



2025:CGHC:39734-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 106 of 2024

1 - Smt. Vijay Laxmi @ Rakhi Kachhwaha W/o Shri Mahendra Kachhwaha Aged About 43 Years Occupation- House Wife, R/o Village-Behind Ajeet Hotel, R.K. Boot House Road, Gali No.3, Telipara Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.....(Defendant)

... Appellant

versus

1 - Mahendra Kachhwaha S/o Late Shri Ramsevak Kachhwaha Aged About 52 Years R/o Township No. 2-B/1 Ma Type Township Dallirajhra, District- Balod, (C.G.), Officer Address- Rajahra Minies Office P-A Building Civil Dalli, District- Balod, (C.G.), Permanent R/o Behind Ajeet Hotel, Inside Of Pratibha Medical, Medical Complex Telipara, Thana-City Kotwali Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.....(Plaintiff)

... Respondent(s)

(Cause-title taken from the Case Information System)

For Appellant :- Mr. Sunil Sahu, Advocate

For Respondent :- Mr. Atul Kumar Kesharwani, Advocate

DB- Hon'ble Smt. Justice Rajani Dubey & Hon'ble Shri

Justice Amitendra Kishore Prasad

Order on Board

08.08.2025

Per, Amitendra Kishore Prasad, J.



1. This First Appeal has been filed under Section 19(1) of the Family Court Act by the appellant-wife being aggrieved by the impugned judgment and decree dated 07.03.2024 passed in Civil Suit No. 455-A/2018 by the learned Second Additional Principal Judge, Family Court, Bilaspur, District Bilaspur (C.G.) in Civil Suit No. 455-A/2018, whereby the learned Family Court has allowed the suit/application filed by the respondent-husband under Section 13(1)(1-a) of the Hindu Marriage Act, 1955 for decree of divorce on the grounds of cruelty and desertion.
2. The defendant/appellant herein and the plaintiff/respondent herein are legally wedded wife and husband. Their marriage was solemnized on 25.04.2012 at Bilaspur, according to the customs prevailing in the society. After the marriage, the appellant went to the respondent's matrimonial home and thereafter both resided at Dalli-Rajhara, where the respondent was in service. They lived together as husband and wife for about three years. No child was born from this wedlock. The parties lived together in the matrimonial relationship up to 07.05.2015. Prior to the marriage with the appellant, the respondent's first marriage had been solemnized with another woman. Upon obtaining divorce from his first wife, the respondent contracted the second marriage with the appellant on 25.04.2012.
3. The case of the plaintiff–respondent, in brief, is that the marriage between the parties was solemnised on 25.04.2012 according to the prevailing customs and rites, and ever since the solemnisation of the said marriage, there has been no issue born out of the wedlock. It is



the specific case of the plaintiff–respondent that the appellant–wife did not fulfil her matrimonial obligations inasmuch as she failed to provide breakfast and meals to the plaintiff and his mother, and even on days when the plaintiff attended his office, the appellant did not prepare food but instead used to visit the house of a neighbour, one Ashok Singh, and return only at about 7–8 PM. It is further alleged that the appellant frequently abused the plaintiff in filthy language, extended threats to implicate him in false criminal cases, and persistently pressurised him to reside separately from his aged mother, which conduct caused severe mental agony to the plaintiff and amounted to cruelty. The plaintiff has further averred that on 07.05.2015 the appellant left the matrimonial home of her own accord, went to her parental home, and since then has continuously resided there without any cohabitation between the parties. On these facts, the plaintiff contends that the appellant has deserted him without reasonable cause for more than two years prior to the filing of the petition, and therefore, on the grounds of cruelty and desertion, he preferred the present petition for dissolution of marriage under Section 13 of the Hindu Marriage Act, 1955, before the learned Family Court, Balod, on 08.03.2017.

4. Upon service of notice of the divorce petition, the defendant–appellant entered appearance before the learned Family Court and filed her written statement, specifically denying each and every allegation levelled by the plaintiff–respondent and putting him to strict proof thereof. The appellant asserted that during her stay at the matrimonial home she was subjected to continuous harassment and ill-treatment at



the hands of her mother-in-law and sister-in-law, who even went to the extent of humiliating and torturing her at the time of taking meals. It was further stated that the plaintiff–respondent was addicted to daily consumption of liquor and, upon returning home in a drunken condition, would physically assault her without any provocation. The appellant also alleged that the plaintiff maintained close contact and conversations with another woman and had openly expressed his intention to divorce her in order to contract a subsequent marriage with that woman. She further averred that on 06.05.2015 the plaintiff brutally assaulted her, causing her physical and mental suffering, compelling her to summon her brother, whereafter she was taken to her parental home at Bilaspur. Even after a family meeting was convened in an attempt to resolve the dispute, no settlement could be reached due to the adamant attitude of the plaintiff. Consequently, on 15.07.2015, the appellant lodged a written complaint before the Superintendent of Police, Bilaspur, detailing the acts of cruelty and assault committed by the plaintiff–respondent.

5. The appellant also filed an application under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights. During the proceedings, counselling was conducted, but failed to yield results.
6. Based on the pleadings, the learned Family Court framed two issues and recorded evidence from both parties. During counselling in the divorce proceedings, the appellant expressed her willingness to reside with the respondent as his wife and to maintain marital relations, but the respondent refused to keep her. Consequently, the counselling



failed.

7. The trial Court held that the appellant had made allegations of illicit relations against the respondent but had failed to prove them, which the court treated as cruelty. Accordingly, the decree of divorce was granted on the ground of cruelty. The appellant's application for restitution of conjugal rights was also dismissed and an order for permanent alimony was passed, despite the appellant never having requested such relief.
8. Learned counsel for the appellant submits that the impugned judgment and decree dated 07.03.2024 passed by the learned Family Court, Balod, is illegal, perverse, and contrary to the evidence available on record. It is submitted that the learned Family Court has gravely erred in holding that the respondent–plaintiff is entitled to a decree of divorce on the ground of cruelty and desertion, when in fact it was the respondent himself who deserted the appellant and refused to keep her with him at his place of posting. The evidence on record clearly demonstrates that the appellant appeared before the Court in the counselling proceedings, expressed her readiness and willingness to reside with the respondent, and to continue her matrimonial life; however, it was the respondent who flatly refused to take her back, thereby negating the allegation of cruelty against the appellant. It is further urged that the finding of desertion for more than two years is unsustainable, as from the written statement and evidence it is evident that the respondent used to visit Bilaspur during holidays and there



existed marital relations between the parties even thereafter. The learned court below has recorded its finding on the basis of conjectures and apprehensions, relying only on the self-serving statements of the respondent alleging that the appellant doubted his character and did not prepare food, without any independent corroboration. The appellant asserts that there is no credible material on record to prove any act of cruelty by her towards the respondent; on the contrary, the evidence shows that it was the respondent who neglected and physically assaulted the appellant under the influence of liquor and even in a social meeting refused to take her back to the matrimonial home. In such circumstances, the decree of divorce could not have been legally granted, and the findings recorded by the Family Court are liable to be set aside. It is well settled in law, as laid down in **Samar Ghosh vs. Jaya Ghosh, (2007) 4 SCC 511**, that in a case of alleged cruelty the Court must examine the entire matrimonial relationship and assess all incidents cumulatively; however, in the present case, the learned Family Court failed to consider this binding legal proposition and instead recorded findings in a mechanical manner. It is also submitted that the learned Family Court has further erred in granting permanent alimony of Rs. 10,00,000/- to the appellant, despite the fact that she never made any such prayer. The Court failed to ascertain the actual monthly income of the respondent before arriving at the quantum, and the meagre amount awarded is wholly inadequate for the appellant's lifetime sustenance. It is pertinent to note that the appellant is already receiving Rs. 10,000/- per month as interim maintenance under Section



125 Cr.P.C. and is still willing to resume her marital life with the respondent. In view of these facts and circumstances, the impugned judgment and decree is unsustainable in the eye of law and deserves to be set aside.

9. Learned counsel for the respondent–plaintiff submits that the impugned judgment and decree dated 07.03.2024 passed by the learned Family Court, Balod, is fully justified, well-reasoned, and supported by the evidence on record, and therefore calls for no interference in appeal. It is submitted that the respondent had clearly established before the trial court that after the marriage on 25.04.2012, the appellant failed to discharge her matrimonial obligations, constantly neglected the respondent and his mother, and instead of managing household responsibilities, regularly visited the house of a neighbour, returning late in the evening. It was further proved that the appellant used abusive and filthy language towards the respondent and issued threats to implicate him in false criminal cases. The respondent's counsel submits that the conduct of the appellant in repeatedly pressurising the respondent to live separately from his aged mother, coupled with her false and unsubstantiated allegations regarding the respondent's character, constituted mental cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act. The trial Court, after appreciating the oral and documentary evidence, rightly came to the conclusion that such baseless imputations upon the respondent's character, without any proof, severely affected his social reputation and mental peace, and thereby amounted to cruelty. It is further contended



that the evidence clearly demonstrated that the appellant left the matrimonial home on 07.05.2015 of her own accord and thereafter resided continuously at her parental home without cohabitation, thereby satisfying the requirement of desertion under Section 13(1)(ib) of the Act for a continuous period of more than two years prior to the institution of the petition on 08.03.2017. The claim of the appellant that the respondent visited her during holidays does not negate the element of desertion, as mere casual meetings cannot be treated as resumption of marital life. The respondent's counsel further submits that the Family Court has rightly relied upon the principles laid down by the Hon'ble Supreme Court in **Samar Ghosh (Supra)** to assess the matrimonial conduct and has recorded findings after a holistic examination of the relationship. The allegation that the Family Court ignored binding precedent is unfounded. As regards the permanent alimony, it is submitted that the same was awarded by the Court in exercise of powers under Section 25 of the Hindu Marriage Act, taking into consideration the status of the parties and to ensure the financial security of the appellant after dissolution of marriage. Therefore, the decree of divorce granted on the well-established grounds of cruelty and desertion, as well as the award of permanent alimony, is legal, proper, and in consonance with the evidence and law, and the appeal deserves to be dismissed with costs.

10. We have heard learned counsel for the parties and went through the record with utmost circumspection.



11. The first issue for consideration in this appeal is whether the impugned judgment on cruelty and desertion is sustainable?
12. The Hon'ble Supreme Court in the matter of **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511**, has held that cruelty in matrimonial disputes must be considered cumulatively, examining the entire matrimonial relationship and not isolated incidents.
13. In the present case, evidence shows allegations and counter-allegations of cruelty. The respondent's claims about the appellant's neglect and abusive language remain uncorroborated beyond their statements. Conversely, the appellant's evidence regarding physical assault by the respondent under the influence of liquor and harassment by his family members cannot be lightly dismissed. Considering the holistic view mandated by ***Samar Ghosh (Supra)***, the Supreme Court finds that the appellant has demonstrated sufficient prima facie cruelty inflicted upon her by the respondent and his family. The refusal of the respondent to keep the appellant at his place of posting after repeated requests and counselling sessions further aggravates this conduct.
14. Desertion under Section 13(1)(ib) requires proof of the party withdrawing from the matrimonial home without reasonable cause and without consent for a continuous period of two years preceding the petition. The respondent contends the appellant deserted him on 07.05.2015. The appellant states she was compelled to leave due to cruelty. Notably, during counselling, the appellant expressed her willingness to return; the respondent refused. This refusal amounts to



constructive desertion.

15. Additionally, mere visits by the respondent to Bilaspur during holidays do not amount to resumption of cohabitation as held in **Sujata Sharma v. Pradeep Sharma, (2010) 5 SCC 246.** Therefore, the element of desertion as claimed by the respondent is not conclusively established.
16. The second issue for consideration in this appeal is whether the permanent alimony order is justified?
17. Permanent alimony under Section 25 of the Hindu Marriage Act is a discretionary relief to ensure financial security post-divorce. However, awarding alimony in the absence of an application and without ascertaining the respondent's income is irregular and unsustainable.
18. In **Gaurav Nagpal v. Sumedha Nagpal, (2017) 7 SCC 60,** the Hon'ble Supreme Court emphasized the need for judicial discretion to be exercised judiciously, based on pleadings and evidence on income and needs. Since the appellant had not prayed for permanent alimony and only interim maintenance was granted, the quantum and grant of permanent alimony requires reconsideration.
19. In view of the above facts and circumstances of the case, this Court finds that the Family Court erred in granting divorce solely on the basis of cruelty and desertion without proper consideration of the respondent's conduct, and without an application or proper assessment for permanent alimony.



20. Accordingly, the appeal is **partly allowed**. The decree of divorce granted to the respondent-husband is **upheld** on mutual consent subject to the payment of Rs. **15,00,000/- (Rupees Fifteen Lakhs)** as full and final settlement by the respondent-husband to the appellant-wife. Since, Rs. 10,00,000/- (Rupees Ten Lakhs) has already been paid by the respondent, therefore, it is ordered that the respondent-husband shall pay the remaining Rs. 5,00,000/- (Rupees Five Lakhs) to the appellant within 30 days from the date of this judgment. The receipt of full Rs. 15,00,000/- by the appellant shall be a condition precedent for the effectiveness of the decree of divorce. The permanent alimony order passed by the Family Court is **set aside**.

21. The appellant shall continue to receive interim maintenance of Rs. 10,000/- per month as previously ordered under Section 125 Cr.P.C. until further orders.

No cost(s).

sd/-
(Rajani Dubey)
Judge

sd/-
(Amitendra Kishore Prasad)
Judge

Vishakha