IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 166 of 2024

Chaturgun Rai, aged about 57 years, son of Late Ram Naresh Rai, resident of Adarsh Nagar, Road No.3, P.O. and P.S. Pulwarisharif, District Patna, Bihar ... **Petitioner/Appellant**

Versus

Geeta Rai, wife of Chaturgun Rai, resident of Dhanbad Public School Road, Bhuiphore, P.O. K.G. Ashram, P.S. Govindpur, District Dhanbad … **Respondent/Respondent**

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANOJ PRASAD

For the Appellant: Mr Arvind Kumar Choudhary, Advocate
For the Respondent: Mr Prince Kumar, Advocate

Reserved on: 08.10.2026 **Pronounced on: 05/11/2026**

***Per* Manoj Prasad, J.**

1. Heard Mr Arvind Kumar Choudhary, learned counsel for the appellant and Mr Prince Kumar, learned counsel for the respondent.

2. The present First Appeal is under Section 19 (1) of the Family Courts Act, 1984, filed by the petitioner/appellant, Chaturgun Rai, husband, aged about 57 years, against his wife, opposite party/respondent herein, namely, Geeta Rai.

3. This appeal is directed against the judgment dated 30.04.2024 and the decree sealed and signed on 10.05.2024 by the Court of the learned Additional Principal Judge, Additional Family Court

No. II, Dhanbad, in Original Suit No. 537 of 2018, whereby the learned Additional Principal Judge, Additional Family Court No. II, Dhanbad, dismissed the suit of the plaintiff/petitioner/appellant, registered on the basis of an application filed under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act for dissolution of marriage by decree of divorce on the grounds of cruelty and desertion.

Factual Matrix

4. Briefly stated, the facts of the case are that the Suit was instituted in 2018 by the present petitioner/appellant, Chaturgun Rai, under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, stating that the respondent/opposite party treated the petitioner with cruelty and deprived him of the enjoyment of conjugal rights for more than two years immediately preceding the application for dissolution of marriage, and that the respondent is living separately, having no relationship with her husband-appellant as a wife. It is also stated that the respondent deserted the appellant for a continuous period of 18 years, despite her undertaking in the compromise petition filed in the Matrimonial Suit No. 60 of 1998 before the Family Court, Patna, where she had given an undertaking to live with the petitioner. This undertaking was given on 30.09.2000, but she never complied with it. On these grounds, a prayer for dissolution of marriage was made by a decree of divorce.

5. The respondent appeared and filed a written statement denying the allegations made by the present appellant.

6. The respondent stated that it is not in dispute the marriage between the parties was solemnized as per the Hindu rituals in the year 1988 at Village Samharia, District Arwal, Bihar. Out of their wedlock, the parties have a daughter, namely, Richa Rai, who was born in the year 1994 who on the date of filing of the written statement sometimes in the year 2022 was aged about 28 years. It is stated that immediately after the marriage, as the nature of the appellant was not good, he meted out cruelty on the present respondent. Resultantly, an FIR was lodged which was subsequently compromised at Hazaribagh, where the brother of the appellant admitted the guilt and gave an undertaking not to repeat such conduct in the future. After compromise between the parties, the parties again lived together for some times, but the behavior of the appellant again changed. It is stated that the petitioner/appellant was an employee of B.M.P.V. where the respondent was nominee. It is further stated that the petitioner/appellant constructed a three storied building at Adarsh Nagar, Fulwarisharif, Patna where he resided alone over there and part of the building was given on rent of Rs. 20,000/- a month. The appellant had also landed properties and annual earning of Rs.5,00,000/- from agriculture. Despite having sufficient earnings, the appellant was neglecting the respondent-

wife and his daughter in maintaining them. The entire belongings of the present respondent was retained by the appellant and the respondent was ousted from her matrimonial home in the year 1992 and she came to live with her father at Hazaribagh who was then in service at Hazaribagh. After retirement of her father, the respondent along with her father returned to their paternal home at Aurangabad. A complaint was filed by the present respondent to the Commandant of B.M.P. on 10.03.2013, where a compromise was made but all this was done just to avoid the liabilities of the complaint. It is also stated that the parties had consummated their matrimonial life and the appellant even threatened that if consummation of marriage is opposed, maintenance would not be provided to the present respondent. It is also stated that the appellant had solemnized the second marriage and hence it is not possible for the parties to live together.

7. Based on the pleadings, the following issues were formulated by the learned trial Court.

(i) Whether the suit is maintainable in its present form?

(ii) Whether the petitioner has got valid cause of action for the suit?

(iii) Whether the marriage of petitioner and respondent is fit to be dissolved on the ground of cruelty U/s 13 (1) (i-a) of Hindu Marriage Act?

(iv) Whether the marriage of petitioner and respondent is fit to be dissolved on the ground of desertion U/s 13 (i-b) of Hindu Marriage Act?

(v) Whether the petitioner is entitled for the relief as claimed for?

8. Thereafter, on behalf of the present appellant, three witnesses have been examined, namely, Mofil Rai, Umesh Rai and Chaturgun Rai, present appellant. On behalf of the respondent, four witnesses have been examined, namely, Ashok Rai, Janardan Rai, Vishwanath Rai and Gita Devi @ Geeta Rai, present respondent.

Findings of the learned Trial Court

9. The learned trial court, after considering the oral and documentary evidence, took up the two dominant issues, i. e., issues nos. 3 and 4, which relate to the question of cruelty and desertion sufficient to grant a decree of divorce to dissolve the marriage between the parties. The learned trial court observed that the appellant, who was examined as P. W.- 3, admitted that the marriage was solemnised in 1988 and that, after marriage, they resided together for a sufficiently long time. However, on account of the respondent' s frequent visits to her parents' house and the protests raised by the present appellant, quarrels between the parties began, and in 1990 the respondent' s father brought his daughter back to his house. It is stated that a suit for dissolution of marriage was filed by the present appellant, being

Matrimonial Suit No. 60 of 1998, but the said suit ended in settlement, as the respondent agreed to join the company of the appellant, and on 30. 09. 30.09.2000 the said case was disposed of with a direction to the respondent that she would reside with her husband. However, despite such directions of the Family Court, Patna, resumption of conjugal life between the parties did not take place, and it is stated that for the last 30 years there has been no marital relationship between the parties as husband and wife. It is also stated that, as per the directions of the Family Court, he provides monthly maintenance of Rs. 15, 000/-.The respondent admits having a daughter, who, she says, was born out of wedlock and is presently residing with her, i. e., the present respondent. In the evidence of the appellant/petitioner, he has stated that he is not ready to bring back his wife and daughter, as his wife has ruined his life, and it also appears in the evidence that the appellant/petitioner has solemnised a second marriage. P. W. 1, the brother of the present appellant, has also supported the case of the appellant but has denied the allegation that the present appellant has solemnised a second marriage and is living with another lady, and that there is a child from the second marriage. P. W.- 2, the nephew of the present appellant, has also supported the case of the appellant, but there is nothing very significant in his evidence.

10. The respondent, D.W.-4, was examined and admitted that she has a daughter out of wedlock with the appellant, who was born in 1994, and further stated that she was subjected to physical and mental cruelty as her husband had an illicit relationship with another lady, namely, Sandhya Devi. She also alleges that the appellant has a house at Fulwarisharif which has been purchased in the name of Sandhya Devi. She states that she has filed a complaint against her husband where her husband had executed a bond not to torture his wife in the future and has stated that the present application for divorce has been filed for the solitary purpose of removing the name of the present respondent, who is a nominee in the service book of the present appellant. She expresses her desire to live with her husband. The other witnesses examined on behalf of the respondent supports the case of the respondent.

11. The learned Trial Court, while discussing the elements of cruelty, stated that, in order to obtain a decree of divorce on the ground of cruelty, the petitioner-appellant was bound to prove that the respondent's cruelty was of such a nature as to render conjugal life impossible. The continuation of the matrimonial relationship between the parties, if it becomes impossible on account of physical or mental cruelty inflicted by the other spouse, is sufficient cause for dissolving the marriage on the ground of cruelty. The learned Trial Court held that the

respondent had taken a specific plea of a second marriage and stated that, for this reason, it was not possible for her to reside with the present appellant along with the alleged second, though not legal, married wife. The Court held that the allegation of cruelty was unsubstantiated and that there was nothing on record to suggest that the respondent had meted out any cruelty. Rather, the respondent was the victim of the acts of the present appellant, who, as per the evidence, had already solemnised a second marriage, though prohibited under law. The appellant also has a child from the second marriage. Similarly, living separately for any valid reason cannot be considered a sufficient cause for separation and will not amount to desertion for the purpose of obtaining a decree of divorce on that ground. Unjustified separation, with no intention to restore conjugal life, is desertion. In the present case, as held by the learned Trial Court, the respondent was living separately for just cause, and nothing on record suggested that the appellant ever made any sincere effort to restore conjugal life.

12. Considering the entire facts, the learned trial court dismissed the suit of the petitioner/appellant, deciding the two issues against the petitioner/appellant and in favour of the respondent. Consequently, the other issues were also decided against the present appellant, and the suit was dismissed on contest.

<u>Submission on behalf of the appellant (husband)</u>

13. Learned counsel appearing on behalf of the appellant contended that the fact that the appellant has contracted a second marriage is not disputed, though the same was not admitted by the present appellant before the trial court. It is also stated that the appellant has a child from the second marriage. Learned counsel submits that all efforts of settlement have failed. The respondent's proposal to settle the dispute on one-time alimony has also failed. Despite the appellant agreeing on every such proposal the respondent has declined to abide by her own proposals. Learned counsel submits that unjustified separation for a sufficiently long period is cruelty. The parties have been living separately for more than 30 years, and despite orders by the court to restore conjugal life, an application for divorce had ended up by way of settlement on terms that the party would restore conjugal life. Failure to honour the terms of settlement, and non-restitution of conjugal rights, amounts to mental cruelty. Learned counsel also submits that, while the Hindu Marriage Act does not define cruelty, every case must be examined in its own peculiar facts and circumstances. In this case, it is not in dispute that the parties were living separately for a sufficiently long time, and it can be assumed that there has been an irretrievable breakdown of the marriage, which, though it is not a ground for dissolution of marriage, such long separation in itself amounts to mental cruelty. Arguing that these aspects of the case were not

considered by the learned trial court who even failed to consider that the judgment passed by the learned Principal Judge, Family Court, Patna on 30.09.2000 was not honoured by the respondent, which amounted to mental cruelty on the appellant and also amounted to desertion. It is stated that the respondent is interested in the retiral benefits and other proceeds of the present appellant. The respondent has no interest in restoring the conjugal life. Considering these entire facts and circumstances of the case, prayer is made to set aside the impugned judgment and decree and allow the present appeal.

Submission on behalf of the respondent (wife)

14. Per contra, Mr Prince Kumar, learned Advocate appearing on behalf of the respondent, argued that it is true that efforts at settlement were made to settle the dispute over a certain maintenance/alimony amount, which could not be finalised. However, learned counsel submits that, on the merits of the case, the appellant has no basis to stand on. It is now not in dispute, though this fact has been concealed by the present appellant, that the appellant has solemnised a second marriage, which is prohibited under law, more so when the appellant is also a government servant. Appropriate departmental proceedings could have been initiated against him for solemnising a second marriage prohibited under the law. Learned counsel also submits that the allegations of the present respondent that the appellant

had an illicit relationship with some other lady now stand substantiated by the admitted position that the appellant has contracted a second marriage. The respondent, living separately along with her daughter born out of their wedlock, as the appellant has contracted a second marriage, is for a just cause, and the same cannot amount to desertion. No wife would like to continue in the company of her husband who has an illicit relationship or extra-marital affairs, or subsequently has contracted a second marriage with some other lady. Thus, living separately is fully justified.

15. Learned counsel also submits that, so far as the allegations of cruelty are concerned, and with the admitted facts in the background that the appellant has contracted a second marriage, the charges of cruelty against the appellant fail. Rather, the respondent was a victim of cruelty by the appellant for having begotten a daughter (and not a son) out of their wedlock. Considering these aspects, a prayer is made to dismiss the present appeal.

Findings

16. Heard the parties and perused the records. On the rival contentions raised by the parties, the following point falls for determination before us.

"Whether the appellant was entitled for dissolution of marriage by a decree of divorce on the grounds of cruelty and

desertion as provided under Section 13 (1) (i-a) and (i-b) of the Hindu Marriage Act?"

17. Before deciding the point for determination formulated by this Court, we refer to certain proceedings in this case before a Co-ordinate Bench of this Court. Order dated 20.02.2026 reflects that it is admitted that the husband, i.e. the present appellant, has already solemnised a second marriage during the lifetime of the first wife and has a son from the wedlock with the second wife, and the respondent wife also has a daughter from the marriage with the present appellant. It was also observed that the parties agreed that there was no chance of reunion, and the respondent was ready for settlement in terms of alimony. It was stated that the appellant was likely to superannuate sometime in the year 2027. Order dated 21.08.2026 reflects that, under the instructions of the respondent, her learned Advocate had come up with a proposal to deposit a sum of Rs.30,00,000/- in the name of the respondent and Rs.10,00,000/- for the purpose of solemnization of the marriage of the daughter. Order dated 11th September, 2026 shows that as per the proposal made by the present respondent, an affidavit has been filed by the appellant, but on the said date, the respondent was present in person before the Court and stated that she was not ready to settle the dispute, but rather wanted an adjudication of the *lis* on merit. Subsequently, efforts at settlement were made, which failed, and

the case was finally heard on its merits; today, it is pending adjudication.

18. An affidavit dated 10.03.2026 was filed on behalf of the respondent, in which she disclosed her income and assets, which comes @ Rs. 15,000/- per month, which is being received by her as maintenance, and further, she disclosed her assets as jewellery with an approximate value of Rs.23,500/-.

19. The supplementary affidavit dated 16.03.2026, filed on behalf of the appellant, stated that he was working in the post of Sub-Inspector, Commandant Office, BMP-5, Patna, and that he had filed his pay slip and a photocopy of the GPF balance slip, etc. The pay slip shows his basic pay to be around Rs.64,000/-, with a gross pay of Rs.1,22,838/-, and the GPF balance slip, computed till 31st March 2025, showed an amount of Rs.16,18,827/-.

20. Supplementary affidavit dated 01.09.2026 showed that the appellant was ready to pay permanent alimony by transferring Rs. 10,00,000/- in the account of the respondent and remaining Rs. 30,00,000/- was assured to be transferred in the month of February 2027 after receiving the retiral benefits as the appellant was scheduled to retire on 31.01.2027, subject to the dis-continuance that the monthly maintenance of Rs.15,000/-. These entire efforts have already been failed and as efforts of

settlement have failed they become insignificant in the facts of the present case.

21. Now, coming on the merits of the case it is iterated that the application for dissolution of marriage was instituted on the grounds of cruelty and desertion. The respondent is admittedly the 1st wife of the appellant, and they have a daughter of their wedlock, who is aged about 30 years but is still unmarried. The appellant has solemnized second marriage with another lady and has a son from their wedlock. In the absence of a decree of divorce, marriage between the parties is still subsisting.

22. The appellant claims that the respondent meted out cruelty sufficient to obtain a decree of divorce. The suit was instituted by the present appellant in the year 2018. The appellant alleges that earlier in the year 1998, a suit for dissolution of marriage was instituted, which ended by way of settlement between the parties before the Principal Judge, Family Court, Patna and the settlement was for restitution of conjugal rights between the parties. However, despite the settlement, restoration of conjugal life was not done, and thus it is alleged that despite such orders passed by the Principal Judge, Family Court in the year 2000 still no restoration of conjugal life has been done, and after a lapse of about 18 years, the present suit for dissolution of marriage was instituted.

23. This Court has considered the oral and documentary evidence on record. In the facts of the present case, it is not in dispute that the present appellant has solemnised a second marriage, contravening the mandate of law which prohibits a second marriage during the lifetime of the spouse or during the subsistence of the 1st marriage.

24. In the written statement, the respondent has specifically pleaded an extra-marital relationship of the present appellant with some other lady, which is now substantiated by the admitted fact that the appellant has, though wrongly, solemnised a second marriage.

25. Under such circumstances, the respondent's defence is justified. Under such circumstances, the plea of cruelty or desertion by the respondent against the appellant, *ex facie,* fails, as the defence taken by the respondent *qua* cruelty and desertion is fully justified. Even in the written statement filed by the respondent, she had expressed her desire to restore conjugal life, which, on the admission made by the appellant with regard to a second marriage, has probably become not possible.

26. We therefore are of the considered view that the appellant failed to establish a case of cruelty on the respondent sufficient for the purpose of granting a decree of divorce.

27. The other part of the allegation relates to desertion. Living separately for valid cause cannot be said to be desertion. No

woman can be compelled to stay with her husband knowing full well that her husband has contracted a second marriage or is having an illicit relationship with a lady who is residing with him. The respondent's separate living is therefore justified and cannot amount to desertion. Efforts of reconciliation even in the previous matrimonial suit before the Principal Judge, Family Court, Patna, appear only to be an eyewash, considering the fact that admittedly the appellant had extra-marital affairs which culminated in the second marriage not recognised to be lawful under law.

28. Further, despite the alleged settlement before the Family Court, Patna, nothing is on record to show that the present Appellant took any step to restore conjugal rights. No evidence shows that the appellant was eager to comply with the settlement arrived at before the Family Judge, Patna.

29. We therefore are of the considered view that the appellant also failed to establish his case of desertion sufficient to dissolve the marriage by a decree of divorce under Section 13(1)(i) (b) of the Hindu Marriage Act.

30. The Point for determination as formulated by us, is decided against the appellant and in favour of the Respondent. As a consequence, the appeal fails and it is dismissed.

31. On a perusal of the orders passed by the Coordinate Bench of this Court, it appears that the parties were called upon to file

affidavits in terms of the judgment of the Hon'ble Supreme Court in the case of **Rajnesh vs. Neha & Another** ***(2021) 2 SCC 324,*** with regard to the assets and liabilities of the parties, which were filed.

32. Though a decree for dissolution of marriage is not yet being passed, interim maintenance, which is presently paid @ **Rs.15,000/-** is enhanced to **Rs.30,000/-** per month to be paid by the appellant to the respondent.

33. This enhancement is by taking into account the financial status of the appellant as reflected in the affidavit filed. The daughter requires additional finances to meet her educational and other needs. The Appellant must therefore pay this enhanced amount effective from November 2026. All arrears of maintenance, if any, must also be paid on or before 31.12.2026.

34. This amount shall be paid to the respondent and her daughter. However, this order in no circumstances limits the right of the respondent or her daughter to file an appropriate application before the Court of competent jurisdiction for maintenance and other allowances to which they may be entitled under the law.

35. The enhancement of the maintenance amount from Rs.15,000/- to Rs.30,000/- under no circumstances decides the said question in its finality, which is left open for adjudication in accordance with law by a court of competent jurisdiction, subject to the appropriate application filed by the respondent or her daughter.

36. With the above observations, **the present appeal is dismissed with costs of Rs.25,000/-** to be paid by the appellant to the respondent. Pending I.As, if any, do not survive and are disposed of.

(M. S. Sonak, C.J.)

(Manoj Prasad, J.)

November 5th, 2026

A.F.R.

Pramanik/ Cp.2

Uploaded on 06.11.2026