

**T.S NO-31/13**  
**Ahiz Ali Mondal V/S Molida Khatun**  
**FORM NO-(J) 2**

**HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE**

**District: Dhubri**

**IN THE COURT OF MUNSIFF NO-1, DHUBRI**

Present: **Nur Jamal Hoque, AJS**  
**Munsiff No-1**  
**Dhubri**

**Thursday, 9th January, 2014**  
**Title Suit No-31/13**

**Ahaz Ali Mondal** .....**Plaintiff**

**V/S**

**Molida Khatun**.....**Defendants**

This suit coming on for argument on **8/01/2014** in presence of:-

<b>Mr. Mobinur Rahaman</b>	<b>LD Advocate for the plaintiff</b>
<b>None</b>	<b>LD advocate for the defendant</b>

And having stood for consideration to this day, the court delivered the following judgment:-

**JUDGMENT AND ORDER**

**“This is a suit for restitution of conjugal rights”**

1. Plaintiffs case in brief is that defendant is the legally married wife of plaintiff and their marriage was solemnized on-5/6/11 as per Muslim Law and after their marriage both of them lived together as husband and wife. That on-18/8/11 the defendant during her pregnancy about 2 month had gone to her parents house for customary visit with a promise to return back within a week, but after lapsed of said period defendant did not return back the house of plaintiff. Thereafter plaintiff and his relatives several times went to bring back the defendant on which the defendant refused to return back without any grounds. Thereafter plaintiff filed T.S No-418/11 for restitution of conjugal life and during the pendency of that suit defendant on-20/3/12 in her own accord return back to the house of plaintiff and started living with plaintiff and for which plaintiff not take any steps in T.S N-418/11, and accordingly said suit dismissed for non-prosecution. That on-9/4/12 defendant gave birth one male child in the house of plaintiff. That defendant always insisted the plaintiff to live at her parents house as GHAR JAWAI but plaintiff refused the same as plaintiff is the sole earning family member of his family. That on-28/5/12 defendant went to her parents house for customary visit along with the new born child but subsequently the defendant did not return back and plaintiff went to bring back the defendant but the defendant refused to return back with plaintiff. Hence having

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no other alternative the plaintiff instituted present suit before the court praying restitution of conjugal life with the defendant.

2. In the other hand defendants contested the suit by filling written statement stating that entire allegations of plaint are not true. The defendants further pleaded that plaintiff physically assaulted the defendant on-12/4/12 with a demand of dower Rs.15000/- and on-26/5/12 the defendant and her minor son was driven out by the plaintiff in demands of dowry and since then the plaintiff along with her minor son residing at her parents house

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and plaintiff never visited at the parental house of defendant and accordingly and maintenance case vide case no-629/12 filed by defendant in the court Learned C. J.M, Dhubri and another criminal case has also filed against the plaintiff. Upon the above defendant prayed to dismiss the suit of plaintiff with cost.

3. Upon the above pleadings my predecessor framed following issues:-

**ISSUE**

1. Whether the suit is maintainable?
  2. Whether there is cause of action for the suit?
  3. Whether the defendant deserted the plaintiff since-28/5/12?
  4. Whether defendant is bound to lead conjugal life with plaintiff?
  5. Whether plaintiff is entitled to get any reliefs as prayed for?
4. Upon the above issues plaintiff adduces only oral evidences before the court. On contra defendant side did not adduce any forms of evidences before the court. The defendants side also did not turn up before the court to cross-examine the witnesses of plaintiff side.
  5. I have heard the arguments put forwarded by plaintiff side and perused the pleadings of on records along with C.R.

**DISCUSSION, DECISION AND REASONS FOR SUCH DECISION**

**6. ISSUE NO-1 MAINTAINABILITY**

This issue relates to the maintainability of the suit. Defendants in this suit in their written statement alleged that suit is not maintainable. But why and how the suit is not maintainable that fact was not clearly pleaded by the defendant in this case. Whereas Order -8 Rule-2 of C.P.C mandates that the parties should pleaded specifically as to maintainability of the suit. On perusal of the entire pleadings of both the side I also don't find anything in the suit which renders the suit is not maintainable. Hence this issue is answered in affirmative and in favor of the plaintiffs.

**7. ISSUE NO-2 CAUSE OF ACTION**

In the law, a **cause of action** is a set of facts sufficient to justify a right to sue to obtain money, property, or the enforcement of a right against another party. The term also refers to the legal theory upon which a plaintiff brings suit (such as breach of contract, battery, or false imprisonment). To pursue a cause of action, a plaintiff pleads or alleges facts in a complaint, the pleading that initiates a lawsuit. A cause of action generally encompasses both the legal theory (the legal wrong the plaintiff claims to have suffered) and the remedy (the relief a court is asked to grant). Often the facts or circumstances that entitle a person to seek judicial relief may create multiple causes of action. Although it is fairly straightforward to file a Statement of Claim in most jurisdictions, if it is not done properly, then the filing party may lose his case due to simple technicalities.

In other words cause of action can be defined as bundle of facts affirmed by one party and denied by the other. A cause of action in a civil suit, renders several sets of facts asserted by some body against other, which give right to sue and when the parties in a civil suit successfully proves such facts in their favor that helps the parties to get judicial reliefs through competent court of jurisdiction.

Let have look whether the plaint discloses any such bundles of facts, which requires adjudication in this suit. I have carefully gone through the entire case records and finds that plaintiff have brought instant law suit praying restitution of conjugal life with defendant and defendant side in her written statement denied contention of plaintiff side.

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The defendants in this case further raised some question of fact and law, which requires adjudication in this suit. All the above facts arose from the pleadings of both sides in this case gives raise cause of action and that requires adjudication in this case. The pleadings of plaintiff give raise assertion and denial of both law and facts, which requires adjudication in this suit.

Therefore in the light of all the above discussion I am of considered opinion that plaintiff in this case succeeds to show cause of action. Hence this issue is answered in affirmative and in favor of plaintiff.

**8. ISSUE NO-3&4 WHETHER DEFENDANT DESERTED PLAINTIFF SINCE 28/5/12 AND WHETHER DEFENDANT IS BOUND TO LEAD CONJUGAL LIFE WITH PLAINTIFF:-**

Both the issue no-3&4 are co-relates and same in nature, that is why both the issues above taken together for discussion and decision. The plaintiff brings the instant law suit against the defendant showing the ground that defendant went to her parents house on-28/05/12 and since then the defendant residing at her parents house, refusing to lead conjugal life with plaintiff. The plaintiff pleaded further that plaintiff and his relative tried to bring back the defendant and his minor son to his house but the defendant persistently refused to return back to the house of plaintiff. The plaint categorically reveals that defendant refused

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to reside at the house of plaintiff from-28/5/12 and since then defendant is residing at her parents house refusing to lead conjugal life with the plaintiff. On contra defendant denying all the averments of plaint contended that plaintiff in demands of dowry of Rs.15000/- driven out her from the house of plaintiff on-26/5/12 and since then plaintiff never visited the house of defendant's parents.

From the pleadings of both side it reveals that plaintiff has got the burden to prove the fact that defendant deserted him since-28/5/12 and plaintiff to prove said facts examined as many three witnesses and exhibited one documents before the court. PW-1, PW-2 and PW-3 submitted their examination in chief through affidavit supporting the case of the plaintiff side and their testimonies remains stand as it deposes, as both the witnesses were not cross-examined by the other side.

I have carefully gone through oral evidence of the plaintiff side, where I find that PW-1, PW-2 and PW-3 appears to be corroborative, coherent and trustworthy about the whole case of the plaintiff side. PW-1 being the plaintiff, proves that defendant is the legally married wife of the plaintiff and on-18/8/11 the defendant during her pregnancy about 2 month had gone to her parents house for customary visit with a promise to return back within a week, but after lapsed of said period defendant did not return back the house of plaintiff, on which plaintiff filed T.S No-418/11 for restitution of conjugal life and during the pendency of that suit defendant on-20/3/12 in her own accord return back to the house of plaintiff and started living with plaintiff and for which plaintiff not take any steps in T.S N-418/11, and accordingly said suit dismissed for non-prosecution and Ext-1 is the order passed in T.S No-418/11. PW-1 further proved that on-9/4/12 defendant gave birth one male child in the house of plaintiff and defendant always insisted the plaintiff to live at her parents house as GHAR JAWAI but plaintiff refused the same as plaintiff is the sole earning family member of his family and on-28/5/12 defendant went to her parents house for customary visit along with the new born child but subsequently the defendant did not return back and plaintiff went to bring back the defendant but the defendant refused to return back with plaintiff. It further reveals that other witnesses of plaintiff side, i.e PW-2 and PW-3 appears to be corroborative and supportive with the testimony of PW-1. After meticulous perusal of the oral and documentary evidences of plaintiff side, this court not finds any grounds to disbelieve the testimonies of all the witnesses of plaintiff side, as we know that all the three witnesses not crossed by the defendant side. The testimonies of witnesses of plaintiff are remains unshaken and as it stand, that renders their testimonies believable and admissible without any contradiction. On contra the pleadings put forwarded by the defendant side not proved before the court, as the defendant side not adduce any forms of evidence before the court.

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Therefore, in the light of all the above discussion I am of considered opinion that plaintiff prove the fact that defendant without any lawful and just excuse deserted the plaintiff since-28/5/12 and that is why is plaintiff being legally married husband of defendant is entitled to get restitution of conjugal life with the defendant. Hence both the issues above are answered in affirmative and in favor of plaintiff.

**9. ISSUE NO-4 RELIEFS**

In the light of discussion and decision made in all the foregoing issues plaintiffs is entitled to get all the reliefs as prayed. Hence this issue is answered in affirmative and in favor of the plaintiff.

**ORDER**

10. In the result plaintiff suit is decreed on contest with cost by directing the defendant to come back to the house of plaintiff and lead conjugal life with the plaintiff within one month from the date of this judgment.

11. Prepare a decree accordingly.

12. Judgment is pronounced and delivered in open court under the hand seal of this court on 9th day of January, 2014.

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**APPENDIX**

1. **PLAINTIFFS WITNESSES**: - PW- 1 Ahiz Ali Mondal

PW-2 Najab Ali Pramanik

PW-3 Kurman Ali Mondal

2. **PLAINTIFFS EXHIBITS**

dated-19/10/12

:- Ext-1 Certified copy of Order

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