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HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 316 of 2023

Judgment Reserved on 01.08.2025

Judgment Delivered on 18.08.2025

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... Appellant

versus

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----Non-appellant

For Appellant : Mr. B.P. Singh, Advocate
For Non-appellant : None

Hon'ble Smt. Justice Rajani Dubey and
Hon'ble Shri Justice Amitendra Kishore Prasad
CAV Judgment

Per, Amitendra Kishore Prasad, J.

1. This first appeal under Section 28 of Hindu Marriage Act read with Section 19(1) of the Family Courts Act, 1984 has been preferred by the appellant-husband against the judgment and decree dated

25.10.2023, passed by the learned Additional Third Principal Judge, Family Court, Durg District Durg (C.G.) in H.M.A. No. 905/2022, whereby the learned Family Court dismissed the suit/application filed by the appellant-husband under Section 13(1) (1-b) of the Hindu Marriage Act, 1955 for decree of divorce on the grounds of cruelty and desertion.

2. Parties are herein referred to their original status as in the trial Court.
3. Brief facts of the case are that the marriage between the applicant-husband and non-applicant-wife was solemnized on 26/12/1996 according to Hindu rituals and customs at Sector-6, Bhilai. After the marriage, both parties maintained their conjugal rights and were blessed with two children, a daughter namely Phalguni, aged about 19 years, and a son namely Aniket, aged about 16 years. According to the plaint, disputes arose between the parties after some years of marriage, during which the non-applicant allegedly began threatening to live separately. The non-applicant, who obtained a Ph.D degree and secured a position as a principal in Kurud with the applicant's assistance, is said to have changed her behavior, becoming proud of her position and frequently quarreling over trivial matters, taunting the applicant regarding his job. During the COVID-19 pandemic, when the applicant's income ceased, the non-applicant allegedly verbally abused him, calling him unemployed and demanding unnecessary things which the applicant could not fulfill, thereby subjecting him

to cruelty. On 02/08/2020, the non-applicant left the matrimonial home with their daughter and went to her sister's house, taking her belongings along. The applicant, along with his son, visited the non-applicant's sister's home on 08/08/2020 to bring her back, but she refused and allegedly ousted the applicant after a quarrel. Despite several efforts by the applicant, the non-applicant did not return. After about a month, the non-applicant returned with the applicant but left again after five days on 16/09/2020, leaving a letter stating that she is leaving the matrimonial home of her own will and intended to sever all relations with the applicant and her son, Aniket. Since 16/09/2020, the non-applicant has deserted the applicant without sufficient reason, prompting him to inform the Mahila Cell at Sector-6, Bhilai. The applicant and his son made multiple attempts to contact the non-applicant, who has not responded to calls, leading the applicant to file for dissolution of the marriage.

4. The record reveals that the non-applicant-wife was duly served with summons and the paper publication was also made. Despite service, she did not appear before the Family Court on any of the dates of hearing. The matter was adjourned on multiple occasions, but the non-applicant failed to avail herself of those opportunities. Ultimately, the learned Family Court, Durg proceeded *ex-parte*, framed one issue and decided the matter based on the oral and documentary evidence adduced by the applicant-husband, thereby dismissing the application.

5. Aggrieved by the *ex-parte* decree, the applicant-husband has filed the present appeal, contending that the non-applicant-wife neither appeared before the trial court nor filed any written statement, and also did not enter the witness box to record her evidence. Therefore, the applicant-husband has prayed that the *ex-parte* decree be set aside and the matrimonial relationship be dissolved.
6. On behalf of the applicant, in support of his case, the affidavit evidence of Anil Kumar Sonamni alias Anil Swami (PW-01) himself and Rajesh Kumar Sahu (PW-02) has been produced. The non-applicant, after initially appearing in the case, remained absent at the stage of filing the reply and did not produce any reply or evidence on her behalf.
7. On behalf of the applicant-husband Anil Kumar Sonmani alias Anil Swami (PW-01), in support of his statement, the following documents have been submitted: his Aadhaar card (Exhibit P-01), a letter written by the non-applicant dated 16.09.2020 (Exhibit P-02), a letter addressed by her to the Police Station In-Charge, Mahila Police Station, Sector-06, Bhilai dated 20.09.2020 (Exhibit P-03), and the Gazette notification regarding the publication of his name change (Exhibit P-04).
8. In the affidavit submitted by the applicant-husband Anil Kumar Sonmani alias Anil Swami (PW-01) under Order 18 Rule 04 of the CPC, it is stated that the non-applicant is his wife, they are governed by the Hindu religion, and belong to the general

category. The applicant and the non-applicant were married on 26.12.1996 at the rest house of Sector-06, Bhilai Steel Plant according to Hindu customs. From this marriage, two children were born daughter Miss Falguni, aged 19 years, and son Aniket Kumar, aged 16 years. The daughter Falguni resides with the non-applicant-wife, while the son Aniket resides with the applicant. After a few years of marriage, differences began to arise between the applicant and the non-applicant over trivial issues. The non-applicant would often threaten to live separately at her maternal home. Presently, the non-applicant has completed her Ph.D. and has obtained a doctorate degree. With the applicant's tireless efforts, she secured employment as a Principal at Dream India School, Kurud, Kohka, in the year 2016–17. However, after that, she began to argue with the applicant frequently over small matters and insisted on living separately. The applicant has further stated that, being an advocate by profession, his work was severely affected during the COVID-19 pandemic due to court closures. As a result, his income came to a standstill, and the financial responsibility of the household fell upon the non-applicant. Instead of supporting him during this difficult period, she taunted him by calling him unemployed and began harassing him over trivial issues. She influenced their daughter Falguni against him, started quarrelling frequently and made unreasonable demands that were not possible to fulfill during the pandemic. On 02.08.2020, following a dispute, she called her sister Aruna and

left the matrimonial home with all her belongings to live with her elder sister in Sector-04, Bhilai. From there, she continued commuting to her workplace at Dream India School, Kurud, Kohka. The applicant further stated that on 08.08.2020, he, along with his son Aniket, went to the house of the non-applicant's elder sister in Sector-04 to convince her to return, but she refused and stated that she had no relationship with him or their son and did not wish to maintain any relation with them in the future. She then started an argument and forced them to leave her sister's house. Despite this, the applicant made continuous efforts to bring her back. The applicant further stated that after about a month, he again went to the house of the non-applicant's elder sister and succeeded in bringing her back with great difficulty. However, after five days, on 16.09.2020, she left again, along with her daughter Falguni, to stay with her sister Aruna Jha in Raipur. Before leaving, she wrote a letter (Exhibit P-02) stating that she was going to her sister's house in Raipur voluntarily and that no one was responsible for her decision. She also stated that she would no longer have any relationship with the applicant or their son Aniket and was leaving them forever. Since 16.09.2020, the non-applicant has been living separately with her daughter without any valid reason. Information about this was also submitted by her to the Mahila Police Station, Sector-06, Bhilai, on 20.09.2020 (Exhibit P-03). Despite several calls and attempts made by the applicant and his son to bring her back, the non-applicant did not

respond. Therefore, it is clear that she has voluntarily abandoned the applicant and their son without any valid or justifiable reason since 16.09.2020.

9. The statement of the applicant, Anil Kumar Sonamni alias Anil Swami (PW-01), has been fully supported by the testimony of witness Rajesh Kumar Sahu (PW-02), who has filed his chief affidavit under Order 18 Rule 04 of the CPC.
10. Learned counsel for the applicant submits that the judgment and decree dated 25/10/2023 is bad in law as well as on facts and is therefore liable to be set aside. The applicant has adduced proper evidence before the learned Family Court to establish that the non-applicant deserted him on 16/09/2020 along with her daughter without any reason, leaving the son in the applicant's custody. The applicant informed the Women's Cell, Sector 6 Bhilai, about the non-applicant's unexplained departure on 20/09/2020, just four days after the alienation, but the learned Family Court failed to consider this fact despite the applicant providing such information without any allegation. The applicant made several attempts to bring the non-applicant back to the matrimonial home, but she neither accepted his phone calls nor responded, and ultimately deserted him without any intimation. The learned Family Court did not take these facts into account. Furthermore, the applicant supported the non-applicant's higher education, which culminated in her obtaining a Ph.D degree and securing a well-paying job. However, during the COVID-19 pandemic, when the applicant's

financial situation deteriorated, the non-applicant completely alienated him, seemingly to avoid the legal and financial responsibilities that arose during the crisis. The applicant continues to maintain their son, aged about 16 years, through his hard-earned income, while the non-applicant has created problems and sought reasons for alienation, ultimately abandoning the matrimonial home without cause. While residing in the matrimonial home, the non-applicant herself wrote a letter dated 16/09/2020 (Exhibit P/2) stating that she is leaving of her own accord and will, with no one else responsible, clearly indicating she had no grievance compelling her to leave. This constitutes sufficient ground to dissolve the marriage solemnized on 26/12/1996, yet the learned Family Court overlooked this legal aspect and dismissed the applicant's application. Moreover, the non-applicant has not filed any criminal or civil proceeding against the applicant to allege cruelty or maltreatment, implying that her desertion was voluntary, a legal proposition disregarded by the learned Family Court. The applicant alleged that the non-applicant frequently used sarcastic taunts about his unemployment, favored their daughter, and made unreasonable demands during the pandemic, which he was unable to fulfill. When these demands were unmet, the non-applicant verbally abused him, called her sister, and left the matrimonial home, taking her belongings and daughter with her. Such conduct amounts to cruelty by the non-applicant, yet this was not considered by the learned Family Court. The non-applicant's

unprovoked cruelty and permanent alienation, leaving the son with the applicant, are sufficient grounds for dissolution of the marriage. The learned Family Court primarily rejected the applicant's application based on a counseling report that allegedly indicated the applicant did not want to live with the non-applicant while the non-applicant wished to continue the marriage. However, surprisingly, this counseling report was never exhibited by either party during the proceedings. Additionally, the non-applicant's absence, having remained *ex-parte* throughout, demonstrates her unwillingness to contest the case or deny the applicant's allegations, reinforcing that the non-applicant voluntarily chose to break the matrimonial ties. Had she genuinely wished to maintain the marriage, she would have participated in the trial. Accordingly, it is prayed that the present appeal be allowed.

11. Neither any representation has been made on behalf of the non-applicant-wife before this Court despite issuance of notice to her nor any written reply/submission has been filed.
12. Now, the questions arise for consideration is whether the cruelty under Section 13(1)(i-a) has been made out and whether desertion under Section 13(1)(i-b) has been established?
13. The appellant-husband has made detailed and consistent allegations of mental cruelty against the respondent-wife, supported by his own affidavit (PW-1), corroborated by the testimony of PW-2, and further substantiated by documentary

evidence (Exhibits P-1 to P-4). It has been clearly deposed that after obtaining a Ph.D. degree and securing a high-paying job as a Principal, the respondent's behavior towards the appellant changed significantly. She became disrespectful, frequently taunted him for being unemployed during the COVID-19 pandemic, and engaged in repeated verbal altercations over trivial matters. These acts, including insults and humiliation during a time of financial vulnerability, clearly amount to mental cruelty as recognized under law.

14. In the matter of **V. Bhagat vs. D. Bhagat (Mrs.)** reported in **(1994) 1 SCC 337**, the Hon'ble Supreme Court held that mental cruelty in Section 13(1) (i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wrong party cannot reasonably be asked to put-up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out

exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

15. Further, the Hon'ble Supreme Court in the matter of **K.Srinivasa Rao vs. D.A. Deepa** reported in **(2013) 5 SCC 226** held at paragraphs 30 and 31, which read as under:

“30.It is also to be noted that the appellant-husband and the respondent-wife are staying apart from 27/4/1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in Samar Ghosh, 2007 4 SCC 511, if we refuse to sever the tie, it may lead to mental cruelty.

31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree.”

16. In the matter of **Smt. Vijaya Laxmi Soni vs. Raj Kuma Soni** reported in **2009(2) CGLJ 72 (DB)**, this Court held that when re-union or restitution of conjugal rights becomes impossible between

the parties, dissolution of marriage by a decree of divorce is the only effective remedy for the welfare of the parties, rejected the appeal and marriage between the parties dissolved by decree of divorce.

17. From the aforesaid evidence coupled with the above decisions rendered by the Hon'ble Supreme Court as well as this Court, it is quite vivid that in the present case, the conduct of the respondent-wife falls squarely within this definition. Her behavior, including instigating the daughter against the father, making unfounded demands during a financially unstable period, and leaving the home with the daughter while abandoning the son, demonstrates a pattern of mental harassment and disregard for the matrimonial bond. It is also pertinent to note that no rebuttal or counter-evidence has been filed by the respondent-wife. Her absence throughout the trial and appeal proceedings further strengthens the un rebutted nature of the appellant's allegations. The Family Court failed to appreciate the legal implications of this uncontroverted evidence and wrongly concluded that cruelty was not established.

18. The appellant has also alleged and established that the respondent-wife deserted him without any justifiable cause on 16.09.2020. The letter (Exhibit P-2) written by the respondent before leaving clearly indicates that she left the matrimonial home on her own will and volition, without attributing any reason or allegation against the appellant. She expressly stated that she

would sever all ties with the appellant and her son Aniket, thereby proving *animus deserendi*.

19. As per the settled position of law, including the judgment in **Bipinchandra Jaisinghbhai Shah v. Prabhavati (AIR 1957 SC 176)**, to prove desertion, two essential elements must be present: (i) factum of separation, and (ii) intention to bring cohabitation permanently to an end (*animus deserendi*). Both elements are present in this case. Despite repeated efforts by the appellant to bring her back, including personal visits and phone calls, the respondent neither returned nor expressed any intention to resume marital life.

20. Further, the Hon'ble Supreme Court in the matter of **Dr. Nirmal Singh Panesar vs. Paramjit Kaur Panesar @ Ajinder Kaur** reported in **(2025) 3 SCC 790** has held as under:-

"12. Similarly, the law is also well settled as to what could be said to be "desertion" in the divorce proceedings filed under Section 13 of the said Act. The expression "desertion" had come up under the judicial scrutiny of this Court in Bipinchandra Jaisinghbhai Shah v. Prabhavati's [1956 SCC OnLine SC 15 : AIR 1957 SC 176], which was again considered in Lachman Utamchand Kirpalani v. Meena [1963 SCC OnLine SC 32 : AIR 1964 SC 40]. This Court collating the observations made in the earlier decisions, stated its view as under: (Lachman Utamchand Kirpalani case, SCC OnLine SC para 40)

"40.... Collating the aforesaid observations, the view of this Court may be stated thus: Heavy burden lies upon a

petitioner who seeks divorce on the ground of desertion to prove four essential conditions, namely, (1) the factum of separation; (2) animus deserendi; (3) absence of his or her consent; and (4) absence of his or her conduct giving reasonable cause to the deserting spouse to leave the matrimonial home."

13. Recently, in Debananda Tamuli v. Kakumoni Katakya [(2022) 5 SCC 459 : (2022) 3 SCC (Civ) 82], the Court referring the decision in Lachman Utamchand Kirpalani observed as under: (Debananda Tamuli case, SCC p. 462, paras 7-8)

"7. We have given careful consideration to her submissions. Firstly, we deal with the issue of desertion. The learned counsel appearing for the appellant relied upon the decision of this Court in Lachman Utamchand Kirpalani which has been consistently followed in several decisions of this Court. The law consistently laid down by this Court is that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be animus deserendi on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home. The view taken by this Court has been incorporated in the Explanation added to sub-(2025) 3 SCC

section (1) of Section 13 by Act 68 of 1976. The said

Explanation reads thus:

13. Divorce. (1)

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."

21. Similarly, the Hon'ble Supreme Court in the matter of **Debananda Tamuli vs. Kakumoni Katakya** reported in **(2022) 5 SCC 459** has affirmed the aforesaid law laid down in **Dr. Nirmal Singh Panesar(Supra)** and has reiterated that "desertion" in matrimonial law means the intentional and permanent abandonment of one spouse by the other without reasonable cause and without the consent or against the wish of the deserted spouse. It requires both the factum of separation and the *animus deserendi* (intention to desert). There must also be no reasonable justification for the deserting spouse to leave, based on the conduct of the other. This settled legal position has been incorporated in the Explanation to Section 13(1) of the Hindu Marriage Act, 1955, which defines desertion to include wilful neglect of the petitioner by the other party.

22. The appellant's evidence also shows that the separation has continued uninterrupted since 16.09.2020, thus fulfilling the

statutory requirement of a two-year period of desertion prior to the filing of the divorce petition in 2022. Furthermore, no legitimate reason has been offered by the respondent-wife for such desertion. Her conduct indicates a deliberate and willful decision to end cohabitation and abandon her matrimonial obligations, thereby justifying a decree of divorce under Section 13(1)(i-b) of the Hindu Marriage Act, 1955.

23. The Family Court erred in relying on a non-exhibited mediation report and failed to appreciate the legal effect of a clear, unambiguous act of desertion. The unavailability of the respondent for cross-examination and her decision to remain *ex parte* further support the appellant's claim that the desertion was unjustified and deliberate.

24. Since the parties have been residing separately and there is no possibility of their reunion, this Court is of the view that there has been an irretrievable break-down of the marriage, beyond any scope of repair. Taking these facts into consideration, the present appeal is hereby **allowed** and a decree of divorce in favour of the appellant/husband is granted, while setting aside the judgment and decree dated 25.10.2023 passed by the learned Additional Third Principal Judge, Family Court, Durg District Durg (C.G.) in H.M.A. No. 905/2022.

25. In view of the foregoing discussion, the marriage solemnized between the parties is hereby dissolved.

26. Let a decree be drawn accordingly.

No order as to cost(s).

Sd/-

(Rajani Dubey)
Judge

Sd/-

(Amitendra Kishore Prasad)
Judge

Vishakha