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ASHOK SAHU

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HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 305 of 2023

{Arising out of judgment and decree dated 15.09.2023 passed in Civil Suit No. 51-A/2018 by the Principal Judge, Link Family Court, Sakti, District Janjgir-Champa}

Tuleshwar Prasad Chandra, S/o. Mahettar Lal Chandra, Aged About 42 Years, R/o. Village Sarasdol, Police Station And Tahsil Malkharouda, District Janjgir-Champa (New District Sakti), Chhattisgarh.

... Appellant
Plaintiff

versus

Smt. Ranu Chandra, W/o. Tuleshwar Prasad, Aged About 36 Years, R/o. Security Barik Kulda Open Cast Project Vasundhara Area Balinga, Post Balinga, Police Station Himgir, District Sundargarh (Odisha), At Present Resident Of Balram Chal, Infront Of Kalibadi, Mudapar, Korba, Post Korba, District : Korba, Chhattisgarh

... Respondent
Defendant

For Appellant	:	Mr. Abhinav Tiwari, Advocate
For Respondent	:	Mr. Ishwar Jaiswal, Advocate

Division Bench: -

Hon'ble Shri Parth Prateem Sahu and
Hon'ble Smt. Sushma Sawant, JJ.

Judgment On Board

(27/10/2026)

Sushma Sawant, J.

1. Invoking the appellate jurisdiction of this Court under Section 19 of the Family Courts Act, 1984, the **appellant/plaintiff husband Tuleshwer Prasad Chandra** has preferred this appeal challenging the judgment & decree **dated 15.09.2023** passed by the Principal Judge, Link Family Court, Sakti, District Janjgir-Champa in **Civil Suit No.51-A/2018** ***(Tuleshwar Prasad Chandra v. Smt. Ranu Chandra)***, by which his application for grant of decree of divorce against respondent/defendant wife **Smt.Ranu Chandra**, has been rejected finding no merit.

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

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

Factual Matrix

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

3. The case of the **appellant/plaintiff husband Tuleshwer Prasad Chandra** , in brief, was that his marriage with the **respondent/ defendant wife Smt. Ranu Chandra**, was solemnized **on**

21.05.2002 at Village-Kansa, Tehsil-Dabhra, District-Janjgir-Champa (Chhattisgarh), in accordance with Hindu rites and customs. Two sons, namely **Gaurav** and **Tarun Chandra**, were born within the wedlock, and the parties initially resided together at Village-Sarsadoli. The appellant/plaintiff husband was employed in the Indian Army. Their matrimonial relationship gradually deteriorated due to the quarrelsome and cruel conduct of the respondent/defendant wife, who frequently quarrelled with and abused him and his family members and subjected him to physical and mental harassment, despite repeated efforts by relatives to reconcile the parties, there was no improvement in her conduct.

4. The **appellant/plaintiff husband** further pleaded that, during his stay at Amritsar, the respondent/defendant wife had consumed poison in his absence and was hospitalised. He also pleaded that she neglected household responsibilities and refused to attend to his parents. According to him, the parties had executed an undertaking on stamp paper of ₹100 on 15.05.2014 before their relatives, whereby the respondent/defendant wife had expressed regret and assured that such incidents would not recur; however, their relationship did not improve. He further pleaded that the respondent/defendant wife had been living separately since 15.12.2015 after taking her belongings and that there was no possibility of resuming their matrimonial life. On these grounds, the appellant/plaintiff husband sought a decree of divorce.

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

5. On the other hand, the **respondent/defendant wife Smt.Ranu Chandra** contested the suit by filing her written statement and denied the material allegations levelled against her. She contended that the appellant/plaintiff husband had made false and baseless allegations of cruelty and desertion. According to her, she had neither executed the alleged undertaking dated 15.05.2014 nor deserted the appellant/plaintiff husband or their two sons. She further contended that the appellant/plaintiff husband had abandoned her and the children and was residing with another female employee. She also denied the allegation that she had consumed poison at Amritsar or had been hospitalised on that account.

6. The respondent/defendant wife further pleaded that she had been residing in a security barrack at an open-cast coal project in the Vasundhara area, Balinga, District Sundargarh, Odisha, while the appellant/plaintiff husband continued to reside separately from her. She alleged that the appellant/plaintiff husband had failed to disclose his assets, income and other relevant financial particulars and had not made adequate arrangements for the education and maintenance of their minor children, including their differently abled son. Accordingly, she sought dismissal of the divorce petition.

-: Proceedings before the learned Family Court :-

7. The Family Court after appreciating oral and documentary evidence available on record, framed following issues and answered the issues as under:-

क्र.	वाद प्रश्न	निष्कर्ष
1.	क्या अनावेदिका/प्रत्यर्थी ने विवाह के अनुष्ठापन के पश्चात् आवेदक/याचिकाकर्ता के साथ क्रूरता का व्यवहार किया ?	"अप्रमाणित"
2.	क्या अनावेदिका /प्रत्यर्थी ने याचिका पेश किये जाने के अव्यवहित दो वर्ष से अधिक कालावधि से आवेदक / याचिकाकर्ता को अभित्यक्त कर रखी है?	“साबित नहीं"
3.	सहायता एवं वाद ब्यय ?	"कंडिका-18 अनुसार"

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

-:Evidence led by the Appellant/Plaintiff- Tuleshwar Prasad Chandra:-

8. Before the Family Court, the appellant/plaintiff has examined himself Tuleshwar Prasad Chandra as **(P.W.-1)** and also examined his witness Maniram Chandra as **(P.W.-2).** The appellant/plaintiff husband has not adduced any documentary evidence in support of his case.

Evidence led by the Respondent/Defendants- Smt. Ranu Chandra:-

9. The respondent/defendant herself Smt. Ranu Chandra has examined as **(D.W.-2)** and also examined Gourav Chandra as **(D.W.-2)**. The respondent/defendant wife has produced documents **Ex.D-1 to Ex.D-3** in support of her case.

-:Judgment of the trial Court:-

10. Upon completion of the trial, the learned Family Court, by its judgment and decree dated 15.09.2023, dismissed the appellant/plaintiff's suit. Being aggrieved by the same, the present appeal has been preferred on the following grounds:-

(i) That, the impugned judgment passed by the learned Court below dated 15-09-2023 is arbitrary, unreasonable, against the law and contrary to the facts of the case and therefore the impugned order/judgment deserves to be set-aside.

(ii) That, the learned family court has not taken into consideration the pleadings of the appellant made by him in the application under Section 13 (A) of Hindu Marriage Act, in which he has submitted that 15-05-2014, the agreement which has been executed between the parties and in the social meeting, the respondent in stamp paper has made her submission that she will not repeat the misbehavior against the appellant as well as their parents.

(iii) That, the learned court below has not properly appreciated the evidence adduced by the appellant to prove his case of cruelty by the respondent/wife and her family members.

(iv) That, the evidence adduced by the appellant as well as by one Mani Ram Chandra are in accordance with the application, which reveals that cruelty has been done by the respondent wife against the appellant.

(v) That, by the evidence of respondent along with Gaurav Chandra does not rectified the case of appellant therefore the impugned judgment passed by the learned family Court is required to be set-aside.

-:Proceedings before the Appellate Court:-

11. Both the parties were heard on this appeal. The evidence and documents available in the record of the trial Court have been perused.

-:Questions to be considered in this Appeal:-

12. In order to dispose of this First Appeal, the following questions are to be considered:-

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

(ii) Whether the Appellant/plaintiff husband is entitled for decree of divorce as claimed?

-:Argument of the Appellant/Plaintiff- Husband Tuleshwar Prasad Chandra:-

13. Learned counsel for the appellant/plaintiff husband submits that the learned Family Court has erred in dismissing the petition under Section 13 of the Hindu Marriage Act, 1955, without properly appreciating the pleadings and evidence adduced by the appellant/plaintiff husband. He contends that the undertaking dated 15.05.2014, executed by the respondent/defendant wife on stamp paper in a social meeting, wherein she had assured that she would not repeat her alleged misbehaviour towards the appellant/plaintiff husband and his parents, has not been properly considered. He further submits that the testimony of the appellant/plaintiff husband and witness Mani Ram Chandra is consistent with the pleadings and establishes the alleged cruelty committed by the respondent/defendant wife. Accordingly, he prays that the impugned judgment dated 15.09.2023 be set aside and the appeal be allowed.

-:Argument of the Respondent/Defendant- Smt. Ranu Chandra:-

14. Learned counsel for the **respondent/defendant wife** submits that the impugned judgment does not suffer from any illegality or perversity. Accordingly, he prays for dismissal of the appeal.

-:Analysis of the Appellate Court:-

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

15. To avoid repetition of the evidence, both the questions are taken up together for consideration.

16. Since the present appeal concerns the grounds of **"cruelty"** and **"desertion"** under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955, it would be appropriate to reproduce the relevant statutory provisions for ready reference: -

> " **13 Divorce.** --(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party--
>
> (i) xxx.....xxx..... xxx.....
>
> (ia) has, after the solemnization of the marriage, treated the petitioner with **cruelty**; or
>
> (ib) has **deserted** the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or
>
> ***Explanation.-*** In this sub-section, the expression **'desertion'** means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly."

17. Section 13 sub-section(1) clause (ia) of Act of 1955 provides that a decree of divorce can be granted in case after the solemnization of marriage, the petitioner has been treated with **"cruelty"**. Similarly Section 13 (1) (ib) of Act 1955 provides for grant of decree of divorce provided the other party has **"deserted"** petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.

18. Appellant/Plaintiff filed above mentioned suit for divorce on the grounds of **"cruelty"** as well as **"desertion"**. Having regard to the allegations levelled by the appellant/plaintiff husband, it would be appropriate to examine, in the first instance, whether the ground of **"cruelty"** has been established, followed by consideration of the ground of desertion.

19. The Hon'ble Supreme Court has consistently held that every trivial quarrel, ordinary wear and tear of matrimonial life, or minor discord between spouses does not constitute cruelty. The conduct complained of must be assessed in the context of the parties' matrimonial relationship and the cumulative effect of the circumstances. In **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511,** the Supreme Court explained the concept of mental cruelty and emphasised that it must be assessed on the facts and circumstances of each case.

20. In **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511**, the Hon'ble Supreme Court, in paragraph 101, has enumerated certain illustrative instances of human behaviour that may be relevant in determining whether a case of "mental cruelty" is made out. The Court clarified that these instances are illustrative and not exhaustive, and that no uniform standard can be laid down for all matrimonial disputes. The relevant portion of paragraph 101 is as follows:

> "No uniform standard can ever be laid down for guidance, yet it is deemed 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; but 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 sterilization 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."

21. In the aforesaid context, the facts and evidence of the present case are being examined. In the present case, the appellant/plaintiff husband examined himself as **(P.W.-1)** and also examined **Mani Ram Chandra** as **(P.W.-2)**. However, **Mani Ram Chandra (P.W.-2)** had no direct knowledge of the alleged incidents and admitted as much in **paragraph 8 of his cross-examination**. Consequently, his testimony does not materially support the appellant/plaintiff husband's case of cruelty.

22. As regards the testimony of the appellant/plaintiff husband **Tuleshwer Prasad Chandra (P.W.-1)**, his own examination-in-chief indicates that the parties continued to reside together from the date of their marriage, i.e., **21.05.2002, until December 2015**, and that two sons were born during their marriage.

23. Although he referred to an incident in which the respondent/defendant wife **allegedly consumed poison at Amritsar**, the respondent/defendant wife **Ranu Chandra (D.W.-1)**, in paragraph 9 of her cross-examination, denied the suggestion put to her and stated that it was the appellant/plaintiff husband who had given her the poison.

24. The evidence on record reveals that the parties have levelled allegations against each other. In these circumstances, the testimony of their son **Gaurav Chandra (D.W.-2)** assumes significance. He is of sufficient age and maturity to understand the circumstances of the matrimonial dispute and has been residing with his mother. No reason has been established to suggest that he would falsely depose against his father.

25. For the sake of argument, even if the appellant/plaintiff husband's version that the respondent/defendant wife had consumed poison is accepted, the question remains as to why she would have taken such a step. Whether she was suffering from any mental illness or whether there were other circumstances that led to the incident, has not been

established by the evidence on record. If she was suffering from any mental illness, the appellant/plaintiff husband ought to have taken appropriate steps for her treatment. In the absence of any cogent evidence explaining the circumstances of the incident, the same cannot, by itself, be treated as establishing cruelty on the part of the respondent/defendant wife.

26. Another significant circumstance is that the alleged **agreement/ undertaking dated 15.05.2014** was neither exhibited nor tendered in evidence in a manner that afforded the respondent/ defendant wife an opportunity to explain its contents. She also denied having executed any such undertaking. Therefore, in the absence of proper proof, the alleged undertaking cannot be relied upon to establish the appellant/plaintiff husband's case.

27. Furthermore, paragraph 14 of the cross-examination of the appellant/plaintiff husband **Tuleshwer Prasad Chandra (P.W.-1)** brings out that, during a quarrel between the parties at **Balinga, Odisha**, the respondent/defendant wife sustained an injury to her head, after which the appellant/plaintiff husband left her there and went to his village, where he remained for two to three months.

28. He remained away from her for two to three months without making any enquiries about her well-being. This circumstance, particularly when the respondent/defendant wife had sustained a head injury, indicates that the appellant/plaintiff husband, rather than the

respondent/defendant wife, was more responsible for the cruelty arising out of their matrimonial discord.

29. Thus, the circumstances relied upon by the appellant/plaintiff husband, when considered individually and cumulatively, do not establish conduct of such a grave and weighty nature as would constitute cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955, nor do they fall within the illustrative instances of mental cruelty discussed by the Hon'ble Supreme Court in **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511**.

30. In view of the foregoing discussion, this Court finds that the **appellant/plaintiff husband Tuleshwer Prasad Chandra** has failed to establish the ground of cruelty pleaded by him. The learned Family Court has properly appreciated the evidence on record, and no illegality or perversity is found in its conclusion warranting interference by this Court.

31. Now, turning to the ground of **"desertion"**, the governing principle is that mere physical separation does not, by itself, establish desertion within the meaning of Section 13(1)(ib) of the Hindu Marriage Act, 1955. Under Section 13(1)(ib) of the Hindu Marriage Act, 1955, the appellant/plaintiff husband must establish the factum of separation and the respondent/defendant wife's intention to bring cohabitation permanently to an end (animus deserendi), without reasonable cause and without his consent or against his wish.

32. These principles were reiterated by the Supreme Court in **Lachman Utamchand Kirpalani v. Meena, AIR 1964 SC 40**, and **Adhyatma Bhattar Alwar v. Adhyatma Bhattar Sri Devi, (2002) 1 SCC 308**. In the present case, the evidence on record indicates that the appellant/plaintiff husband left the respondent/ defendant wife and their children and went to his village at a time when the respondent/defendant wife had sustained a head injury.

33. Further, as emerges from paragraph 15 of his cross-examination, in the proceedings before the Family Counselling Centre as well as in the proceedings for restitution of conjugal rights instituted by the respondent/defendant wife under Section 9 of the Hindu Marriage Act, 1955, the appellant/plaintiff husband refused to take her back and resume cohabitation. He also did not deny that one of the children was ill, yet no arrangement was made for the child's treatment. All these circumstances indicate that it was the appellant/plaintiff husband, and not the respondent/defendant wife, who had abandoned the matrimonial relationship and withdrawn from cohabitation.

34. In view of the evidence discussed above, the appellant/plaintiff husband has failed to establish that the respondent/defendant wife deserted him without reasonable cause and with the requisite intention to bring cohabitation permanently to an end. Rather, the evidence indicates that the appellant/plaintiff husband's own conduct contributed to the continuation of their separation.

35. The allegations of desertion levelled against the respondent/ defendant wife are, therefore, not substantiated by the evidence on record. Accordingly, the learned Family Court has committed no error in refusing to accept desertion as a ground for divorce.

-:Final Conclusion:-

36. In view of the foregoing discussion, this Court finds that the appellant/plaintiff husband Tuleshwer Prasad Chandra has failed to establish the grounds of **"cruelty"** and **"desertion"** as contemplated under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955.

37. The learned Family Court has properly appreciated the pleadings and evidence on record, and the impugned judgment and decree do not suffer from any illegality or perversity warranting interference by this Court. Consequently, the appeal, being devoid of merit, is hereby **dismissed**.

38. The impugned judgment and decree passed by the learned Family Court are affirmed. The appellant/plaintiff husband shall bear the costs of the appeal. A decree be drawn up accordingly.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sushma Sawant)
Judge

Ashok