



CGHC010460582025



2026:CGHC:37487-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**FA(MAT) No. 414 of 2025**

1 - Smt. Bhavna Mishra alias Bhavna Lalwani W/o Shri Pradeep Mishra, D/o Shri Rajkumar Lalwani, Aged About 39 Years R/o Mahavir Nagar, Near Sai Mandir, New Purena Raipur, Tehsil And District Raipur (C.G.) Pin- 492009

... Appellant(s)**versus**

1 - Shri Pradeep Mishra S/o Shri K.M. Mishra, Aged About 47 Years R/o- 31A, Gate No. 01, Near Medical Shop, Ashutosh City, Bareilly, Uttar Pradesh Pin- 243001

... Respondent(s)

For Appellant(s) : Shri Nitesh Jain, Advocate

For Respondent(s) : None

**DB : Hon'ble Shri Justice Parth Prateem Sahu
Hon'ble Shri Justice Sachin Singh Rajput**

Judgment on Board**Per Sachin Singh Rajput, J.****20/08/2026**

The appellant has filed this appeal under Section 19 (1) of the Family Court Act, 1984 challenging the judgment and decree dated 19.06.2025 passed in Civil Suit No.1089/2024 by the First Additional Principal Judge, Family Court, Raipur (CG) (for short 'Family Court') whereby the application under Section 13 (1-a) of the Hindu Marriage Act, 1955 (for short 'the Act of 1955') filed by the appellant for decree of divorce was rejected.

2. The parties are hereinafter referred to as the appellant/wife and respondent/husband.

The appellant/wife filed an application under Section 13 (1-a) of the Act of 1955 seeking dissolution of marriage by granting decree of divorce before the learned Family Court. The pleadings which are reflected from the application are that she entered into an inter-caste marriage with the respondent/husband on 21.04.2004 at Arya Samaj, Baijnathpara, Raipur and a daughter namely Riya Mishra was born from the wedlock. After marriage, the parties resided together at Bareilly for about two years but the respondent's/husband's family allegedly did not accept the appellant/wife and opposed the marriage, particularly after the birth of their daughter. The appellant/wife further alleges that the respondent/husband and his family members subjected her to mental and physical cruelty including abuse, drunken misconduct and suspicion regarding her character. The respondent/husband allegedly misrepresented his property and financial status at the time of marriage. Because of the continuous cruelty and harassment, the appellant/wife has been living separately from the respondent/husband for more than six years and thus, she prayed for decree of divorce.

3. In this case, the respondent/husband has remained ex-parte from the beginning and has not filed any reply.

4. On the basis of above, following issues have been framed -

	<u>Issues</u>	<u>Conclusion</u>
i	Whether the appellant/plaintiff is the married wife of the respondent/defendant ?	Proved
ii	Whether the respondent subjected the appellant – Smt. Bhavna Mishra @ Bhavna Lalwani to cruelty by torturing her physically and mentally	Not proved

	after solemnization of marriage?	
iii	Relief and cost ?	As per paragraph 14

5. Learned Family Court, placing reliance upon the judgment of Hon’ble Supreme Court in the case of **Rajesh Kumar Chandra vs. Smt. Sarita Chandra, 2018 SCC OnLine Chh 39** and after assessment of evidence available on record, dismissed the application of the appellant/wife which led to filing of this appeal.

6. Learned counsel for the appellant/wife submits that the learned Family Court erred in dismissing the appellant’s petition for divorce despite holding that the parties are legally wedded spouses. The impugned judgment dated 19.06.2025 is contrary to the pleadings and evidence on record and therefore deserves to be set aside. He submits that the appellant’s case of mental and physical cruelty is supported by her oral testimony, the testimony of the other witnesses and the documentary evidence including the complaint lodged before the Mahila Thana. The respondent/husband remained ex-parte and did not rebut the allegations or evidence led by the appellant/wife. He further submits that the evidence on record establishes that the appellant was not accepted by the respondent’s family, was subjected to humiliation and allegations concerning her character and was repeatedly pressurized to end the marriage. The respondent’s habitual drunkenness and abusive conduct further caused mental agony and insecurity to the appellant and their daughter. He submits that the learned Family Court failed to appreciate that matrimonial cruelty is to be assessed from the cumulative effect of the conduct of the parties and on the standard of preponderance of probabilities and not on the standard of proof beyond reasonable doubt. It is further submitted that the appellant has also established that the parties have been living separately for about six years. The prolonged separation, coupled with the conduct of the

respondent/husband and the absence of any effective matrimonial relationship, supports the appellant's case of desertion and the irretrievable breakdown of the marital relationship. He further submits that in the absence of any effective cross-examination or contrary evidence from the respondent/husband, the material evidence led by the appellant/wife could not have been discarded without cogent reasons. In these circumstances, he submits that the impugned judgment and decree dated 19.06.2025 warrants interference by this Court and the appellant/wife is entitled to a decree of divorce on the grounds pleaded in the petition. Reliance has been placed on the decision of the Supreme Court in the case of **Roopa Soni vs. Kamalnarayan Soni, 2023 LawSuit(SC) 899, Sonal Talpada vs. Veerbhan Singh, 2026 LiveLaw (SC) 594 and Naveen Kohli vs. Neelu Kohli, 2006 LawSuit (SC) 215.**

7. This Court on 21/11/2025 admitted the appeal and notice was issued to the respondent. On 14/01/2026, as the earlier notice issued to the respondent was awaited, fresh notice by ordinary mode and speed post was directed to be issued. A service report sent by Office In-charge of Nazarat/Special Judge, POCSO Act Court No.3, District Court Bareilly (UP) which is part of record indicates that the process server could not meet the respondent at the given address. Respondent's family member (sister-in-law) namely Sarita was served with the notice. The report of notice issued by ordinary mode sent by the same office dated 19/02/2026 would show that the process server could not meet the respondent and his family members refused to accept the notice. Then the process server pasted one copy of the notice on main gate of respondent's house. The notice issued by speed post is reported to be served as per office report. The respondent was proceeded ex-parte before the learned Family Court. Thus, his conduct shows that he is avoiding

representation before this Court despite having served with the notice and knowledge of this appeal. Thus, he is proceeded ex-parte.

8. Heard learned counsel for the appellant and perused the record.

9. Having considered the pleadings, oral and documentary evidence available on record and the submissions advanced by learned counsel for the appellant, this Court is of the considered view that the learned Family Court has failed to properly appreciate the evidence led by the appellant. The factum of marriage between the parties is not in dispute. The appellant has duly established that the marriage was solemnized on 21.04.2004 and that a daughter namely Riya Mishra was born out of their wedlock. The appellant's case regarding cruelty is supported by her own testimony as well as the testimony of the other witnesses examined on her behalf. The documentary evidence including the complaint lodged before the *Mahila Thana* also lends corroboration to her case. It is significant that the respondent, despite service of notice, chose not to appear before the learned Family Court and the proceedings were conducted *ex- parte*. The evidence led by the appellant/wife, therefore, remained substantially unrebutted. Though an *ex parte* proceeding does not dispense with the requirement of proving the matrimonial ground, the unrebutted testimony and supporting documents are required to be assessed on their own merits. Likewise it is to be emphasized that a decree of divorce cannot be granted merely because the opposite party has not led evidence, the petitioner must establish the statutory ground on the basis of pleadings and evidence. In the present case, the appellant has specifically pleaded and deposed that she was subjected to continuous mental and physical cruelty; the respondent used to return home in a drunken condition and abuse her; the respondent and his family members did not accept her as their daughter-in-law;

her character was doubted and that she was pressurized to end the marriage. These allegations, when considered cumulatively with the oral evidence and documentary material on record, constitute conduct of such nature as to cause serious mental agony and make it difficult for the appellant to reasonably continue the matrimonial relationship. The learned Family Court, in our considered opinion, has adopted an unduly restrictive approach while appreciating the evidence relating to cruelty. Matrimonial cruelty has to be assessed from the cumulative effect of the conduct complained of and in the context of the entire matrimonial relationship. The standard applicable is that of preponderance of probabilities and not on the standard of proof beyond reasonable doubt. Their daughter has been examined as PW3 who has also deposed in the line of her mother Bhavna Mishra (PW1) and stated that her parents used to quarrel most of the time. Her father used to come in drunken condition and assault and abuse her mother.

10. Definitely, the behavior of the respondent/husband in drunken condition would have impacted the mental condition of the daughter also. In this context, it would be expedient to quote paragraph 15 of **Roopa Soni (supra)**.

“15. Secondly, the court must also keep in mind that the home which is meant to be a happy and loveable place to live, becomes a source of misery and agony where the partners fight. When there are children they become direct victims of the said fights, though they may practically have no role in the breakdown of marriage. They suffer irreparable harm especially when the couple at loggerheads, remain unmindful and unconcerned about the psychological and mental impact it has on her/him.”

11. So far as desertion is concerned, the appellant/wife has consistently pleaded and deposed that the parties have been living separately for about six years. Her

testimony in this regard has remained un rebutted. The prolonged separation, coupled with the established circumstances of matrimonial discord and cruelty, clearly demonstrates that the parties have ceased to live together as husband and wife and that the matrimonial relationship has, for all practical purposes, lost its substance. The statutory requirement of continuous separation for the requisite period under Section 13(1)(ib) of the Act of 1955 is thus sufficiently established on the facts and evidence of the present case. The reliance placed by the learned Family Court upon **Rajesh Kumar Chandra** (supra) cannot be mechanically applied to the present case, particularly when the factual matrix and evidentiary circumstances are distinguishable. Each matrimonial dispute has to be adjudicated upon the evidence and circumstances peculiar to that case.

12. Upon an overall consideration of the evidence and in the light of judgments relied upon, this Court finds that the appellant/wife has successfully established the grounds of cruelty under Section 13(1)(ia) and desertion under Section 13(1)(ib) of the Act of 1955. The finding of the learned Family Court to the contrary is therefore unsustainable and liable to be interfered with.

13. Accordingly, the appeal is allowed. The judgment and decree dated 19.06.2025 passed by the learned Family Court is hereby set aside. The application filed by the appellant/wife under Section 13(1)(ia) of the Hindu Marriage Act, 1955 is allowed. Marriage of the parties dated 21/04/2004 is dissolved. No order as to cost. Decree be drawn accordingly.

Sd/-

(Parth Prateem Sahu)
JUDGE

Sd/-

(Sachin Singh Rajput)
JUDGE

Deepti