



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 266 of 2019

Judgment Reserved on 26.02.2024

Judgment Delivered on 09.04.2024

- Raghavendra Soni, S/o Late Parasram Soni, aged about 47 Years, R/o 5 Building, House No. 52, Housing Colony, Durg, Tehsil Civil and Revenue, District Durg, Chhattisgarh.

Currently Residing at - Vidyut Nagar, Near Shiv Mandir, Next to Patwa Sadan, Durg, Tehsil, Civil and Revenue District Durg, Chhattisgarh.

----Appellant

Versus

- Smt. Leena Soni, W/o (Divorced) Raghavendra Soni, aged about 44 Years, R/o Sheetla Nagar, Ward No. 5, Near Santoshi Mandir, Tehsil Civil and Revenue, District Durg, Chhattisgarh.

---- Respondent

For Appellant Mr. Jaydeep Singh Yadav, Advocate.
For Respondent Mr. Jitendra Gupta, Advocate.

FA(MAT) No. 9 of 2020

- Smt. Leena Soni, Wife of Raghvendra Soni, aged about 37 Years, R/o Sheetala Nagar, Ward No. 5, Near Santoshi Mandir, Tahsil and District Durg, Chhattisgarh.

----Appellant

Versus

- Raghvendra Soni, Son of Late Parasram Soni, aged about 40 Years, R/o Five Building, House No. H.I.52, Hospital Colony, Tahsil and District Durg, Chhattisgarh.

---- Respondent

For Appellant Mr. Jitendra Gupta, Advocate.
For Respondent Mr. Jaydeep Singh Yadav, Advocate.

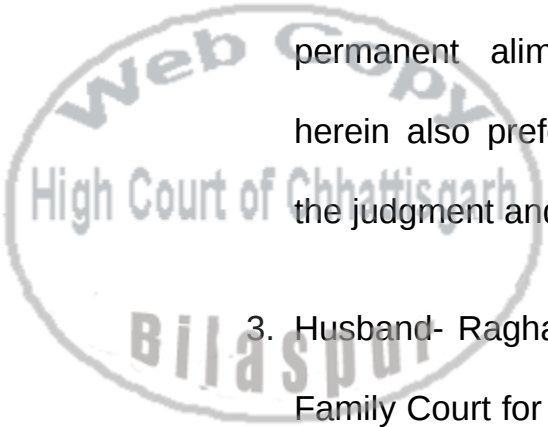


Hon'ble Shri Justice Goutam Bhaduri &
Hon'ble Shri Justice Radhakishan Agrawal

CAV Judgment

Per Radhakishan Agrawal, Judge

1. Since both the appeals arises of the same civil suit No.1113-A/2012, therefore, they are being heard together and disposed of by this common judgment.
2. Being aggrieved by the impugned judgment dated 03.05.2019, the husband herein preferred an appeal (FAM No.266/2019) seeking modification of the judgment of Family Court with respect to permanent alimony and maintenance, whereas respondent-wife herein also preferred appeal {FA(MAT) No.9/2020} for setting aside the judgment and decree passed in favour of husband.
3. Husband- Raghavendra Soni preferred a civil suit before the learned Family Court for dissolution of marriage under Section 13 of the Hindu Marriage Act, 1955 (for short, 'the Act, 1955') which was registered as Civil Suit No.1113-A/2012. Vide impugned judgment and decree dated 03.05.2019, the learned Third Additional Principal Judge, Family Court, Durg, C.G., allowed the application filed by the husband for dissolution of marriage and granted a decree in his favour and the marriage of the parties solemnized on 29.01.2013 has been dissolved, while directing the husband to pay an amount of Rs.5,00,000/- as permanent alimony, in addition to the monthly maintenance amount which the husband is giving to the wife. It is also directed by the Family Court that the decree of divorce shall be effective from that day when the husband deposits Rs.5,00,000/- towards permanent





alimony.

4. Brief facts of the case are that on 29.01.2003, marriage of the husband was solemnized with the wife according to Hindu Rites and Rituals. After marriage, the wife joined the company of the husband. It is alleged by the husband that after marriage, behaviour of wife has changed towards him and she started quarreling and misbehaving with the husband, which was objected by him and made her understand to live peacefully. It is also alleged by him that wife never performed her matrimonial obligations and always used to say that she does not want to live with him. After several persuasions by the husband, there is no change in her behaviour and one fine morning, without giving any information, she left the matrimonial home. It is stated that during course of cohabitation, the attitude of wife towards him was cruel, insulting and painful. The husband further pleaded that the wife is residing separately since 2003 from him and there is no possibility of cohabitation between them as he was deserted by her without any sufficient cause, therefore, the husband has been compelled to file civil suit seeking decree of divorce.

5. Wife in her written statement - counter claim denied all the adverse averments made by the husband and stated that the allegations made by her husband are false and baseless. During course of her stay in matrimonial home, she never subjected the husband to cruelty & harassment and always discharged her matrimonial obligations. She has further stated that with the permission of husband, she used to go to her parental home and her husband used to accompany with her. She has further put forth that even today she is willing to stay with the



husband, but her husband is always willing to divorce her on one pretext or other. Therefore, earlier she had filed a counter suit / separate application under Section 9 of the Act, 1955 for restitution of conjugal rights which was allowed in her favour, but the husband did not follow the said judgment and decree nor has filed any revision against the said judgment and decree, due to which the said judgment and decree passed in her favour has attained finality and has the effect of *res judicata*. It has been further prayed by her that the application filed by her husband under Section 13 of the Act, 1955, seeking dissolution of marriage is baseless, therefore, the same is liable to be dismissed.

6. Before the Family Court, parties led evidence and brought on material documents. The Family Court, on the basis of evidence and material available on record, allowed the suit filed by the husband under Section 13 of the Act, 1955 for dissolution of marriage and granted a decree in his favour with a direction to him to pay an amount of Rs.5,00,000/- towards permanent alimony to the wife, in addition to the monthly maintenance amount which he is paying to wife and also directed that decree of divorce shall be effective from that day when husband deposits an amount of Rs.5,00,000/- towards permanent alimony to the wife. Aggrieved by the said judgment, the husband and wife are before this Court.

7. Learned counsel for the husband, while not pressing the impugned judgment with respect to dissolution of marriage, submits that the Family Court, without appreciating the proper evidence on record with regard to source of income of husband, was not justified in granting



permanent alimony to the wife. Therefore, it is prayed by him that the impugned judgment with respect to grant of permanent alimony along with monthly maintenance amount be set aside.

8. Learned counsel for the wife submits that the judgment impugned passed by the learned Family Court granting decree of divorce in favour of husband is contrary to law. He further submits that even today wife is willing to live with the husband, but her husband is always willing to divorce her on false pretexts. He also submits that the amount of Rs.5,00,000/- granted in favour of wife as permanent alimony is also inadequate as she has no source of income and looking to the present rate of inflation, it is prayed by her that the amount granted towards permanent alimony be enhanced. For all these reasons, the impugned judgment and decree of the Family Court is liable to be set aside.

9. We have heard learned counsel appearing for the parties, perused the pleadings and the evidence available on record.

10. Reiterating the pleadings as stated by the husband, it is specially stated by him that wife has been residing separately for the past 13 years and there is no possibility to establish cordial relationship between them. Therefore, he has filed the civil suit for dissolution of marriage on the ground of desertion. He was subjected to cross-examination wherein he has admitted that against him, case under Section 498-A was going on. He has also admitted that earlier also he has filed an application under Section 13 of the Act, 1995 for dissolution of marriage whereas the wife had also filed an application under Section 9 of the Act, 1955 for restitution of conjugal rights in which



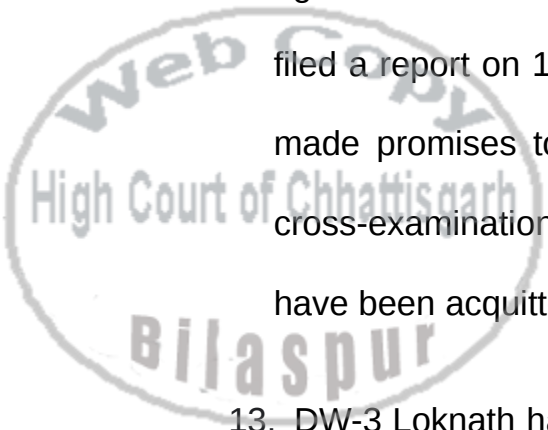
decree was passed by the Family Court in favour of wife to lead a married life. He has also stated that even if the wife is willing to go with him, then also he would not take her as 14 years have elapsed.

11. PW-2 Ram Krishna Bargade, neighbour of the Raghavendra Soni (husband), has stated that after marriage, the wife hardly stayed with the husband only for 15 days.

12. On the other hand, wife has been examined herself as DW-1, who has stated that after marriage, she was subjected to mental harassment by the husband and his family members. She has further stated that against the harassment meted out by husband and in-laws, she has filed a report on 18.01.2005. It is also alleged by her that husband had made promises to take her back, but he never come to take her. In cross-examination, she has admitted that her husband and in-laws have been acquitted of the charge under Section 498-A of IPC.

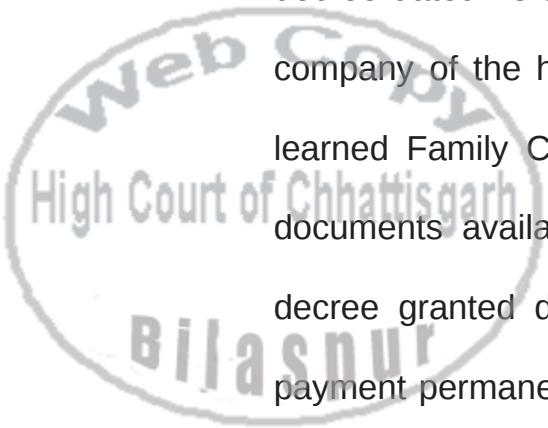
13. DW-3 Loknath has admitted in his cross-examination that wife is living separately for the last 15 years. DW-4 Raj Kumar Soni, father of Leena Soni (wife) has stated her daughter always wanted to stay with the husband, but her husband always wanted to get rid of her by way of divorce and filed a divorce petition on false grounds. In cross-examination, this witness admitted that the husband and his parents have been acquitted of the charge under Section 498-A IPC which was initiated at the behest of his daughter.

14. What is reflected from the above evidence is that after marriage, allegations and counter allegations were leveled by the husband and wife against each other with respect to discharge of their marital duties.





It is pertinent to mention here that earlier also husband filed an application before the Family Court for dissolution of marriage and wife had also filed a counter suit / separate application under Section 9 of the Act, 1955 for restitution of conjugal rights. However, the suit for decree of divorce filed by the husband has been rejected whereas counter suit filed by the wife for restitution of conjugal rights has been decreed vide judgment dated 28.07.2009 in civil suit No.75-A/2007. It appears from perusal of record that husband again filed an application on 09.05.2012 seeking decree of divorce on the ground of cruelty and desertion with a further pleading that despite there being judgment and decree dated 28.07.2009 passed in favour of wife, she did not join the company of the husband for discharging matrimonial obligations. The learned Family Court, having appreciated the evidence and material documents available on record, by way of impugned judgment and decree granted divorce in favour of husband while directing him to payment permanent alimony of Rs.5,00,000/- to wife, in addition to the amount of monthly maintenance. It is also clarified by the learned Family Court that the decree of divorce shall only be effective from that day when husband deposits a sum of Rs.5,00,000/- against which both the spouses have filed separate appeals before this Court. From perusal of the pleadings & evidence of the parties, it appears that both spouses have leveled bald allegations against each other. From perusal of record, it appears that there is no evidence on record to show the financial earning capacity of the husband, nature of work and source of income and in absence of such evidence, the trial Court has directly held that the husband shall pay a sum of Rs.5,00,00/- towards permanent alimony, in addition to the monthly maintenance amount,

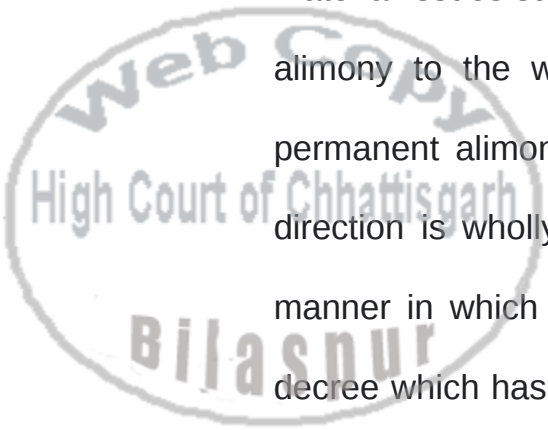




while granting decree of divorce. It is also held by the learned Family Court that the decree of divorce shall only be effective from that day when husband deposits a sum of Rs.5,00,000/-. In our view, mere perusal of judgment and decree passed by the Family Court would go to show that the learned Family Court has failed to apply its judicial mind to the factual and legal controversy insofar as award of permanent alimony to the wife is concerned. The learned Family Court even did not mention the factual narration of the case set up by the parties on the question of award of permanent alimony and without there being any discussion, appreciation, reasoning and categorical findings on the material issues such as financial earning capacity of husband to pay the alimony to the wife, a direction was given to the husband to pay permanent alimony of Rs.5,00,000/-. In our considered opinion, such direction is wholly unsustainable in law. We cannot countenance the manner in which the learned Family Court passed the judgment and decree which has compelled us to remand the matter to the concerned Family Court for deciding the issues afresh on merits.

15. In the light of the foregoing discussion, the impugned judgment and decree passed by the Family Court is set aside and the matter is remitted back to the concerned Family Court to decide the case afresh, particularly with respect to financial earning capacity of the husband, on its own merits, after affording full opportunity of hearing to the parties, as expeditiously as possible preferably within a period of 6 months from the date of first appearance of the parties. Parties are directed to appear before the concerned Family Court on 30.04.2024.

16. Needless to mention here, the Family Court shall provide proper and





sufficient opportunity to the parties to amend the pleadings and to file additional documents, if any. Learned Family Court shall also provide opportunity of examination and cross-examination of the witnesses of both the parties along with additional evidence, if any.

17. In the result, both the appeals stand disposed of.
18. Record of the Court below be sent back forthwith.
19. No order as to costs.

**Sd/-
(Goutam Bhaduri)
Judge**

**Sd/-
(Radhakishan Agrawal)
Judge**

