



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**FAMILY COURT APPEAL NO. 79 OF 2023
(WITH CIVIL APPLICATION NO.11833/2023)**

Satish S/o Kodandrao Deshmukh,
Age : 35 Years, Occ. : Private Service,
R/o N-9, K-69/6, Pawar Nagar, Hudco,
T.V. Center, Aurangabad.

... APPELLANT

...VERSUS...

Sau. Deepali Satish Deshmukh,
Age : 33 Years, Occ. : Service,
R/o C/o Jagannath P. Jagdale,
N-11, B-163/2, Hudco, Near T.V. Center,
Behind Jijau Medical, Aurangabad.
At present Plot No. 48, Aaisaheb Nagar,
Pisadevi Road, Harsool, Aurangabad.

... RESPONDENT

**AND / WITH
FAMILY COURT APPEAL NO. 80 OF 2023
(WITH CIVIL APPLICATION NO. 11834/2023)**

Satish S/o Kodandrao Deshmukh,
Age : 35 Years, Occ. : Private Service,
R/o N-9, K-69/6, Pawar Nagar, Hudco,
T.V. Center, Aurangabad.

... APPELLANT

...VERSUS...

Sau. Deepali Satish Deshmukh,
Age : 33 Years, Occ. : Service,
R/o C/o Jagannath P. Jagdale,
N-11, B-163/2, Hudco, Near T.V. Center,
Behind Jijau Medical, Aurangabad.
At present Plot No. 48, Aaisaheb Nagar,
Pisadevi Road, Harsool, Aurangabad.

... RESPONDENT

-
- Ms. Renuka V. Ghule, Advocate for the Appellant
 - Mr. Kshitij H. Surve, Advocate for the sole Respondent
-

CORAM : NITIN B. SURYAWANSHI AND
VAISHALI PATIL – JADHAV, JJ.

RESERVED ON : NOVEMBER 27, 2025

PRONOUNCED ON: DECEMBER 18, 2025

J U D G M E N T [Per Vaishali Patil – Jadhav, J.] :

1. The appellant/husband by filing Family Court Appeal No. 79 of 2023, has challenged the judgment and decree passed by the Family Court, Aurangabad dated 19.12.2022, dismissing his petition for dissolution of marriage filed under u/Sec. 13(1) (i-a) and (i-b) of the Hindu Marriage Act, 1955.

2. The appellant/husband by filing Family Court Appeal No. 80 of 2023, has challenged the judgment and decree passed by the Family Court, Aurangabad dated 19.12.2022, decreeing the petition filed by the respondent/wife under u/Sec. 9 of the Hindu Marriage Act, 1955. For the sake of convenience, appellant and respondent are hereinafter referred as “husband” and “wife”.

Facts in brief, leading to this appeal can be stated thus:

3. Husband filed petition under Section 13(1) (i-a) and (i-b) of the Hindu Marriage Act for divorce against wife inter alia contending that their marriage was solemnized on 02.03.2012 at Aurangabad as per Hindu rites and customs. After marriage, wife went for cohabitation in the matrimonial house at Aurangabad along with the husband and his parents. Out of the said wedlock the parties have a son Shubhneet born on 30.10.2013. Parties are residing separately since 24.03.2013.

Following are the instances which according to the husband led to filing of the divorce petition on the ground of cruelty and desertion:

- i. After marriage they were planning to undertake construction and furniture work of their house where he and his brother resided. The wife insisted husband not to spend money for the work and that his parents should bear the expenses. Since, husband made expenses for the said work, wife expressed her displeasure.
- ii. After marriage, the husband's father had given Rs. 40,000/- for visiting Kashmir for their honeymoon. During the tour, husband had purchased few gift articles for his parents which was disliked by the wife.

- iii. After their marriage, her father-in-law got her name changed in the government gazette. She quarrelled with the husband on this as according to her it was unnecessary.
- iv. The husband and wife would routinely walk together after dinner. On one occasion, his 2-year-old nephew accompanied them which was not liked by the wife.
- v. Once, his mother had asked the wife to bring down clothes and food grains from the terrace. The wife only brought dried clothes and not the food grains. When questioned by mother-in-law she started quarrelling with husband.
- vi. While attending the marriage of wife's cousin brother, wife asked the husband about gifts to be given in the marriage. The husband answered that the elders will look after it, upon which she got angry and insulted him.
- vii. Devisingh Pawar, a close relative and mediator for marriage of parties who was about to retire from service asked to look for the wife's service book. She got angry and started quarrelling with the husband and his family members alleging that her father-in-law wanted to see the details of her salary and so through Devisingh Pawar he was trying to ask for her service book.

viii. On the occasion of Amavasya and Pournima, the wife would observe fast, keep chillies, lemons, dolls, etc. and perform pooja in her bedroom. When the husband tried to convince her not to do such things, she fought with him.

ix. The wife was not respecting elders in the family and that she would always quarrel with the husband on trivial issues.

x. When relatives would visit their house, the wife would go inside and never talk or offer water to them.

xi. The wife was serving as a teacher, she would leave the house for her job around 5.30 to 6.00 a.m. and return around 7.30 to 8.00 p.m. His mother would look after majority of the household work and a maid was appointed for cleaning utensils, brooming and dusting the house. The wife would never look after any work and on being instructed by her mother-in-law, she would answer back arrogantly and cause disrespect.

xii. After the wife received her first salary, she asked her father-in-law what she should do with it. He advised her to make a decision in consultation with the husband. However, the wife kept the salary in her own account and never contributed towards household expenses. On the contrary, she would take money from the husband or his father for her personal expenses.

xiii. Between 15.01.2013 to 20.01.2013 the husband had requested the wife for Rs. 2,000/- due to his personal difficulty. The wife refused to give him money despite having Rs. 70,000/- in her bank account. Thereafter, the husband avoided giving her money for her expenses. On this, wife defamed the husband and his parents in front of relatives.

xiv. As there was a balance amount of Rs. 90,000/- in the bank account of the wife at Lasur Branch and Rs. 40,000/- at the Aurangabad Branch she wanted to purchase a gold chain. The husband advised her to invest the money in pure gold piece instead of a chain. However, the wife did not share her decision about it with him. The wife wanted to transfer money from Lasur Branch to Aurangabad Branch. On being requested by wife, the husband agreed to go along with his friends to get the money transferred. However, she insisted him to wait for her to accompany him to the bank. As per the husband, this conduct shows that she had no trust on him with regard to finances.

xv. On 04.03.2013 it was confirmed that the wife had conceived. On 24.03.2013, the wife picked up a quarrel with the husband as he would help his mother in household chores, and saying that she does not want to live with him anymore left for her parental house. This incident caused a negative impact on his parents' health and on 02.04.2013 procedure of Angiography was performed on his father.

xvi. On 28.04.2013 and 01.05.2013, meetings were conducted between the families to resolve disputes between the husband and wife. However, no resolution was arrived at. On 30.04.2013, the wife and her brother came to the husband's house and abused him. She rushed on him and tore his T-shirt. She also went on the street, abused him and his family in filthy language and threatened of approaching the police station against them all.

xvii. The husband issued a legal notice to the wife on 04.05.2013 to resume cohabitation. The wife forwarded a notice to the husband making false allegations against him and his family members on 31.07.2013.

xviii. On 12.06.2014 Devisingh Pawar, along with others was at Hotel Nisarga where the brother-in-law of the wife was present. There, the brother-in-law of the wife abused and threatened Devisingh Pawar asking him to take steps to separate the husband and wife.

xix. On 24.12.2014 the wife along with her parents visited her matrimonial home and behaved indecently with her in-laws. The wife got angry and left the place when her parents-in-law mentioned of calling some respectable members of their community to mediate and resolve the issues between them.

xx. On 25.12.2014 the wife and her brother Vishwas Jagdale, with few goons came to the husband's house, broke the lock of the house gate, tore curtains and created a scene. The husband's parents being frightened by the said incident, lodged a complaint at CIDCO Police Station on 26.12.2014.

xxi. The husband could not concentrate on his work due to the mental cruelty caused by wife. He had to resign from his job as the wife created a scene by visiting his office.

Husband has further alleged that, the wife has, without any reasonable cause left the matrimonial house on 24.03.2013, therefore, the husband has filed a petition for dissolution of marriage on 06.04.2015.

4. The wife opposed the petition by filing written statement at Exhibit-9 and denied the allegations levelled against her. According to the wife:

- (i) The construction work of the house was completed prior to their marriage. Hence, there was no question of her asking or showing displeasure about the expenses of construction.
- (ii) The arrangements of their Kashmir tour were made by her elder sister and her husband. The entire expenses of food and residence during the tour were borne by her parental

family. She had not opposed the husband for purchasing gift articles for his family, instead, insisted him to purchase them as a token of love and memories.

- (iii) Being a Government Servant, it was necessary on her part to get her name changed in the records after marriage. She had not opposed or quarrelled about it.
- (iv) No guests or relatives would come to their house due to the rude behaviour of her in-laws. Her sister-in-law would visit often and instigate her parents against the wife.
- (v) Before leaving for her job, she would wake up at 4.30 a.m. and complete all the household chores. Her mother-in-law would taunt her if there was any sound while working. No maid was employed for doing household chores. She herself would clean utensils and even after returning home from her job she was required to do all the household work.
- (vi) The husband used to transfer money from her bank account to his, using her ATM Card.
- (vii) Her in-laws never took care of her. Her mother-in-law would ill-treat her and she wanted to ensure that the wife does not conceive. After the husband and his parents had

knowledge about her pregnancy, they made many attempts to get the abortion done.

On 24.03.2013 the husband and his parents beat her and drove her out of their house to cause abortion. To save her pregnancy she returned to her parental house and since then, is residing at her parental house. She did not leave the matrimonial house on her own. Also, the husband and his family have not visited the child since his birth.

- (viii) On 30.04.2013, since she was pregnant there arises no question of her visiting the matrimonial house and quarrelling with the husband and his family as alleged.
- (ix) When her father visited her matrimonial house to collect her school uniform/saree, the husband and his father asked him to carry back all her sarees and kept her gold ornaments with them.
- (x) The husband during their counselling session before the Court, had clearly refused to cohabit with her. She has made many attempts for resuming cohabitation with the husband and even now, is ready to cohabit with him. During the meetings for resolution of disputes between the

parties, the husband and his family warned her to give divorce or leave their house.

Thus, with an intention to cohabit with the husband, she has filed a petition u/Sec. 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights on 23.03.2015. She has prayed for dismissal of the petition for dissolution of marriage filed by the husband.

5. From 2015 onwards multiple litigations ensued between the parties. On 23.03.2015, wife filed a petition for restitution of conjugal rights. On 06.04.2015, husband filed a petition for dissolution of marriage on the grounds of cruelty and desertion. The wife on behalf of her son, filed Proceeding No. E-201/2018 for interim maintenance u/Sec. 125 Cr.P.C. which is pending. The husband filed Petition No. D-25/2021 for the custody of child which is pending. The wife on behalf of her son, filed Special Civil Suit No. 457/2019 for partition, separate possession and injunction which is pending. In April 2015 wife filed PWDVA No. 205/2015 claiming interim maintenance for her and their minor son which came to be rejected. Against the said order, she filed an appeal i.e. PWDVA Appeal No. 176/2017 on 23.10.2017, which was partly allowed and held that the wife is not entitled for interim maintenance as she is employed but, the husband was directed to pay

Rs. 7000/- per month as interim maintenance for their minor son. The husband filed a petition i.e. Cri.W.PNo. 1636/2019 challenging the order in PWDVA Appeal No. 176/2017 which was dismissed by this Hon'ble Court on 25.08.2022. As per the orders of this Court, the husband has deposited an amount of Rs. 3,50,000/- in the JMFC Court, Aurangabad, towards interim maintenance for the son.

6. After recording evidence, Family Court came to a conclusion that the husband is not entitled for a decree of divorce and dismissed his petition. The Family Court held that the wife is entitled for a decree of restitution of conjugal rights and allowed her petition. These judgments of the Family Court are under challenge in these appeals.

7. The parties were referred for mediation by this Court. However, mediation failed and the matter was not resolved.

8. Heard learned advocates representing both the parties. We have perused the record.

9. After hearing rival contentions following points arise for our consideration;

(I) Whether the husband has proved that the conduct of the wife was such that the same amounted to cruelty under Section 13(1) (ia) of the said Act?

(II) Whether the husband has proved that the wife was guilty of desertion within the meaning of Section 13(1) (ib) of the said Act?

(III) Whether the Family Court was justified in granting the decree of restitution of conjugal rights in favour of the wife?

(IV) Whether the judgment passed by the Family Court calls for any interference?

10. The husband has examined himself in support of his petition at Exhibit-19. Obviously, he has filed evidence affidavit by reproducing the averments made in the petition. He has examined his mother Pushpa Deshmukh at Exhibit-52. Wife filed petition for restitution of conjugal rights first. In that petition, evidence of husband's witnesses namely Devisingh Pawar, Jijabai Gautam Paikade and Manoj Nikam was recorded. Husband has adopted the said evidence in his petition for dissolution of marriage.

11. The evidence on record is as follows:

(i) It has come in the evidence of the husband that renovation work was to be carried out at the house where he and his brother were residing and the wife had objected to the said expenditure. It is necessary to mention here that husband has stated in his cross-examination that he and his brother are living separately, so also the wife has deposed that no such renovation work was ever undertaken, therefore, the said allegation is not proved by the husband.

(ii) It is the case of the husband that his father had given Rs.40,000/- for their honeymoon, however, he has admitted in his cross-examination that he and his wife, both were employed and earning at that time. Wife has specifically denied the said allegation. She has also given details of their travel and stay during the said tour. Wife has deposed that all the expenses of said tour were borne by her parental family. There is no evidence by the husband to show that Rs.40,000/- was given by his father, therefore, he has failed to prove this allegation.

(iii) There is no substance in the contention of the husband that wife quarrelled with him as his father asked her to change name after marriage. He has admitted that he does not know what discussion took place between his wife and father. The wife has stated that it was mandatory for her to to change name after the marriage as she was in Goverment service and she has produced the Government Gazette, wherein her changed name is published.

(iv) The next contention of the husband that while going to the marriage of wife's brother, she picked up a quarrel in the car as to what gifts are being given in the marriage. Husband has admitted that he did not go in the same vehicle to the marriage in which the wife had gone. Therefore, there was no question of wife picking up a quarrel. It is natural for a wife to ask about what gifts are being given in her

brother's marriage. By no stretch of imagination, it can be said that it amounts to cruelty.

(v) The husband has alleged that Mr. Devisingh Pawar had casually asked for her service book upon which the wife picked up a quarrel and alleged that her father-in-law wanted to check her salary. It has come in the evidence of Devisingh Pawar that he has seen the salary book of wife and not the service book. The said contention is therefore not supported by evidence.

(vi) The husband has alleged that the wife did not worship Gods in the house, rather used to fast and worship by using lemons, chillies, dolls on Amavasya & Pournima, etc. However, in the cross-examination he has stated that he does not remember the dates on which his wife used to fast or perform Pooja. He also did not remember when his wife quarrelled with him on this count. It has come in the evidence of wife that she being an educated woman does not believe in superstitions, and therefore, she never performed Pooja nor observed any fast on Amavasya & Pournima. Thus, the said allegation of the husband is liable to be disbelieved.

(vii) According to the husband, the wife never gave respect to his parents. It appears from the evidence on record that after the marriage husband expected the wife to follow all the customs and

culture being followed in his family without giving reasonable time to the wife to learn and get accustomed to the same.

(viii) The husband has claimed that since wife was a working woman, they had kept a maid for household work. This contention is falsified by his own witness, maid Jijabai Gautam Paikade, who has deposed that she has been working in the house of the husband since 2010. His mother has deposed that there was a maid employed for all the household work, since prior to her son's marriage.

(ix) The husband claims that wife never did household work like brooming the house, keeping clothes, filling drinking water etc., and all these works were being done by his mother. He further claims that wife left the house at around 5:30 A.M. to 6:00 A.M. for her work. His mother has deposed that all the household work was done by the maid and since everybody liked the food cooked by her, she used to willingly cook food for the family. Therefore, there is no merit in the contention of the husband that wife did not used to do household work.

(x) The husband has further alleged that at the time of returning from school, the wife used to go to her parent's house, had dinner there and the dinner cooked for her at the matrimonial house would go waste every day. This contention of the husband is falsified by his mother, who has deposed that wife did not have food as she was having some stomach related issue. His mother has not stated that the

wife used to go her parental home and have dinner there, and therefore, the food cooked for her would go waste.

(xi) The next allegation of the husband is that he could not concentrate on his work in office due to the mental cruelty meted out by the wife and wife had visited his office and created a scene, due to which he had to resign. No date of visit of the wife in his office is mentioned by the husband. He has admitted that the information of the wife visiting the office is hear-say. He has mentioned in his resignation letter that he is resigning due to family issues. Therefore, he has failed to prove the said contention.

(xii) It is the contention of the husband that wife did not spend any amount from her salary. It has come in the evidence of wife that her salary used to directly get deposited in her bank account, which is also admitted by the husband. Wife has further deposed that the husband used to take money from her and deposit it in his own account. He had her ATM Card with him and would use her salary for household expenditure and his own tours. There is also evidence to the effect that wife asked advice of husband for making investments and as per his advice the wife had deposited her savings in FDRs. Therefore, there appears no merit in the contention of the husband that wife did not have faith in him with her money.

(xiii) The husband has alleged that on 24.03.2013, the wife picked up a quarrel with him as he was helping his mother in household chores, she abused him and then her parents were called and she went with her parents. This incident negatively impacted on her father's health and he had to undergo Angioplasty on 02.04.2013.

The wife has claimed that on that day, she was harassed on count of insistence on the part of the husband to abort the child. She was beaten and kicked out of the house. To save her pregnancy she had no other alternative than to go to her parental house.

No medical record is produced by the husband to support the allegation in respect of his father's health.

(xiv) It is alleged by the husband that the wife was in habit of leaving matrimonial house without any reason. The husband has failed to give any date, month or year of such incident of wife leaving the house. Therefore, the said contention cannot be believed.

(xv) The husband has claimed that on 30.04.2013, the wife and her brother came to his house and abused him, wife rushed towards him and tore his T-shirt, then she went on the street and abused him and his family in filthy language and threatened of approaching police station against all of them. The wife has admitted that she had gone to the husband's house, however, she denied other allegations. The husband has therefore failed to prove the said allegation.

(xvi) The husband has alleged that on 12.06.2014, wife's brother-in-law Nitin Kolte, Mr. Devisingh Pawar and others were present at hotel Nisarga. He abused and threatened Mr. Devisingh Pawar and asked him to take steps to separate the husband and wife. Admittedly, the husband was not present there. Mr. Devisingh Pawar though is examined as husband's witness has not stated about the date, month and year of the said incident. Thus, the husband has failed to prove the said allegation.

(xvii) Husband has alleged that on 25.12.2014, the wife along with her brother and few goons had visited their house and broke open the gate lock, tore the curtains and created a scene in front of their house. His father got afraid of the same and lodged a complaint. On that day, husband was not present there. The copy of said complaint is filed in Petition No. A-159/2015, but is not exhibited. Therefore, the husband could not prove the said allegations.

(xviii) Visit of wife to her matrimonial house on 23.12.2014 is admitted by the husband. He has claimed that without intimation, wife and her parents visited the matrimonial home. His parents told wife's parents that had they given prior intimation, they would have called 2-3 respectable members of their community and the dispute arose. Husband's mother has also admitted that wife and her parents had

visited their house and due to the words of her deceased husband of calling 2-3 respectable members of their community, the dispute arose. This evidence indicates that there is genuine attempt on the part of the wife to cohabit with the husband.

(xix) Parties have exchanged notices. It is evident from the record that after exchange of notices, the wife has filed petition for restitution of conjugal rights bearing Petition No. A- 137/2015 on 23.03.2015 and the husband has filed petition for divorce bearing Petition No. A- 159/2015 on 06.04.2015.

(xx) Though, the husband has stated that he loved his wife tremendously till they lived together, which ended after their separation, the same is not acceptable in view of the fact that though he issued notice for restitution of conjugal rights, he has filed divorce petition.

(xxi) Husband's mother's evidence indicates that the quarrels between them were of ordinary nature. She had shown willingness to accept her daughter-in-law if she tenders apology. She felt that husband and wife should stay together. She has further deposed that she is ready to tender apology to her daughter-in-law, if the husband and wife are ready to reside together.

12. To deal with the issue of mental cruelty, it will be useful to refer the following observations of the Hon'ble Supreme Court in the case of **Gurbux Singh Vs. Harminder Kaur**¹.

"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the

¹ AIR 2011 SC 114

resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

13. In order to appreciate the rival allegations made by the husband and wife, we have minutely perused the evidence. On taking a fresh look at the evidence and subjecting the same to scrutiny, we are satisfied that the evidence on record is not sufficient to prove the grounds of cruelty and desertion put forth by the husband for seeking a decree of divorce.

14. Apart from the fact that the husband has miserably failed to prove his allegations discussed in foregoing paragraphs by leading cogent, convincing and reliable evidence, the following admissions destroy his case.

- a. The quarrels between them were not very serious but daily wear and tear between the spouses.
- b. The lack of dates for many incidents stated by him.
- c. That several contentions raised by him are based on hearsay information.

d. That there is no medical evidence, to show the connection of her conduct affecting his father's health and eventually resulting in his angiography and death.

e. That he did not file any police complaint against the alleged incidents of 23.03.2013 and 30.04.2013.

f. That he is not ready to cohabit with her and that he has not filed a petition for Restitution of Conjugal Rights.

g. That he has transferred property in his sister's name inspite of an order passed in the PWDVA proceedings filed by the wife.

15. It is thus clear that his evidence about mental cruelty is vague and uncorroborated and he has miserably failed to prove the said grounds. All the allegations made by the husband are of trivial nature and they appear to be a part of ordinary wear and tear of the matrimonial life and they do not prove his allegations of cruelty. His mother's evidence also does not support the said ground of cruelty. Point No. I is therefore answered in negative.

16. To prove desertion, the husband needs to show the factum of separation, the wife's intention of leaving the matrimonial house without any reasonable cause and his willingness to resume cohabitation. However, evidence on record indicates that the wife was

forced to leave the house as there was insistence on the part of the husband to abort. To avoid it, wife had to leave matrimonial house and go to her parents. Admittedly, the husband has not made any attempts to resume the cohabitation. On the contrary, though he has issued notice for restitution of conjugal rights, he has filed divorce petition. He has deposed that he is not ready to cohabit with the wife. Thus, the contention of the wife that she was forced to leave the matrimonial house deserves to be accepted.

There is evidence on record that the wife had visited the matrimonial house along with her minor son for more than one occasion and she has also filed application to the police station stating her intention to reside at her matrimonial house. She has filed petition for restitution of conjugal rights. Thus, the wife has made repeated attempts to resume cohabitation. No evidence is led by the husband to rebut the said contention of the wife. Therefore, since the husband has forced the wife to leave the matrimonial house, he cannot claim divorce on the ground of desertion. Point No. II is therefore answered in negative.

17. The Family Court has properly appreciated the evidence on record and has rightly rejected both the grounds of the husband i.e. cruelty and desertion as not supported by proper evidence. There is no illegality or perversity in the judgment and decree passed by the Family Court

dismissing the husband's petition for dissolution of marriage, the same, therefore, requires no interference.

18. For the aforestated reasons, the Family Court has rightly passed decree of restoration of conjugal rights at the instance of wife and the said decree deserves no interference. As such, Point No. III is answered in negative.

19. In the result, the Family Court Appeal No. 79 of 2023 and Family Court Appeal No. 80 of 2023 being devoid of merit are dismissed.

20. Cost of the litigation shall be paid by the husband to wife.

21. Pending civil applications, if any, stand disposed of.

(VAISHALI PATIL – JADHAV, J.)

(NITIN B. SURYAWANSHI, J.)

sga