement that he is a government servant, as such he committed fraud with her. Therefore, the appeal may kindly be allowed and the decree of divorce be granted in favour of the appellant. Reliance has been placed on this Court's judgment dated **29.03.2022** passed in **FAM No.69/2016** in the matter of **Smt. Sarita Tamrakar vs Sudhir Tamrakar**.

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. Before the learned Family Court, the respondent husband filed an application under Section 9 of the Hindu Marriage Act, which was allowed vide order dated 26.09.2018, but the appellant wife is still living separately and did not follow the order of the learned Family Court.

7. It is not disputed that the marriage of both the parties was solemnized on 05.05.2011 according to Hindu Rites and Rituals. The appellant filed application under Section 13 (1) (b) of the Hindu Marriage Act on the ground of cruelty and desertion. The learned Family Court after appreciation of oral and documentary evidence found that the appellant wife herself is living separately without any sufficient cause and she has failed to prove her case against the respondent husband.
8. The appellant wife stated that she lived with her husband only for 1 month and stated that at the time of marriage, she was aged about 18 years and the respondent husband was aged about 40 years at the time of marriage. The husband stated that his age was 28 years at the time of marriage and also stated that he is a government servant and since 11 years the appellant is living separately. In the cross-examination, she admitted this fact that she filed divorce petition before Korba Court, which was dismissed by the Court and she herself stated that she is living separately since 10-11 years. The respondent husband also admitted this fact that in the year 2012, the appellant wife filed application for divorce, which was dismissed in default and after that he filed application under Section 9 of the Hindu Marriage Act. He denied this suggestion that he suppressed his age at the time of marriage, but he admitted this fact that at the time of marriage, he was aged about 35 years and he also admitted his

signatures in stamp paper (Ex-D/1) and he stated that his signatures were taken by threatening him.

9. The learned Family Court found that the appellant wife has failed to prove cruelty and desertion on the part of the respondent, but it is clear that both the parties are living separately since long.
10. This Court in FAM No.69/2016 held in paras 7 & 8 as under:-

“7. In so far as the plea of desertion is concerned, it is stated by the husband that both are living separately since 1998 and the said version is found to be corroborated by the statement of the wife, as reflected from para 16 of her statement whereby it is deposed by her that they lived only for 2-3 months after 25-6-1998 and appears further from her own admission as reflected from para 17 that a desertion certificate was issued by the Nagar Panchayat, Dhamdha on 19-2-1999. After considering the evidence led by the parties, the trial Court has, therefore, not committed any illegality in arriving to a conclusion that both are living separately since 1998 and, thus, rightly granted a decree for dissolution of marriage on the ground enumerated under Section 13(1)(ib) of the HM Act and we do not find any infirmity in the same.

8. Moreover, as observed hereinabove, the marriage was solemnised in June, 1988 but both have started living separately since 1998. Therefore, the alleged marriage has irretrievably broken down and, it is, thus like a deadwood for all purposes and cannot be revived as held by the Hon’ble Supreme Court in the matter of K. Srinivas Rao v D.A. Deepa<sup>1</sup>, wherein, it has been held at paragraphs 30 & 31 as under :

“30. It is also to be noted that the appellant-husband and the respondent-wife are staying apart from 27/4/1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in Samar Ghosh, if we refuse to sever the tie, it may lead to mental cruelty.

31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree."

11. In light of the above, in this case also, it is clear that the marriage of the parties was solemnized on 05.05.2011 and as per statement of both the parties as well as the document (Ex-D/1), they are living separately since 2011-12, therefore, the alleged marriage has irretrievably broken down. It is thus like a deadwood for all purposes and cannot be revived, as has been held by the Hon'ble Apex Court in the matter of **K. Srinivas Rao** (supra). Therefore, we are of the considered opinion that the impugned judgment and decree passed by the learned Family Court is not sustainable, as such the impugned judgment and decree is hereby set aside and the application filed by the wife under Section 13 (1) (b) of the Hindu Marriage Act is allowed and the marriage solemnized between the parties on 05.05.2011 is dissolved.
12. The appeal stands allowed.

13. A decree be drawn accordingly.

Sd/-  
(Rajani Dubey)  
Judge

Sd/-  
(Sanjay Kumar Jaiswal)  
Judge

Nirala