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PAWAN KUMAR JHA
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HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 165 of 2025

- Rajendra Kumar Verma S/o Shri Devendra Kumar Verma Aged About 41 Years Presently Residing At E.W.S. 36, In Front Of Bafna Mangalam, Padmanabhpur, Tehsil And District Durg, Chhattisgarh.

... Appellant/ Applicant

versus

- Shrimati Komal Verma W/o Rajendra Vermam D/o Shri Bhagwati Prasad Verma Aged About 39 Years R/o Plot No. 988/5, Ispat Nagar, Near Karma Bhavan, Ward Number 63, Risali, Bhilai Tehsil And District Durg, Chhattisgarh.

... Respondent/ Non-applicant

For Appellant	:	Mr. Ashwin Panickar, Advocate
For Respondent	:	None, though served.

Division Bench
Hon'ble Shri Parth Prateem Sahu, Judge
Hon'ble Smt. Sushma Sawant, Judge

JUDGMENT ON BOARD

***Per* Parth Prateem Sahu, Judge**

28/10/2026

1. This appeal under Section 19(1) of the Family Courts Act, 1984 (for short “Act of 1984”) is filed by appellant questioning the legality and sustainability of the impugned judgment and decree passed in Civil Suit No. 933/2024 dated 15.04.2025 by learned Principal Judge, Family Court, Durg (C.G.), whereby the suit/ application filed by appellant under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955 (for short “Act of 1955”) seeking decree of divorce was dismissed.

2. Brief facts of the case, as projected by the appellant/plaintiff before the Family Court, are that:-

(*a*) Marriage of appellant with the respondent/ defendant was solemnized on 29.06.2012 according to Hindu rites and customs. Out of their wedlock, two daughters, namely, Bhavya Verma and Riddhi Verma, were born in the years 2013 and 2023, respectively. It is pleaded that, soon after the marriage, respondent started quarrelling with him and his family members over trivial matters. She insisted him on living separately from his parents and pressurized him to seek partition in the family property. Even after several efforts by him and his family members to maintain matrimonial harmony, conduct of the respondent continued.

(*b*) Appellant further pleaded that, due to continuous matrimonial disputes between them, he submitted a written application before the community head on 09.08.2024, seeking separation from the respondent. On 20.08.2024, respondent also submitted a written application expressing her willingness to live separately from him. Thereafter, on 23.08.2024, the respondent left the matrimonial home along with their younger daughter, and the appellant informed this fact to the concerned police station. The respondent subsequently returned to the matrimonial home, and on 13.09.2024, the parties executed an agreement before a Notary, in presence of witnesses, expressing their consent to live separately.

(*c*) It was further pleaded that the appellant had been residing separately from the respondent for a considerable period and that repeated efforts of reconciliation by their family members and community elders had failed. According to him, respondent continued to reside at the matrimonial home with children and was unwilling to agree to a divorce by mutual consent, despite earlier agreement between the parties. Appellant pleading that the matrimonial relationship had deteriorated beyond reconciliation and that

the respondent's conduct had caused him mental agony, he instituted a suit under Section 13(1)(i-a) of the Act of 1955, seeking dissolution of the marriage on the ground of cruelty.

3. Respondent/ defendant did not appear before the Family Court and the written statement is also not filed on her behalf, she has been proceeded ex parte.

4. Appellant in support of application under Section 13(1)(i-a) of the Act of 1955 filed before the trial court has examined himself as PW-1 and submitted his affidavit under Order XVIII Rule 4 of the Code of Civil Procedure, 1908. He reiterated the allegations made in his application regarding frequent quarrels, interference of the respondent's parental family, pressure to live separately from his parents and the alleged threats given to him. He also relied upon the documents ie., marriage registration certificate as Ext. P-02(c), marriage card as Ext. P-03, rent agreement dated 18.09.2024 as Ext. P-05(c), applications submitted before the community head, the agreement dated 13.09.2024 as Ext. 04(c), the police complaint, police station Nevai dated 23.08.2024 as Ext. P-06(c).

5. Learned trial Court based on the pleadings made has formulated as many as two issues for consideration and upon considering the evidence brought in record, observed that although the appellant had alleged frequent disputes between the parties, the allegations regarding mental and physical cruelty had not been established by reliable evidence. It further observed that the appellant and the respondent were residing separately on account of their matrimonial disputes, but such circumstances, by themselves, were not sufficient to grant a decree of divorce on the ground of cruelty and has dismissed the suit by the impugned judgment and decree, against which this appeal is filed.

6. Learned counsel for appellant would submit that learned trial Court fell into error in dismissing the suit filed by appellant/plaintiff without appreciating the evidence brought in record by the appellant/plaintiff in appropriate manner. It is submitted that the learned Family Court failed to properly appreciate the evidence adduced by the appellant in support of the grounds of cruelty. Appellant examined himself before the Family Court, and reiterated the material averments made in the plaint and specifically stated about the conduct of the respondent which caused him continuous mental agony. He would submit that the Family Court failed to appreciate that the respondent had herself agreed to reside separately from the appellant and had also expressed her willingness to dissolve the marriage by mutual consent, but subsequently withdrew from the said arrangement. It is further submitted that the parties have been residing separately for a considerable period and that repeated matrimonial disputes have made their relationship practically impossible to continue. Learned counsel would also submit that the respondent remained absent throughout the proceedings before the Family Court and did not controvert the pleadings and evidence of appellant. Learned Family Court, therefore, ought to have considered these circumstances cumulatively while deciding whether the conduct complained of, constituted cruelty within the meaning of Sections 13(1)(i-a) of the Act of 1955. It is, therefore, prayed that the impugned judgment and decree be set aside and a decree of divorce be granted. In support of his contention, he placed reliance upon the judgment passed by the Kerala High Court in **Beena M.S. v. Shino G. Babu**, passed in Mat. Appeal No. 43 of 2020, decided on 04.02.2022.

7. There is no appearance on behalf of respondent even after service of notice in the present appeal, and has been proceeded *ex parte*.

8. We have heard learned counsel for the parties and also perused the record available before this Court.

9. The issue involved for consideration in this appeal before this Court is whether the appellant has been able to establish that the respondent-wife treated him with cruelty within the meaning of Section 13(1)(i-a) of the Act of 1955, so as to entitle him to a decree of divorce.

10. At the outset, it is relevant to note that the proceedings before the Family Court were ex parte. However, merely because the respondent did not appear and contest the proceedings, the allegations made by the appellant could not automatically be accepted as proved. The appellant was still required to establish the alleged matrimonial cruelty by leading cogent and reliable evidence. An *ex parte* proceeding does not relieve the appellant of the burden of proving the ground on which dissolution of marriage is sought.

11. The expression "cruelty" occurring in Section 13(1)(i-a) of the Act of 1955 has to be understood in the context of the matrimonial relationship. There cannot be any fixed formula for determining mental cruelty. The Court has to consider the nature of the conduct complained of, the circumstances in which it occurred, its effect upon the other spouse and the matrimonial relationship as a whole.

12. It is a well-settled principle of law that burden of proving allegation of cruelty lies squarely on the parties who seeks dissolution of marriage on that ground. Mere making of allegations in the pleadings is not sufficient; the party asserting cruelty must establish the same by leading clear, cogent, reliable, and legally admissible evidence before the Court. The standard of proof in such cases is based on the preponderance of probabilities; however, the evidence produced must be of such nature that it inspires confidence and is capable of convincing the Court that the

conduct complained of amounts to cruelty within the meaning of law. Vague assertions, general allegations, or unsubstantiated statements, without supporting material, cannot form the basis for granting a decree of divorce.

13. In the present case, the allegation made by appellant is alleged that the respondent used to quarrel with him and his parents over trivial matters, pressurize him to live separately from his parents and demand partition of the family property. He has also alleged that the respondent and her parental family threatened of lodging with false criminal cases and termination of his employment. However, on a careful examination of his affidavit and statement before the Family Court, it appears that the allegations are substantially general in nature. No specific particulars of the alleged incidents, their dates or the circumstances in which such conduct caused serious mental agony to the appellant have been satisfactorily established.

14. The mere fact that matrimonial disputes arose between the parties or that they frequently quarrelled with each other would not, by itself, constitute cruelty within the meaning of Section 13(1)(i-a) of the Act of 1955. The conduct complained of must be assessed in the facts and circumstances of each case to determine whether it has attained such a degree of seriousness as to make it unreasonable for the aggrieved spouse to continue the matrimonial relationship.

15. Appellant relied upon the agreement dated 13.09.2024, Ext.P-07(c), executed between the parties before a Notary in presence of witnesses, whereby they agreed to reside separately and expressed their intention to pursue divorce by mutual consent in accordance with law to contend that initially the respondent-wife agreed to dissolve the marriage, but subsequently withdrew from the said arrangement, which caused him mental agony as alleged. The aforesaid document is merely an agreement

executed between the parties before a Notary and is not a petition presented before the competent Court under Section 13-B of the Act of 1955. Thus, no judicial proceeding for dissolution of marriage by mutual consent had been instituted on the basis of the said document. Even otherwise, Hon'ble Supreme Court in **Anil Kumar Jain v. Maya Jain**, reported in **(2009) 10 SCC 415**, has explained that mutual consent for dissolution of marriage under Section 13-B of the Act of 1955 must continue until the passing of the decree and either party is entitled to withdraw such consent before the decree is passed and further held 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.
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> **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.
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> **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."

16. In the present case, therefore, the mere fact that the respondent subsequently did not proceed in accordance with the said agreement or withdrew from her earlier willingness to dissolve the marriage by mutual consent cannot, by itself, be construed as an act of cruelty. Appellant is required to establish some independent conduct on the part of the respondent amounting to cruelty within the meaning of Section 13(1)(i-a) of the Act of 1955. In absence of such proof, the aforesaid agreement and the subsequent conduct alleged by the appellant cannot constitute a sufficient ground for dissolution of marriage.

17. Another circumstance relied upon by the appellant is that he has been residing separately from the respondent and that the parties have been unable to resume their matrimonial relationship. In this regard, it is relevant to examine the appellant's own pleadings and evidence. Perusal of pleading made in the application would show that appellant has stated that due to matrimonial disputes, he was compelled to reside separately from the respondent for a considerable period. Similar statements have been made in his evidence in-chief submitted in the form of affidavit under Order XVIII Rule 4 of the CPC. However, neither the application nor his evidence discloses any specific date from which the appellant and respondent allegedly started residing together in the separate rented accommodation. The rent agreement (Exhibit P-5C), relied upon by the appellant would show that the agreement was executed on 18.09.2024 between the landlord and the appellant, whereby the premises were let out to the appellant for a period of eleven months. Though the agreement mentions the commencement of the tenancy period from 01.05.2024 and its

continuation up to 31.03.2025, the document itself was executed on 18.09.2024. It is also relevant to note that the agreement shows the appellant alone as the tenant and does not establish that the respondent-wife had also been residing with him in the said accommodation from the commencement of the alleged tenancy. Further, the application under Section 13(1)(i-a) of the Act of 1955 was filed on 23.09.2024, i.e., merely five days after execution of the aforesaid rent agreement. Thus, even if the appellant's case regarding his separate rented accommodation is taken into consideration, the material available on record does not establish the specific period during which the parties actually resided together in the said premises or the date from which the respondent allegedly started treating him with cruelty therein.

18. In absence of any specific statement in the pleadings and evidence regarding the commencement of such joint residence, the date mentioned in the rent agreement, by itself, cannot be treated as proof that the parties had been residing together in the rented accommodation since 01.05.2024. More so when, the appellant has not produced any independent material to establish that the respondent resided with him in the said premises and subjected him to cruelty during that period.

19. In the facts of the present case, though the proceedings before the Family Court were *ex parte*, a perusal of the affidavit submitted under Order XVIII Rule 4 of the CPC and the appellant's examination before the Court would show that there is no specific mention of the date on which he and the respondent-wife started residing together in the separate rented accommodation. The rent agreement is dated 18.09.2024, whereas the application under Section 13 of the Act of 1955 was filed on 23.09.2024. Thus, there was hardly any interval between the execution of the rent agreement and institution of the divorce proceedings. Even otherwise, the

document does not establish that the respondent-wife actually resided with the appellant in the said rented premises from the date of commencement of the tenancy. Therefore, the contention of appellant regarding separate residence cannot be accepted as sufficient proof of cruelty. There was also no reasonable period, on the basis of the material placed on record, to ascertain that the respondent, even after commencing residence in the rented accommodation, had treated the appellant with cruelty. The evidence of appellant, therefore, does not establish the necessary factual foundation for the relief sought by him.

20. There are material gaps in the appellant's own version regarding the period of separate residence. On one hand, he has made a general assertion that the parties had been residing separately for more than one and a half years, whereas the rent agreement relied upon by him was executed only on 18.09.2024. Although the agreement mentions an earlier commencement date, there is no specific pleading or evidence explaining when the parties actually shifted to the rented accommodation or whether they ever resided there together. Thus, the material relied upon by him does not sufficiently corroborate his assertion of prolonged separate residence on account of the respondent's conduct which amounted to cruelty. Appellant, having sought a decree of divorce on the ground of cruelty, did not come with clean hands, he was expected to disclose the material facts clearly and establish them through reliable evidence.

21. It is also well settled that matrimonial disputes are civil in nature and the facts alleged by a party are required to be established on the standard of preponderance of probabilities. Hon’ble Supreme Court in **Dr. N.G. Dastane v. Mrs. S. Dastane**, **(1975) 2 SCC 326**, has held that the word "satisfied" occurring in the matrimonial statute means satisfaction on a preponderance of probabilities and not beyond reasonable doubt. The

Court has to examine whether the circumstances brought on record, taken collectively, are sufficient to reasonably establish such allegations.

22. In the present case, the allegations made by the appellant are general in nature and the material allegations regarding conduct of respondent, quarreling with him and his family members, pressurizing him to live separately from the family member, and other acts of harassment without any independent or supporting evidence does not by itself establish that the conduct of the respondent amounted to mental cruelty within the meaning of Section 13(1)(i-a) of the Act of 1955. Cruelty, particularly mental cruelty, has to be determined upon consideration of the entire matrimonial relationship and the cumulative effect of the conduct complained of. Ordinary wear and tear of matrimonial life or mere incompatibility between the spouses would not, by itself, be sufficient to grant a decree of divorce.

23. Hon'ble Supreme Court in case of **Gurbux Singh v. Harminder Kaur**, (**2010) 14 SCC 301** observed thus:

> "**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."

24. In order to examine the cruelty, the principles laid down by the Hon'ble Supreme Court in case of **Samar Ghosh v. Jaya Ghosh**, **(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:
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> (*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.
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> (*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.
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> (*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.”

25. In **Samar Ghosh's case** (**supra**), Hon'ble Supreme Court has further held that cruelty in one case may not amount to cruelty in another case and may depend upon social status, customs, tradition, religious belief, human values and value system. 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.

26. The fact that the respondent did not appear before the Family Court and was proceeded *ex parte* would not automatically entitle the appellant to a decree of divorce. Even in an *ex parte* proceeding, the appellant was required to establish the statutory ground pleaded by him by producing acceptable evidence. Appellant has to stand on his own legs and he cannot take advantage of weakness of respondent. The learned Family Court, therefore, cannot be said to have committed any error in examining the evidence produced by the appellant and determining whether the allegations of cruelty were proved.

27. It is also relevant that the parties have two daughters out of their wedlock and the appellant himself has stated that their maintenance and other expenses are being borne by him. However, the existence of matrimonial disputes or the fact that the parties are living separately cannot be treated as sufficient grounds for dissolution of marriage unless the statutory requirement of cruelty is established. Similarly, the plea of irretrievable breakdown of marriage, raised in the grounds of appeal, cannot independently form the basis for granting a decree of divorce under Section 13(1)(i-a) of the Act of 1955. The relief sought in the present proceedings is specifically founded upon cruelty, and the appellant has failed to establish the same. Irretrievable breakdown of marriage is not a ground for grant of divorce under the Act of 1955.

28. The jurisdiction of this Court in an appeal under Section 19(1) of the Family Courts Act, 1984 requires consideration of the correctness of the judgment and decree passed by the Family Court on the basis of the material available on record. On such consideration, we find that the learned Family Court has appreciated the oral and documentary evidence led by the appellant and has recorded a finding that the allegations of cruelty were not proved. The said finding is based upon the evidence available on record and no material has been shown to us which would warrant interference with the same.

29. In the facts of the present case, the evidence brought by the appellant does not establish conduct of such nature as would constitute matrimonial cruelty within the meaning of provisions of Section 13(1) of the Act of 1955.

30. In the light of aforesaid law laid down by Hon'ble Supreme Court, if we examine facts of instant case, we find that whatever conduct/ behaviour of respondent-wife has been alleged as cruelty by appellant-husband, is not found to be proved by the appellant to that of a degree to grant decree of divorce on the ground of cruelty.

31. The decision relied upon by learned counsel for appellant in **Beena M.S. (supra)** is distinguishable on its own facts, as therein the parties had been living separately since 2017, their matrimonial incompatibility was evident from the initial stage of marriage and was supported by substantial documentary and oral evidence, and other material showing the emotional distress and deteriorated relationship between them. An application seeking dissolution of marriage is required to be considered only with reference to the statutory grounds envisaged under Section 13(1)(i-a) and (i-b) of the Act of 1955, namely, cruelty and desertion, respectively, and it is for the party seeking dissolution of marriage to plead and establish the particular ground on which such relief is claimed. In the present case, the

appellant has sought dissolution of marriage on the ground of cruelty, but has failed to establish the same by reliable evidence.

32. For the foregoing discussions, the appeal, being devoid of merit, is liable to be and is hereby dismissed accordingly. The impugned judgment and decree dated 15.04.2025 passed by the learned Principal Judge, Family Court, Durg, in Civil Suit No. 933/2024 are hereby affirmed.

33. All pending applications are disposed off.

A decree be drawn up accordingly.

Parties to bear their respective cost.

Sd/-

(Parth Prateem Sahu)
Judge

Sd/-

(Sushma Sawant)
Judge

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