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HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment Reserved on 26.09.2026

Judgment Delivered on 13.10.2026

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FA(MAT) No. 25 of 2024

Sanjeev Guruwara S/o Shri Satyapal Guruwara Aged About 51 Years R/o House No. 111, Indira Ward, Jagdalpur District Bastar (C.G.)

... Appellant (s)

versus

Smt. Poornima Khare Guruwara @ Hema Khare Guruwara W/o Sanjeev Guruwara Aged About 46 Years R/o House No. 111, Indira Ward, Jagdalpur, District Bastar (C.G.)

... Respondent(s)

For Appellant	:	Mr. B.P. Sharma with Mr. Vivek Shrivastava and Ms. Pallavi Singh, Advocate
For Respondent	:	Mr. Manish Nigam, Advocate

D.B. : Hon'ble Shri Justice Parth Prateem Sahu & Hon'ble Smt. Justice Sushma Sawant

CAV Judgment

Per **Parth Prateem Sahu, J.**

1. This appeal under Section 19(1) of the Family Courts Act, 1984 is directed against the judgment and decree dated 08.12.2023 passed

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by learned Family Court, Jagdalpur, District- Bastar in Civil Suit No. 51-A/2021, whereby application preferred by appellant/ applicant (husband) under Section 13(1)(i-a), 13(1)(i-b) of the Hindu Marriage Act, 1955 (for short, "*the Act of 1955*") against respondent/non-applicant (wife) seeking dissolution of marriage by a decree of divorce on the ground of cruelty and desertion, has been rejected.

2. Facts necessary for disposal of the present appeal are that the appellant/applicant (husband) filed an application under Sections 13(1)(i-a) and 13(1)(i-b) of the Act of 1955 before the Family Court, Bastar, seeking dissolution of marriage with the respondent/non-applicant (wife), pleading therein that parties, who were in a love relationship, married on 7th July 1992 according to Hindu rites and rituals, and three children were born from the wedlock. He further pleaded that their marital relationship remained harmonious only for a few months, after which non-applicant became arrogant, aggressive, and quarrelsome and subjected him to continuous mental cruelty, humiliation, and neglect. She led a lavish lifestyle, frequently insulted and belittled the applicant, refused to maintain physical relations with him, and threatened to implicate him in false criminal cases. Despite his attempts to resolve the disputes and intervention by her family members, the situation deteriorated. Applicant further stated that, due to the non-applicant's conduct, he was compelled to leave his ancestral home and reside separately at Poonam Lodge, where he has been living since July 2018. He pleaded that despite suffering from various health problems, non-applicant failed to care for him, while he continued to discharge his

marital and parental responsibilities, including meeting the children's educational and other expenses. He also stated that the non-applicant made false complaints against him, defamed him before relatives and family members, and influenced their children against him. The parties had earlier filed a petition for divorce by mutual consent, but the same was dismissed for want of mutual consent. According to the applicant, prolonged separation, continuous harassment, threats, humiliation, and the non-applicant's refusal to continue the marital relationship had caused him severe mental, physical, and financial distress, making it impossible for him to live with her. Consequently, he pleaded that the marriage had irretrievably broken down and sought a decree of divorce on the grounds of cruelty and desertion.

3. In her written statement, respondent/non-applicant (wife) denying all the allegations made by the applicant in the plaint stated that the non-applicant has not subjected the applicant to any cruelty nor she deserted him. In fact, applicant himself has neglected and deserted the non-applicant. The applicant has been violent and assaulting his wife and children. Despite the applicant's parents being aware of these facts and the harassment by the applicant, they have unjustly sided with the applicant. Application has been filed with extreme delay. Non-applicant has performed her duties as a wife, mother, and daughter-in-law in a joint family, despite living in an environment of violence, abuse, and mental and physical cruelty. The applicant's misconduct is self-evident. She prayed for dismissal of plaint/application filed by applicant/husband.

4. On the basis of the pleadings made by the parties, learned Family Court framed following main issues for determination:

> **"**1. Whether the applicant was subjected to cruelty by the non-applicant after marriage?
>
> 2. Whether the applicant was deserted by the non-applicant after marriage?
>
> 3. Whether the applicant treated the non-applicant with cruelty after marriage?
>
> 4. Whether the applicant deserted the non-applicant after marriage?
>
> 5. Whether the applicant is not entitled to obtain a decree of dissolution of marriage under Section 23 of the Hindu Marriage Act due to his own act, conduct and filing of the petition with inordinate delay?
>
> 6. Whether the applicant is entitled to obtain a decree of divorce against the non-applicant ?**"**

5. Learned Family Court upon appreciation of the pleadings and oral as well as documentary evidence adduced by the parties, answered the aforesaid issues in negative and held that the applicant/plaintiff failed to prove the allegation of cruelty and desertion against the non-applicant/defendant. Consequently, the application filed under Section 13(1)(i-a), 13 (1) (i-b) of the Act of 1955 was dismissed by the impugned judgment which is the subject matter of challenge by applicant/husband (appellant herein) in the present appeal.

6. Assailing legality and validity of the impugned judgment and decree, learned counsel appearing for the appellant-husband would

submit that marriage between the parties was solemnized in the year 1992, but since the year 2011, respondent/wife refused to maintain conjugal relationship between the two. When the appellant/applicant became ill due to high blood pressure, some issue with his backbone and when he suffered with hernia in the year 1996, respondent-wife asked him not to sleep on the same bed. She also refused to take care of appellant/applicant. He contended that maintaining conjugal relationship between the husband and wife is one of the most important facet of a marital life. Refusing to maintain conjugal relationship caused mental cruelty upon the appellant. He also contended that since 2011 because of conduct of respondent-wife, appellant is forced to live out of his house, in a hotel though situated in same city. He also contended that not permitting to maintain conjugal relationship and neglecting the appellant is an act of desertion on the part of respondent-wife. He argued that by the act and conduct of one spouse against another even if residing in same roof can be an act of desertion of one against the another. It, all time, does not necessary that for desertion, a person is to leave one of the souse and matrimonial home and reside at some other place. To support his contention, he referred to explanation appended to section 13 (1) of the Act of 1955 and relied upon the decision of Hon'ble Supreme Court in case of **Bipinchandra Jaisinghbai Shah Vs. Prabhavati** reported in **(1956) 2 SCC 382** and **Baker Vs. Baker** reported in **(1952) 2 ALL ER 248 .** Learned counsel for the appellant further submits that earlier an application under Section 13-B of the Act of 1955 was filed jointly by the parties before the Family Court in which it is pleaded that due to incompatibility of temperament as well as other

family discord arose between the parties, parties could not adjust with each other and are residing separately. An agreement was also entered into between the parties . However, even after complying the terms of agreement by the appellant, respondent – wife before Family Court stated that she wants to live with appellant and did not want to break the marital relationship which shows the conduct of respondent. Therefore, in the facts of case, this Court may also consider this appeal for grant of decree in terms of Section 13-B also. In support of his contention, he places reliance upon the decision of Hon'ble Supreme Court in case of **Dhananjay Rathi Vs. Ruchika Rathi** [2026 LawSuit (SC) 369]. He also contended that the appellant and respondent being husband and wife and if respondent is not permitting the appellant to cohabit with her without any justifiable reason for long time i.e. since 2011 it is mental cruelty upon the appellant. In support of his contention, he places reliance upon the judgment passed by this Court in case of **Navodit Mishra VS. Smt. Richa Mishra** (FAM 24 of 2018, decided on 25.02.2022). He also places reliance upon decision of Hon'ble Supreme Court in case of **Dr. Nirmal Singh Panesar Vs. Paramjit Kaur Panesar alias Ajinder Kaur Panesar** reported in (2025) 3 SCC 790.

7. Per contra, learned counsel appearing for the respondent/wife would vehemently oppose submission of learned counsel for the appellant/husband and would submit that submission of learned counsel for the appellant that respondent deserted him is absolutely false and baseless and contrary to pleadings and evidence available on record. He contended that appellant is a businessman having hotel

and resort and he with his own freewill left the company of respondent and started living in a hotel thereby enjoying luxurious life. He contended that in the written statement as also in the evidence, respondent in categorical terms denied all the allegations that respondent has refused to maintain conjugal relationship between the two. The allegation made against respondent is almost after 20 years of marriage when out of three children from their marital relationship, two have attained the age of majority. He contended that ground of desertion and cruelty due to not permitting cohabitation does not lie together. There is no specific averment in the plaint about refusing to maintain conjugal relationship or denying request of cohabitation and therefore there cannot be a presumption in this regard. Appellant himself left the home with his own freewill, in which, appellant, respondent and their children are residing and therefore plea of desertion as raised is not available to him. He contended that if for any reason proceedings earlier filed under Section 13-B of the Act of 1955 and was closed in the facts of case as alleged due to conduct of respondent, then appellant ought to have challenged the said proceeding, which he did not do and, therefore, at this stage in these proceedings appellant will not be permitted to raise the said ground. In support of his contention, he places reliance upon the judgment of Supreme Court in case of **Dr. Anita Vs. Indresh Gopal Kohli** [arising out of SLP (Civil) No.24920 of 2019, decided on 14th November 2025.] The case filed is only on the basis of own narrative of appellant and therefore appeal be dismissed.

8. We have considered the rival submissions made by learned counsel for the parties and have carefully perused the record of the Family Court.

9. Appellant/applicant (husband) has challenged the impugned judgment and decree whereby learned Family Court dismissed the application filed by him under Section 13(1)(i-a) and Section 13 (1) (i-b) of the Act of 1955 seeking decree of divorce against respondent/non-applicant (wife) on the ground of cruelty and desertion. The factum of marriage is not in dispute. It is an admitted position that the marriage between the parties was solemnized on 07.07.1992 in accordance with Hindu rites and rituals.

10. Section 13 of the Act of 1955 provides for grant of decree of divorce in certain cases. It enacts that any marriage solemnized whether before or after the commencement of the Act may be dissolved on a petition presented either by the husband or by the wife on any of the grounds specified therein. Clause (i-a) of sub-section (1) of Section 13 envisages that a decree of divorce may be passed by a Court on the ground that after solemnization of marriage, opposite party has treated the petitioner with cruelty. Expression ‘cruelty’ includes both (i) physical cruelty; and (ii) mental cruelty. Cruelty is not defined in the Act of 1955. Physical cruelty can be proved by oral and documentary evidence. As far as mental cruelty is concerned, the same has to be decided based on the facts and circumstances of each case taking into consideration the social standing of the parties.

11. Section 13(1)(i-b) of the Act of 1955 provides desertion as a legal ground for divorce. It allows either spouse to file for the dissolution of marriage if the other party has deserted them for a continuous period of at least two years right before filing the petition.

12. In order to examine the act of cruelty, the principles laid down by the Hon'ble Supreme Court in **Samar Ghosh v. Jaya Ghosh** reported in **(2007) 4 SCC 511,** would be a relevant guideline wherein the Court has indicated certain illustrative instances at para 101 whereby the inference of mental cruelty can be drawn. Para 101 reads as under :-

> **"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 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. The burden of establishing the grounds pleaded for dissolution of marriage was upon the appellant/applicant (husband). In support of

his case, appellant/applicant entered the witness box as AW-1. The respondent /non-applicant (wife) entered the witness box as NAW-1 and was subjected to extensive cross-examination.

14. Although appellant-husband (applicant) has alleged various instances of harassment and cruelty against the respondent-wife (non-applicant), perusal of the evidence of non-applicant NAW-1 shows that she specifically denied the allegations made against her. In paragraph-9 of her cross-examination, she stated that she and the applicant shares common bedroom and that applicant frequently visited the house and lived in her bedroom. In paragraph- 10, she stated that she had taken the applicant to doctor. In paragraph- 20, she stated that, although there had been disputes between the parties in the past, their relationship was presently cordial and that she desired to continue living with the applicant as she loved him. In paragraph- 29 of her cross-examination, respondent/ non-applicant (wife) specifically denied the suggestion that she had harassed the applicant/husband by threatening to implicate him in a false criminal case and that such apprehension had compelled him to leave the ancestral home and reside at the hotel. She also denied the suggestion that the applicant had been living separately at his hotel and had never lived with her in the matrimonial home. She further denied that, taking advantage of the influence of her parents and relatives, she had threatened the applicant with false criminal proceedings.

15. Significantly, nothing material has been elicited from the testimony of the respondent/non-applicant in cross-examination which would discredit her testimony or establish the allegations levelled by the applicant. The respondent/non-applicant has consistently denied having refused matrimonial relations or having threatened or harassed the appellant/applicant.

16. It is well settled that matrimonial life necessarily involves differences, disagreements, adjustments and occasional discord between spouses. Mere differences relating to lifestyle, residence, financial matters or day-to-day household affairs, in the absence of conduct of sufficient gravity and persistence, cannot by themselves constitute cruelty within the meaning of Section 13(1)(ia) of the Act.

17. The appellant/applicant (husband) has specifically relied upon the alleged refusal of the respondent/non-applicant (wife) to maintain conjugal relations. There can be no dispute with the proposition that persistent and unjustified refusal by one spouse to have conjugal relations with the other, when established, may amount to mental cruelty. However, the legal proposition cannot dispense with the requirement of proving the foundational facts.

18. In the present case, the allegation of persistent refusal of conjugal relationship has been specifically denied by the respondent/non-applicant (wife). The appellant/applicant has not been able to establish the allegation by cogent and convincing evidence. Mere assertion of such conduct, particularly when specifically denied by the respondent, cannot by itself be sufficient to record a finding of cruelty.

19. Further, the allegation regarding refusal of conjugal relationship appears to have been relied upon as a principal ground despite the long duration of the marriage and the birth of three children from the wedlock. The evidence on record, as appreciated by the learned Family Court, does not establish a sustained and unilateral refusal of matrimonial intercourse of such nature and duration as would render the matrimonial relationship intolerable.

20. We are, therefore, unable to accept the submission of learned counsel for the appellant that the alleged refusal of conjugal relationship, as pleaded and proved in the present case, constitutes mental cruelty.

21. Hon'ble Supreme Court in case of **Dr. Anita** (supra) has observed thus:

> **"5.** In this vein, we may hasten to add that Courts, in recent times, often observe that since the parties are living separately, the marriage should be taken to have broken irretrievably. However, before jumping to such a conclusion, it is imperative upon the Family Court or the High Court to determine as to who out of the two is responsible for breaking the marital tie and forcing the other to live separately. Unless there is cogent evidence for willful desertion or refusal to cohabit and/or look after the other spouse, the finding of marriage having been broken irretrievably is likely to have devastating effects, especially on the children. The arrival of such a

> conclusion puts the Courts under an onurous duty to deeply analyse the entire evidence on record, consider the social circumstances and the background of the parties, and various other factors.

22. The appellant has also alleged that the respondent-wife threatened to implicate him in false criminal cases and had lodged a false complaint against him. However, there must be cogent material to establish that a complaint was false, malicious or deliberately instituted with the intention of causing harassment. In the present case, the appellant has failed to place sufficient material on record to establish such conduct on the part of the respondent.

23. Similarly, the allegation that the respondent had influenced the minds of the children against the appellant has also not been established by convincing evidence. Such an allegation, when specifically denied by the respondent, cannot be accepted merely on the basis of the appellant's own assertion.

24. We now turn to the ground of desertion. The appellant/applicant contends that the respondent/non-applicant deserted him by refusing to maintain matrimonial relations and that desertion can occur even when the spouses continue to reside under the same roof.

25. Laxman Patel (AW-2), one of the witnesses examined on behalf of the appellant/applicant, stated in his evidence that the applicant used to visit his own house to meet his parents. He further admitted that

the applicant's children reside in the same building in which the applicant's parents reside.

26. Daughter and son of the appellant/plaintiff were examined as NAW-2 and NAW-3, respectively. In paragraph-4 of her cross-examination, daughter of appellant/plaintiff, namely Sanchi Guruwara (NAW-2), stated that her father frequently visits at home, almost every day, and they take meals together. She further deposed that she holds a BBA degree and a diploma in Beauty Parlour work. Her educational expenses were borne by her father and grandparents. She also stated that she receives money from her father to meet out her other expenses. In paragraph- 5 of her cross-examination, she specifically denied the suggestion that her parents had been involved in a long-standing dispute and that, as a consequence, her father had been living separately since 2011.

27. Similarly, son of appellant/plaintiff namely Atharv Guruwara (NAW-3) in para-5 of his cross-examination stated that his educational expenses were borne by his father and grandparents. He further stated that his father frequently visits home. In paragraph 6 of his cross-examination, he denied the suggestion that his parents had been having a long-standing dispute and that, as a result, his father had been residing in his hotel since 2011. In paragraph 7 of his cross-examination, he further stated that, apart from his educational expenses, all his other expenses were borne by his father and grandparents. He also stated that his father had never subjected him to any harassment.

28. The legal proposition that desertion is not necessarily confined to a physical departure from the matrimonial home cannot be disputed. However, it remains incumbent upon the appellant/applicant to establish the essential ingredients of desertion, including the factum of separation and the intention to permanently bring matrimonial cohabitation to an end. In the present case, the evidence shows that it was the appellant himself who left the matrimonial home and started residing separately at his business premises/hotel. The appellant seeks to justify his separate residence by attributing it to the conduct of the respondent. However, as noticed herein-above, he has failed to establish the alleged conduct of cruelty or willful neglect on the part of the respondent which compelled him to leave the matrimonial home. NAW-2 and NAW-3 in their evidence clearly stated that their father used to visit house, take meals. They also denied that their father is continuously residing separately since 2011. There is no reason to disbelieve the evidence of NAW-2 and NAW-3 who are major children of parties to this appeal that, appellant/applicant regularly used to visit their house in which they are residing along with their mother.

29. The mere fact that the appellant has been residing separately for a considerable period cannot, in the circumstances of the present case, lead to the conclusion that the respondent deserted him. On the contrary, the respondent has consistently stated that she was willing to continue the matrimonial relationship and desired to live with the appellant.

30. The appellant has also relied upon the fact that the parties had earlier initiated proceedings under Section 13-B of the Act of 1955. It is true that the parties had, at an earlier point of time, contemplated dissolution of their marriage by mutual consent. However, a decree under Section 13-B necessarily depends upon the subsistence of mutual consent at the relevant stage. The subsequent withdrawal of consent by one spouse cannot, by itself, be treated as an act of cruelty or desertion. The fact that the respondent subsequently expressed her desire to continue the matrimonial relationship, therefore, cannot be treated as a circumstance establishing cruelty against the appellant. Rather, such conduct is consistent with her stand in the present proceedings that she did not desire dissolution of the marriage and was willing to continue the matrimonial relationship.

31. We are also unable to accept the submission that the present proceedings can be converted into proceedings under Section 13-B merely because the parties had earlier initiated proceedings for mutual-consent divorce. The jurisdiction of the Court in the present appeal is required to be exercised on the grounds pleaded and established under Section 13 of the Act of 1955.

32. Hon'ble Supreme Court in the case of **Anil Kumar Jain v. Maya Jain** reported in **(2009) 10 SCC 415** observed thus :

> **"27.** In all the subsequent cases, the Supreme Court invoked its extraordinary powers under Article 142 of the Constitution of India in order to do complete justice to the parties when faced with a situation where the marriage ties had

completely broken and there was no possibility whatsoever of the spouses coming together again. In such a situation, this Court felt that it would be a travesty of justice to continue with the marriage ties.

28. It may, however, be indicated that in some of the High Courts, which do not possess the powers vested in the Supreme Court under Article 142 of the Constitution, this question had arisen and it was held in most of the cases that despite the fact that the marriage had broken down irretrievably, the same was not a ground for granting a decree of divorce either under Section 13 or Section 13-B of the Hindu Marriage Act, 1955.

29. In the ultimate analysis the aforesaid discussion throws up two propositions. The first proposition is that although irretrievable breakdown of marriage is not one of the grounds indicated whether under Sections 13 or 13-B of the Hindu Marriage Act, 1955 for grant of divorce, the said doctrine can be applied to a proceeding under either of the said two provisions only where the proceedings are before the Supreme Court. In exercise of its extraordinary powers under Article 142 of the Constitution the Supreme Court can grant relief to the parties without even waiting for the statutory period of six months stipulated in Section 13-B of the aforesaid Act. This doctrine of irretrievable breakdown of marriage is not available even to the High Courts which do not have powers similar to those exercised by the Supreme Court under Article 142 of the Constitution. Neither the civil courts nor even the High Courts can, therefore, pass orders before

> the periods prescribed under the relevant provisions of the Act or on the grounds not provided for in Sections 13 and 13-B of the Hindu Marriage Act, 1955."

33. In the case of **Gurbux Singh v. Harminder Kaur**, reported in **(2010) 14 SCC 301**, Hon'ble Supreme Court, while considering an appeal arising out of the dismissal of an application filed by a spouse under Section 13 of the Hindu Marriage Act, 1955, seeking a decree of divorce, observed as under:

> "**16**. The married life should be assessed as a whole and a few isolated instances over certain period will not amount to cruelty. The ill conduct must be precedent for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, one party finds it extremely difficult to live with the other party no longer may amount to mental cruelty. Making certain statements on the spur of the moment and expressing certain displeasure about the behaviour of elders may not be characterised as cruelty. Mere trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would not be adequate for grant of divorce on the ground of cruelty. Sustained unjustifiable and reprehensible conduct affecting physical and mental health of the other spouse may lead to mental cruelty. Both the appellant and the respondent being highly qualified persons, the appellant being Principal in ITI

> College, the respondent working as a Librarian in a government institute, an isolated friction on some occasion like festival of lohri even in the presence of others cannot be a valid ground for dissolving the marriage**."**

34. The judgments relied upon by learned counsel for the appellant in cases of **Bipinchandra Jaisinghbai** (supra), **Baker** (supra), **Dhananjay Rathi** (supra), **Navodit Mishra** (supra) and **Dr. Nirmal Singh Panesar** (supra), lay down principles governing desertion, mental cruelty and matrimonial disputes. However, having regard to the facts and evidence of the present case, the aforesaid decisions are distinguishable and do not advance the appellant's case as appellant herein has failed to establish the essential ingredients of cruelty and desertion by cogent evidence.

35. For the foregoing discussions and the law laid down by Hon'ble Supreme Court as referred to above, we find that the allegations levelled by the appellant, even when considered cumulatively, do not establish conduct on the part of the respondent of such gravity, persistence and intensity as would constitute mental cruelty within the meaning of Section 13(1)(ia) of the Act. We also find that the appellant has failed to establish that the respondent had deserted him within the meaning of Section 13(1)(i-b) of the Act. The evidence, rather, indicates that the appellant himself chose to reside separately and that the respondent expressed her willingness to continue the matrimonial relationship. The findings recorded by the learned Family Court are based on a proper appreciation of the oral and

documentary evidence available on record. The impugned judgment neither suffers from any perversity nor discloses any error of law or fact warranting interference by this Court in exercise of its appellate jurisdiction.

36. Consequently, the appeal, being devoid of merit, deserves to be and is accordingly **dismissed.** Impugned judgment and decree dated 08.12.2023 passed in Civil Suit No.51-A/2021, whereby application filed by the appellant/husband under Section 13(1)(i-a) and 13 (1) (i-b) of the Act of 1955 seeking dissolution of marriage on the ground of cruelty and desertion has been rejected, are hereby affirmed.

37. Let a decree be drawn accordingly.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sushma Sawant)
Judge

Praveen