IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

&

HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY

ON THE 12th OF AUGUST, 2025

FIRST APPEAL NO.2370/2024

JITENDRA JANI

VS.

SMT. BHUMI JANI

Appearance:

Appellant by Shri Ankit Saxena – Advocate.

None for the respondent.

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Reserved on: 31.07.2025

Pronounced on: 12.08.2025

JUDGMENT

Per : Shri Ramkumar Choubey, J.

The learned counsel for the appellant was heard and the matter was reserved for judgment on 31.07.2025 and today the judgment is being pronounced.

2. This first appeal has been preferred by the appellant under section 19 of the Family Courts Act, 1984 being aggrieved by the judgment and decree dated 19.11.2024 passed by the II Additional Principal Judge, Family Court, Jabalpur in Regular Civil Suit No.

RCSHM/716/2024 dismissing the petition under section 13 (1) of the Hindu Marriage Act, 1955 (in short "the Act") for a decree of divorce.

3. The case of the appellant is as under:-

3.1 The appellant/husband and respondent/wife are governed by Hindu Law. They were married on 14.05.2007 as per the Hindu rites at Jabalpur. After marriage, the respondent resided with the appellant and out of their wedlock, two sons were born on 15.08.2009 and 12.01.2019 respectively.

3.2 It is averred by the appellant that marital relations between the appellant and respondent were strained from the very beginning. At first, they were residing at Raipur where the appellant had his transport business. On conceiving first child by the respondent in Raipur, they shifted in appellant's parental house at Jabalpur for providing necessary care and medical aid to the respondent but she was not willing to reside with her in-laws. The respondent became disdainful to the appellant and his parents and used to dispute with them on trifling issues. She forsook wearing *mangalsutra* and applying *bindi.* She was reluctant to observe the traditions and rituals of her in-law's family.

3.3 The respondent had gone to Chhindwara with her father and mother where she made a false complaint against the appellant and his family members to the Parivar Paramarsha Kendra. The appellant along with his parents appeared before said Kendra, where respondent forced the appellant to live separately from his parents. The appellant has shutdown his transport business at Raipur and started living with respondent separately from his parents in a rental house at Jabalpur. They resided there for two-three years.

3.4 In the year 2013-14, the appellant and respondent shifted in a newly built house of the appellant's parents, wherein the respondent

was accommodated in a separate portion. The appellant had made all comforts of the respondent including domestic help.

3.5 The respondent used to visit her parental home along with children even without intimating the appellant or his parents. She used to stay at Chhindwara for months together from time to time. All the time the respondent's parents and relatives were intrusive with the married life of the appellant and respondent. The respondent and her relatives never used to invite the appellant or his parents in any familial functions and thereby causing insult to them.

3.6 On umpteen occasions, the respondent used to threaten the appellant of committing suicide and to fallaciously implicate him and his family by lodging a false complaint of dowry demand and harassment. Even during the outbreak of COVID-19 pandemic, that too when the appellant and his family members were afflicted with corona virus, the respondent remained at her parental home, showing a complete disregard for their well-being.

3.7 The appellant was always caring and fulfilling the needs of the respondent and their children. Despite all efforts, her cruel behaviour, indicative of marital discord and quarrels over trivial matters, could not improve. As per the appellant, the respondent used to deny cohabitation with him. Ultimately, as per the appellant, the respondent left the matrimonial home along with both the children and her all belongings on 28.03.2024. The respondent was subjecting the appellant to physical and mental cruelty.

3.8 The Appellant sent a notice to the respondent on 20.05.2024 (Ex.P/1) for reconciling their marital relations. In response, the respondent sent a reply notice dated 31.05.2024 (Ex.P/2) expressing to resume marital life with the appellant under certain conditions which

indicates her unwillingness to genuinely reside with the appellant. The conduct of the respondent/wife would amount to cruelty and she has deserted the appellant/husband. The marriage had irretrievably broken. Therefore, the appellant praying that the marriage between the parties be dissolved by a decree of divorce.

4. The learned Family Court has recorded the finding that the appellant (petitioner before the Family Court) failed to prove that the respondent had deserted the appellant for a period of not less than two years before the presentation of the divorce petition and also failed to prove that the respondent had treated the appellant with cruelty. On the anvil of those findings, learned Family Court, vide impugned judgment dismissed the Civil Suit. Hence, this appeal.

5. During the course of arguments the learned Counsel for the appellant submitted that he insists only on the ground of cruelty. The learned Counsel for the appellant submitted that from the evidence adduced before the learned Family Court and the statements deposed by the appellant/husband on oath, it has been categorically proved that the appellant was subjected to cruelty by the respondent/wife. The evidence adduced by the appellant is unrebutted. Therefore, the learned Family Court erred in recording the finding that the factum of cruelty has not been proved. The learned Family Court ought to have decreed the Suit.

6. We have heard the learned counsel for the appellant and perused the record.

7. It is apparent from the record that the appellant had filed a petition for divorce on the grounds of cruelty as well as desertion. Clause (ib) of sub-section (1) of section 13 of the Act ruled thus;

"the other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the

petition".

8. As per the averments of the petition, the respondent left the matrimonial home on 28.03.2024 and the petition was filed on 01.07.2024. This clearly shows that there was no basis of decree for divorce on the ground of desertion. Therefore, in this regard the learned Family Court committed no error in recording the finding that the ground of desertion is not made out.

9. Thus, only the ground of cruelty remains to be examined. The legal conception of cruelty and the kind of degree of cruelty to necessitate a ground of divorce has not been defined under the Act. Clause (ia) sub-section (1) of Section 13 simply states "treated the petitioner with cruelty". However, it is a settled position of law that the cruelty contemplated under the Act is conduct of such type that the petitioner cannot reasonably be expected to live with the respondent. The ground of cruelty requires to be established so as to conclude that cruelty has resulted into a situation where spouses no longer can live together, as observed by the Supreme Court in the case of **Naveen Kohli v. Neelu Kohli, AIR 2006 SC 1675.**

10. Appellant Jitendra Jani was examined as PW1 in the Family Court and he deposed that at the time of marriage, he had a transport business in Raipur and from the very first week of their marriage, the respondent lived with him at Raipur as she was unwilling to live with her in-laws at Jabalpur.

10.1 The appellant (PW1) further stated that when the respondent became pregnant in Raipur, then they shifted to Jabalpur for giving care to the respondent/wife, but the respondent could not adjust with her in-laws and thereafter her parents took her away to Chhindwara after the birth of first son. He further stated that after few days of her departure,

he received a notice from Pariwar Paramarsh Kendra, where he along with mother and father remained present and there the respondent and his family members threatened him for fallaciously implicating in a dowry case and then appellant's parents advised him to live separately. Since then he started living separately from his family in a rented house, firstly at Gorakhpur and then in Shimla Hills and at different places, where the appellant and respondent lived together for a period of two and half years. During that period, the behaviour of the respondent was cruel towards the appellant.

10.2 The appellant (PW1) further stated that in the year 2012-13, he got constructed a house at Madanmahal and moved therein, where the respondent used to quarrel and she never used to let him take care of his mother and father. He further stated that the respondent never used to inform about the matrimonial ceremonies held in her parental family and by hiding those ceremonies, she alone used to visit her parental home. She forsook wearing *mangalsutra* and was reluctant to observe the traditions and rituals of her in-law's family.

10.3 The appellant (PW1) stated that even during the outbreak of COVID-19 pandemic, that too when the appellant and his family members were afflicted with corona virus, the respondent remained at her parental home, showing a complete disregard for their well-being.

10.4 The appellant (PW1) further stated that the respondent got admitted their children in a school at Chhindwara in the year 2022-23 even without informing or consulting with him, but he brought back them to Jabalpur. He also stated that on 28.03.2024, the respondent along with her mother left her matrimonial home while picking all her personal belongings and thus deserted the appellant.

11. Although, the appellant has deposed about the conduct of

the respondent, but none of the incidents appear to be a cruel behaviour of such gravity and weight so as to come to a conclusion that the appellant cannot reasonably live with the other spouse. What the appellant averred in his petition and what he deposed before the Family Court in support of his petition, are indicative of ordinary wear and tear of married life of both the spouses.

12. The learned counsel for the appellant urged that the respondent has sent a conditional reply notice (Ex.P/2) which shows her unwillingness to reconcile with the appellant. This contention is not well founded. In the reply notice (Ex.P/2), the respondent has categorically denied all the allegations made by the appellant in his notice (Ex.P/1) and stated that she is willing and ready to come to her matrimonial home and reside with the appellant. It is revealed from the reply-notice (Ex.P/2) that the respondent has intended to seek assurance from the appellant that he will take proper care of herself and their children, provide adequate maintenance to them and would keep himself away from adultery.

13. Any wife can have an expectation from her husband that he must be caring towards the wife and their children and be honest towards the conjugal obligations. The respondent did not intend to make any such false allegation against the appellant which can said to be a cruelty. The reply-notice (Ex.P/2) does not impose any preceding condition to reconcile, but it is aimed to get assurance of a happy life of the spouse in future.

14. The appellant has nowhere stated in his notice (Ex.P/1) that he wanted to break-up the martial status, but he expected from the respondent to come back to her matrimonial home and live with the appellant. This clearly indicates that the appellant has condoned the

cruel conduct, if any, of the respondent. Despite that the respondent has expressed her willingness to reconcile with the appellant as stated in the reply notice (Ex.P/2), no attempt was made by the appellant to bring back the respondent and children.

15. The appellant (PW1) deposed that the respondent may times used to refuse for cohabitation. But it is nowhere stated in the notice (Ex.P/1) that the respondent has ever denied to make physical relationship with the appellant. The appellant and the respondent were married on 14.05.2007 and lived together till March, 2024 and they have two children, which itself is a proof of well-cohabitation between them. In ordinary wear and tear of married life, occasional refusal to perform marital obligation is not sufficient to attract mental cruelty. To establish such cruelty there must be persistent refusal to have sexual relationship. Therefore, respondent cannot be held responsible for the denial of coitus so as to constitute cruelty. (See: **Smt. Swapna Chakrawarti v. Dr. Viplay Chakrawarti, AIR 1999 MP 163**).

16. It was intensely submitted by the learned counsel for the appellant that the statements of the appellant on oath before the Family Court were unrebutted and case was not defended by the respondent, therefore, the appellant has successfully proved his case. This contention has no force. Indubitably, the respondent did not contest the case before the Family Court, as well as before this Court. The words "whether defended or not" occurring in Section 23 (1) of the Act indicate that the burden must lie on the petitioner to establish his case which affirms those facts which constitute cruelty as a ground of divorce and it is only on the satisfaction of the court a decree can be passed. In this context a reference can be made to the case of **Dr. N.G. Dastane v. Mrs. S. Dastane, AIR 1975 SC 1534**.

17. In the present case, even the facts proved by the unrebutted evidence do not constitute cruelty as a ground for dissolution of marriage. In the facts and circumstances of the present case, we may rely on **Gurbux Singh v. Harminder Kaur, 2010 AIRSCW 6160** wherein it is held that "the married life should be assessed as a whole. Mere trivial irritations, quarrels, normal wear and tear of married life which happens day-to-day in all families would not be adequate for grant of divorce on the ground of cruelty."

18. Adverting to the record of the case at hand, it is revealed from the entire evidence adduced that the appellant/husband and respondent/wife have lived together for more than 17 years and they have two children. The appellant in the notice (Ex.P/1) sent to the respondent expressed his wish to reconcile with her as well as the respondent/wife in her reply (Ex.P/2) also expressed her willingness to come back and reside with the appellant. Whatever incidences about which the appellant has made statements before the Family Court are mere trivial irritations and quarrels between the spouses, which happen in day-to-day life, but that does not amount to cruelty. It cannot be said that the behaviour of the respondent is of such cruel treatment, which has resulted into a situation where both can no longer live together.

19. In the light of the aforesaid discussion, we are of the opinion that the learned Family Court committed no error in holding that the appellant failed to establish that the respondent treated the appellant with cruelty. As such no ground for divorce under Section13(1) (i-a) of the Act, having been proved against the respondent, the trial Court committed no error in dismissing the petition for divorce filed by the appellant.

20. Resultantly, the first appeal being devoid of any merit, fails

and is hereby **dismissed**.

21. Let a decree be drawn up accordingly.

(VISHAL DHAGAT)
JUDGE

(RAMKUMAR CHOUBEY)
JUDGE

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