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2026:CGHC:42569-DB

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SAIFAN KHAN
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SAIFAN KHAN

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 148 of 2025

{Arising out of judgment and decree dated 10-2-2025, passed in Civil Suit No.426/2024 by the Family Court, Durg, District Durg (CG)}

Smt. Soniya, W/o Raju, aged about 36 years, R/o C/o House of Puniya Bai, Near Rajendra Kirana Store, Sanjay Nagar, Bhilai, Tahsil and District Durg, Chhattisgarh.

(Plaintiff)
... Appellant

Versus

Raju, S/o Naresh Kumar Vasnik, aged about 40 years, Present Address C/o House of Munna Kawade, Shyamalay/Beside the Hari Niwas, Street No.11, Priyadarshni Nagar, Supela, Bhilai, Tahsil and District Durg, Chhattisgarh

(Defendant)
... Respondent

For Appellant : Ms. Pushpa Dwivedi, Advocate.

For Respondent : None present, though served.

Division Bench: -
Hon'ble Shri Parth Prateem Sahu and
Hon'ble Smt. Sushma Sawant, JJ.

Judgment on Board
30-09-2026

Sushma Sawant, J.

1. Invoking the jurisdiction of this Court under Section 19(1) of the Family Courts Act, 1984, the **appellant herein/plaintiff wife** has preferred this appeal challenging the judgment & decree dated 10-2-2025, passed by the 3rd Additional Principal Judge, Family Court, Durg, District Durg

in **Civil Suit No.426/2024 (Smt. Soniya v. Raju)** by which her application for grant of decree of divorce against the **respondent herein/defendant husband**, has been rejected finding no merit.

2. The aforesaid challenge has been made on the following factual backdrop: -

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the Family Court.)

-:Factual Matrix:-

-:Case of the Appellant/Plaintiff Wife before the Family Court:-

3. The case of the **appellant herein/plaintiff**, in brief, is that marriage between the **appellant herein/plaintiff** and the **respondent herein/defendant** was solemnized on 15-5-2003 according to Hindu rites and customs, at Sanjay Nagar, Supela, Bhilai, District Durg and out of the said marriage they are having three issues. According to the plaint allegations, after the marriage, the behaviour of the respondent/defendant husband changed and he started coming home late at night after consuming alcohol and would abuse and assault the appellant/plaintiff wife over trivial matters and taunt her for dowry. The respondent/defendant husband would also suspect her and quarrel with her by making false allegations whenever she spoke to her parental family over the telephone. Despite such harassment and cruelty, the appellant/plaintiff wife continued to tolerate such behaviour of the respondent/defendant husband. The respondent/defendant husband would sometimes quarrel with her and leave for Jabalpur. The

respondent/defendant husband would stay with the appellant/plaintiff wife in Bhilai for six months only and thereafter left her helpless and without there being any support, resided at Jabalpur for six months.

4. It is also the case of the appellant/plaintiff wife that when she asked the respondent/defendant husband not to remain idle at home and to look for work, he would severely beat her as a result, her life became miserable. On several occasions, the respondent/defendant husband frightened and threatened her by pressing her throat and threatening to kill her. The appellant/plaintiff wife further pleaded that the respondent/defendant husband, driven by greed for dowry, brought her to Bhilai under pressure in connection with finding work. He used to put pressure on her to have her parental family arrange a house and employment for them in Bhilai and to provide financial assistance and, when she refused, in October 2015, he abandoned her and threatened her, saying that since she had not brought money with her, there was no need for her to live with him, and that if she came to him, he would kill her. Since then, the appellant/plaintiff wife has been living a solitary life and, using her own resources, has been maintaining herself and her children. Thereafter, when the appellant/plaintiff wife had filed an application for maintenance against the respondent/defendant husband before the Family Court, the respondent/defendant husband persuaded and misled her by giving false assurances and got the matter disposed of/closed.

5. Under such circumstances, the respondent/defendant husband has completely deprived the appellant/plaintiff wife of marital companionship and matrimonial happiness and has abandoned her. The respondent/defendant husband has deserted her for the past nine years. She made every possible effort to restore and improve their matrimonial relationship, but there was no change in the behaviour of the respondent/defendant husband. Therefore, it became necessary for her to file an application for dissolution of marriage by way of a decree of divorce. On the aforesaid factual premise, it was prayed that the suit filed for divorce be decreed.

**:-Written Statement of the Respondent/Defendant Husband
before the Family Court:-**

6. It is noteworthy that after service of notice the respondent herein/defendant husband appeared before the Family Court on 24-6-2024, mediation proceedings were conducted between both parties and since no amicable settlement arrived at between the parties, trial proceedings were undertaken by the learned Family Court. Further, as the respondent/defendant husband remained absent at the stage of filing of written statement, he was proceeded ***ex parte*** by order dated 4-12-2024. Therefore, no written statement was filed on his behalf.
7. The Family Court after appreciating oral and documentary evidence available on record, framed the following issue and answered the same in negative:

“क्या अनावेदक द्वारा आवेदिका के साथ क्रूरतापूर्ण व्यवहार कर उसे अभित्यक्त कर दिया गया है? जिससे आवेदिका उसके एवं अनावेदक के मध्य अनुष्ठापित विवाह दिनांक 15.05.2003 को विच्छेद करवाने की अधिकारिणी है?”

8. Parties were given an opportunity to adduce evidence and after completion of trial, the suit of the appellant herein/plaintiff wife has been dismissed vide **Judgment dated 10-02-2025**, being aggrieved against which, this appeal has been filed on the following grounds:-

(i) That, the impugned judgment passed by the learned Court below dated 10-02-2025 (Annexure A-1) is perverse and contrary to the facts and therefore the impugned order deserves to be set-aside.

(ii) That, the learned family Court failed to see that the respondent/defendant proceeded ex-parte before the court below and there is no any rebuttal of the plaintiff's witnesses.

(iii) That, the learned trial Court ought to have considered the fact that the wife and children are living separately prior to 09 years and between this period the husband has not care the wife and children, but the learned trial Court has rejected the application filed by the wife.

(iv) That, the learned trial court ought to have considered the fact that at the time of counseling, the husband had appeared and counseling was held, but the husband has neither tried to live with the wife nor care to his children.

(v) That, the friend of the wife namely Balvinder Kour has examined before the trial court as PW-2 and she clearly stated that the husband has assaulted the wife and she also clearly stated that between the husband and wife, the relationship is not good, but the learned trial court has not considered the same and rejected the application for grant of divorce.

(vi) That, looking to the evidence and exhibited documents, it is very clear that the appellant is having proper grounds for divorce.

-: Proceeding before the Appellate Court :-

9. Heard on the Appeal. In the context of the appeal and arguments, evidence and documents available on record of the Family Court, were examined.
10. In order to dispose of this First Appeal, the following questions are to be considered:-

(i) Whether the Family Court is justified in rejecting the application filed by the Appellant-Wife for grant of decree of divorce on the ground of cruelty and desertion ?

(ii) Whether the Appellant-Wife is entitled for decree of divorce as claimed?

-:Arguments of the Appellant/Plaintiff :-

11. The counsel for the Appellant/Plaintiff wife assails the judgment of the Family Court mainly on the ground that the impugned judgment of the Family Court suffers from non-appreciation of materials on record and

contrary to the settled principle of law. The learned Family Court has failed to appreciate the pleadings and evidence in their proper perspective and has not considered the cumulative effect of the conduct complained of.

-:Arguments of the Respondent/Defendant :-

12. There is no representation on behalf of the respondent though served. He after appearance before the trial Court was proceeded *ex parte*.

-: Details of evidence and documents available before the Family Court:-

13. Before the Family Court, witnesses on behalf of the appellant/plaintiff have been examined herself only as **Smt. Soniya (PW-1)**. Whereas, as the respondent/defendant was proceeded ***ex parte***, no oral or documentary evidence was adduced on his behalf.

-:Details of documents submitted by the Plaintiff: -

S.No.	Details of document	Exhibit
1.	Photographs of Marriage	Articles 1 & 2
2.	Adhar Card	Exhibit-P/1C
3.	Order of Family Court, Durg Dt. 23/10/2019	Exhibit-P/2C

-:Analysis of the Appellate Court:-

Points for determination No. (i) and (ii) -

14. Since both the issues are interdependent on each other and therefore, they all are being decided together.
15. It is evident from the record that the **respondent/defendant husband** remained *ex parte* before the Family Court. In the present case, the only evidence available on record is that of the **appellant/**

plaintiff wife, Soniya (PW-1) which has remained wholly unchallenged. The **appellant/plaintiff wife**, instituted the petition seeking dissolution of marriage on the grounds of “**cruelty**” and “**desertion**”.

16. At the outset, as regards the ground of **desertion**, the appellant/plaintiff wife has categorically stated in her evidence that the respondent/defendant husband had deserted her for the **last nine years** and had not made any enquiry about her well-being. Despite having been afforded an opportunity to contest the said assertions, the respondent/defendant husband though appeared after notice before the trial Court but chose not to file reply/written statement. Therefore, there is no reason to disbelieve the uncontroverted testimony of the appellant/plaintiff wife on this aspect that the respondent/ defendant husband had deserted her for the last nine years and had not made any enquiry about her well-being.

17. As regards **cruelty**, the appellant/plaintiff wife has stated in her evidence that the husband used to assault her after consuming alcohol and would also pickup quarrels with her on suspecting her whenever she spoke to her parental family over the telephone, and would prevent her from visiting her parental home. He further pressurised her to seek financial assistance from her parental family. When, owing to their financial inability, her parental family expressed their inability to provide such assistance, the husband left the matrimonial home in the year 2015, threatening her that she should return only after bringing

money, failing which he would kill her. It has also been stated that, even in the proceedings for maintenance, the husband has failed to make payment of the amount due. In support of her case, the appellant/plaintiff wife has produced her Aadhaar Card as **Ex.P-1** and a copy of the maintenance order as **Ex.P-2**.

18. Both the documents have remained uncontroverted. They establish that the parties are husband and wife and that, as the appellant/plaintiff wife and her children were living separately for sufficient and justifiable reasons, an order for payment of maintenance was passed in their favour. As regards the aforesaid oral evidence, the learned Family Court declined to place reliance thereon, principally on the ground that the wife did not call or convene any social meeting for resolving the matrimonial dispute.

19. Such an approach, in our considered view, is wholly erroneous. The learned Family Court failed to appreciate that the testimony of the wife remained wholly unrebutted. Despite having an opportunity to contest the proceedings, the husband neither entered the witness box nor adduced any evidence in support of his case, nor did he put the material assertions made by the wife to any effective challenge. The absence of any rebuttal to such material testimony assumes significance and warrants an adverse inference against the husband.

20. The conduct of the husband in habitually consuming alcohol and picking up quarrels with the wife, coupled with his failure to discharge his responsibilities towards the wife and children for a prolonged period

of about nine years, constitutes conduct of such a nature as to cause mental agony and distress to the wife and, therefore, falls within the ambit of cruelty.

21. Most significantly, the conduct of the husband throughout the proceedings assumes considerable significance. Despite due service of notice, he neither contested before the Family Court nor did he appear before the this Court to contest the matter. His continued absence at both stages of the proceedings, coupled with his failure to take any steps towards resuming or preserving the matrimonial relationship, clearly indicates that he has shown no inclination to continue the matrimonial relationship.

22. In the facts and circumstances of the case, where the matrimonial relationship has been reduced to a mere legal formality and nothing meaningful remains between the parties, there would be no purpose in compelling the parties to continue such a relationship, particularly when the grounds of “cruelty” and “desertion” have been duly established on the basis of the evidence on record.

23. Thus, the learned Trial Court committed an error of law in overlooking and disregarding the unrebutted evidence on record. The impugned judgment, therefore, cannot be sustained and is liable to be set aside

:-Conclusion:-

24. In view of the foregoing discussion and for the reasons recorded hereinabove, we are of the considered view that the impugned judgment &

decree passed by the learned Family Court suffer from errors in appreciation of the material on record warranting interference in appeal.

25. Consequently, the appeal is allowed and the impugned judgment & decree **dated 10-2-2025** passed by the 3rd Additional Principal Judge, Family Court, Durg, District Durg in **Civil Suit No.426/2024** are set aside. It is held that the appellant/plaintiff wife is entitled for decree of divorce. Accordingly, the marriage solemnized between the appellant/plaintiff wife and the respondent/defendant husband on 15-5-2023 is hereby dissolved by a decree of divorce.

26. Decree be drawn-up accordingly.

Sd/-
(Parth Prateem Sahu)
JUDGE

sd/-
(Sushma Sawant)
JUDGE

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