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NC: 2023:KHC-D:11396-DB
MFA No. 104251 of 2017

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 27TH DAY OF SEPTEMBER, 2023

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PRESENT

THE HON'BLE MR JUSTICE S.R. KRISHNA KUMAR

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

MISCELLANEOUS FIRST APPEAL NO. 104251 OF 2017 (MC-)

BETWEEN:

SRI BHIMRAO S/O. NAMDEV SAVNT,
AGE: 31 YEARS, OCC: ARMY SERVICE,
R/O: NANDIKURALI VILLAGE,
TQ: RAIBAG, DIST: BELAGAVI-590001.

...APPELLANT

(BY SRI A.M. GUNDAWADE AND
SRI SANGAMESH S. GULAPPAVAR, ADVOCATES)

AND:

SMT. SANTOSHI W/O. BHIMRO SAVANT,
AGE: ABOUT 28 YEARS, OCC: HOUSEHOLD,
C/O. MUNASI BHARAT THAKARE,
R/O: HIRA GHAT, OPP, NEELM PALACE,
AMBEDKAR NAGAR, ULHASNAGR,
TQ: ULHASNAGR, DIST: THANE-421001.

...RESPONDENT

(NOTICE SERVED TO RESPONDENT)

THIS MISCELLANEOUS FIRST APPEAL MFA FILED UNDER SECTION 28(1) OF THE HINDU MARRIAGE ACT, 1955 PRAYING TO SET ASIDE THE JUDGEMENT AND DECREE DATED 07.10.2017, PASSED IN MATRIMONIAL CASE NO.15/2017 ON THE FILE OF THE SENIOR CIVIL JUDGE AND J.M.F.C., RAIBAG.





THIS APPEAL, COMING ON FOR ORDERS, THIS DAY,
KRISHNA KUMAR, J., DELIVERED THE FOLLOWING:

JUDGMENT

This appeal by the petitioner/husband in M.C.No.15/2017 is directed against the impugned judgment and decree dated 07.10.2017 passed by the learned Senior Civil Judge & JMFC., Raibag (hereinafter referred to as the 'Trial Court'), whereby, the said petition filed by the appellant/husband against the respondent/wife seeking dissolution of their marriage by a decree for divorce on the ground of desertion was dismissed by the Trial Court.

2. Respondent having been served with notice of the petition, has remained unrepresented and has not contested the petition before the Trial Court.

3. Heard learned counsel for the appellant and perused the material on record.



4. The material on record discloses that the appellant got married to the respondent on 12.06.2009 and from out of their wedlock, a male child Aditya was born on 10.08.2011 who is presently in the custody of respondent/mother.

5. In the first instance, the appellant/husband issued legal notice on 03.08.2016 calling upon the respondent/wife to join him and since she did not do so, the appellant instituted M.C.No.33/2016 seeking restitution of conjugal rights. By judgment and decree dated 05.12.2016, the said petition came to be allowed in favour of the appellant against the respondent thereby granting a decree of restitution of conjugal rights *ex parte*, directing respondent to join the appellant. It was contended that despite the aforesaid judgment and decree for restitution of conjugal rights passed in favour of the appellant/husband against the respondent/wife, she did not join him and as such, the appellant was construed to institute the present petition (i.e. M.C.No.15/2017)



seeking divorce on the ground of desertion. In the instant petition also, the respondent remained *exparte* and did not contest the petition. The appellant examined himself as PW1 and produced two documents at Exs.P1 and P2 in compromising of the marriage certificate and certified copy of the judgment and decree dated 05.12.2016 passed in M.C.No.33/2016 as referred to *supra*.

6. It is needless to state that the respondent who remained *exparte* did not cross-examine PW1 nor she adduced any oral or documentary evidence on her behalf and despite this, the Trial Court proceeded to pass the impugned judgment and decree dismissing the petition, aggrieved by which, the appellant/husband is before this Court by way of the present appeal.

7. A perusal of the undisputed material on record will indicate that the specific ground urged by the appellant for the purpose of seeking divorce was that the respondent had deserted him and was leaving separately from the year 2013 onwards. Further, despite obtaining an



ex parte decree for restitution of conjugal rights in M.C.No.33/2016, the respondent did not join the petitioner nor did she comply with the *ex parte* judgment and decree which is sufficient ground for divorce within the meaning of Section 13(1A)(ii) of the Hindu Marriage Act, 1955.

8. In the instant case, it is an undisputed fact that despite judgment and decree for restitution of conjugal rights having passed in favour of the appellant/husband against the respondent/wife on 05.12.2016, the respondent has not joined the appellant and there has not been any restitution of conjugal rights between the parties for more than a period of one year after decree which was passed on 05.12.2016. Under these circumstances, we are of the opinion that the Trial Court committed an error in dismissing the petition without appreciating the above aspects as well as the un-impeached, un-controverted and unchallenged pleadings and evidence of the appellant which constitute sufficient grounds to grant decree for divorce and as such, the impugned judgment and decree



passed by the Trial Court deserves to be set aside and the petition filed for divorce deserves to be allowed. In the result we proceed to pass the following:

ORDER

- (i) The appeal is hereby ***allowed***.
- (ii) The impugned judgment and decree dated 07.10.2017 passed in M.C.No.15/2017 on the file of the learned Senior Civil Judge & JMFC., Raibag is set aside.
- (iii) M.C.No.33/2016 filed by the appellant stands allowed.
- (iv) The marriage solemnized between the appellant and the respondent on 12.06.2009 stands dissolved by a decree for divorce.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

RH
LIST NO.: 1 SL NO.: 4