IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No. 23 of 2024

Surendra Kumar Thakur, Aged about 41 years, son of Dasrath Thakur, Resident of Village Old Cinema Hall, Palihari, Gurudih, P.O. & P.S. Gomia, District Bokaro. …. ... **Appellant**

Versus

1. Babita Devi @ Baby Devi, Aged about 31 years, wife of Surendra Kumar Thakur, Daughter of Gaur Thakur, Resident of Village Old Cinema Hall, Palihari, Gurudih, P.O. & P.S. Gomia, District-Bokaro, At present resident of Village Dumra (Jamua Tand, P.O. Dumra, P.S. Baghmara, District Dhanbad.
2. General Manager, Indian Explosive. Pvt. Ltd., At + P.O. IEL Gomia, P.S. IEL, District Bokaro, PIN 829112, Jharkhand.

…. ... **Respondents**

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANOJ PRASAD

For the Appellant : Mr Atanu Banerjee, Advocate
For the Respondent No.1 : Mr Ranjan Kumar, Advocate
For the Respondent No.2 : Mr Ashwini Bhushan, AC to Sr.SC-II

Reserved on: 07/10/2026 **Pronounced on:03/11/2026**

***Per*: Manoj Prasad, J.**

1. Heard Mr Atanu Banerjee, learned counsel appearing on behalf of the appellant-husband; Mr Ranjan Kumar, learned counsel appearing on behalf of the respondent No.1-wife; and Mr Ashwini Bhushan, learned AC to Sr.SC-II, appearing on behalf of the respondent No.2-State.

2. The present First Appeal has been filed by the appellant-husband under Section 19(1) of the Family Courts Act, 1984, impleading the wife as respondent No.1 and respondent No.2 (IEL), who has been made a party to this proceeding under the orders of the court. This

appeal challenges the judgment dated 30.11.2023 and the decree dated 07.12.2023 passed by the learned Additional Principal Judge, Additional Family Court, Bermo at Tenughat, Bokaro, in Original Suit No.132 of 2021, whereby the petition for dissolution of marriage by a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act, 1955") was dismissed.

3. The brief facts of the case are that the marriage between the parties was solemnised on 30.04.2005 in accordance with Hindu rituals. After marriage, they lived together as husband and wife in village Gomia, District Bokaro, and had two children out of wedlock, namely one son and one daughter. It is stated that after marriage, the respondent-wife came to her matrimonial home but never sought to establish a marital relationship with the petitioner and always kept her distance from her husband, stating that she did not like him. However, through the efforts of the present appellant, the marital relationship somehow continued between the parties. It is alleged that the respondent-wife tried to create disturbances in the matrimonial life and also disregarded her in-laws. Thus, the appellant was tortured both physically and mentally on account of the ill-behaviour and short temper of the respondent-wife, who used to talk continuously on her husband's mobile phone with some other male person, resulting in disputes and quarrels between the parties. It is alleged that the respondent was a lady of suspicious character. It

is further alleged that on 15.04.2015, the respondent left the house of the appellant without informing her in-laws and went to her parental home at Jamua Tand, P.S. Baghmara, District Dhanbad, and since then she has been residing with her parents. The appellant went several times to her in-laws' house to get the matter settled and for restitution of conjugal rights, but to no effect. Hence, a prayer has been made for dissolution of marriage by decree of divorce.

4. After appearance, the respondent filed a show cause-cum-written statement before the learned Trial Court, stating that the parties were legally married husband and wife, and that the marriage was solemnised on 30.04.2005. The marriage was also consummated, and a son and a daughter were born out of wedlock. The respondent further stated that she fully co-operated in maintaining the conjugal relationship. However, the respondent was tortured by the appellant, and demands for dowry were made. Her dignity and honour were compromised. Allegations of an extra-marital relationship were made against her, whereas the real fact was that the appellant had established an extra-marital relationship with a lady working with him. The respondent returned to her parents' house on account of the physical and mental torture and the illegal demand for dowry made by her husband and in-laws. Despite returning to her parents' house, the appellant never tried to restore conjugal life and never made any effort to bring her back to her matrimonial home. All efforts were unilaterally made by the present respondent, who also filed a

complaint under the provisions of the Dowry Act and Section 498-A of the Indian Penal Code, which was compromised with the intent to restore conjugal life. The respondent still expressed her desire to restore conjugal life, subject to the condition that she is given due respect and honour at her matrimonial home. She has not even been allowed to meet her children during this period.

5. Based on the pleadings, the learned Trial Court formulated the following issues for adjudication: -

> *(I). Whether the Suit is maintainable in its present form?*
>
> *(II). Whether the petitioner has valid cause of action for the suit?*
>
> *(III). Whether after marriage the respondent (wife) subjected the petitioner (husband) to cruelty?*
>
> *(IV). Whether the petitioner is entitled to get a Decree of dissolution of marriage on the basis of Section 13(1)(ia) of the Hindu Marriage Act, 1955 and petitioner is entitled to get the relief as prayed for? Whether the respondent (wife) deserted her husband (petitioner) since last two years prior to filing of the suit?*

6. After framing of issues, four witnesses were examined on behalf of the appellant-petitioner, namely, Binod Rawani as P.W.-1, who is a neighbor of the appellant and working with 'ORIKA Company' at Indian Explosive Limited (IEL), Bhim Prasad as P.W.-2, who is another friend of the appellant working in 'ORIKA Company' IEL, Smita Kumari, as P.W.-3, daughter of the parties, who on the date of deposition before the learned Trial Court was aged about 11 years and a student of Class-VI and the last witness is the present appellant himself Surendra Kumar Thakur as P.W.-4.

7. On behalf of the respondent, three witnesses, namely Ravi Thakur as D.W.-1 (the respondent's brother), Jitendra Mahto as D.W.-2, and

the respondent herself as D.W.-3, have been examined. Certain documents have been marked as the X series. A photocopy of the joint compromise petition dated 15.04.2015 is marked as Exhibit-X; photocopies of handwritten letters are marked as Exhibit-X/1 to X/6; a photocopy of the notice relating to O.S. Case No. 245 of 2022 is marked as X/7; a photocopy of the order dated 01.05.2015 passed by the Hon'ble High Court in Cr.M.P. No. 867 of 2015 is marked as X/8; a photocopy of the order dated 24.03.2015 passed by the Hon'ble High Court in A.B.A. No. 2795 of 2014 is marked as X/9; a photocopy of the petition for permission to compromise the case relating to Baghmara P.S. Case No. 109/14 is marked as X/10; a photocopy of the compromise agreement prepared during *'Panchayati'* is marked as X/11; a photocopy of the petition dated 11.05.2013 given to Dhanbad Mahila Police by the respondent is marked as X/12; and a photocopy of the petition dated 16.11.2013 given to Dhanbad Mahila Police is marked as X/13.

Findings of the Trial Court

8. The learned Trial Court, after considering the oral and documentary evidence of the parties, held that the factum of marriage between the parties was not in dispute, that the marriage was solemnised in the year 2005, and, as such, that the suit as instituted was maintainable and that the appellant had a valid cause of action. However, the dominant issues for consideration, i.e. Issue Nos. III and IV, were decided against the appellant and in favour of the respondent. It is

stated that, although P.W.-2 had stated that a case for restitution of conjugal rights was filed in the year 2016, no document to that effect was produced on record. The learned Trial Court, by referring to a judgment of the Hon'ble Supreme Court in ***Samar Ghose Vs. Jaya Ghose in Civil Appeal No.151 of 2004, decided on 26.03.2007, at paragraph 15, has held as under:***

> *"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. 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 behavior of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty. 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."*

9. Considering the mandate of the law, the facts of the present case, and the evidence of P.W.-3, the daughter of the parties, who at the time was about 11 years old, but in her cross-examination stated that her evidence was prepared at her father's dictation, and hence much weight was not given to such evidence, the Court found that the allegation of cruelty as made by the appellant against the respondent was not proved. The documents brought on record by the respondent, though marked as Exhibit X series for identification, were never disputed, i.e., a compromise between the parties at the intervention of the High Court and the filing of a complaint regarding the demand for dowry, etc. Finally, the Court concluded that the decree of divorce on the ground of cruelty and desertion

could not be passed, and accordingly, the suit of the appellant-husband was dismissed.

ARGUMENTS

10. Mr. Atanu Banerjee, learned counsel appearing on behalf of the appellant, submits that although the suit was instituted in 2021, there has been no restitution of conjugal life since 2015, as the respondent left her matrimonial home. It is also stated that it is not in dispute that two children are living with the present appellant. All efforts at settlement have failed. It is further submitted that the witnesses examined on behalf of the appellant have categorically supported the appellant's case. It is also stated that an application under Section 24 of the Act, 1955 was filed, and an order was passed on the said petition in the present Original Suit No.132 of 2021, which was challenged by the present appellant before this Court by filing C.M.P. No.960 of 2022, which was dismissed by a Co-ordinate Bench of this Court vide order dated 04.08.2023. It is further argued that the daughter of the parties came to the Court to support the appellant's case that her mother frequently quarrelled with her father and her grandmother, which categorically establishes the appellant's case and was not considered by the learned Trial Court. The facts of the present case clearly establish cruelty, both physical and mental, and the parties have lived separately for more than six years prior to the institution of the suit without any valid cause and without any efforts for reconciliation, amounting to mental cruelty on the

husband. These aspects of the case were not considered. It was also not considered that the marriage in the present case had become only a formality, with the actual relationship between the parties non-existent, and the marital relationship recognised only as per law, which did not require any further continuance.

11. Learned counsel for the appellant has also submitted that, although the application for dissolution of marriage was filed under Section 13(1)(i-a) of the Act, 1955, it was also a case under Section 13(1)(i-b) of the Act, 1955, i.e., desertion by the wife-respondent of the present appellant without any valid cause. There was a specific pleading to that effect, and even the issue was framed, but the learned Trial Court did not consider this issue while deciding the case. Without passing any speaking order on the point of desertion, the issue was decided against the present appellant. The filing of criminal cases against the present appellant, with the conclusion of no guilt in such cases, also amounts to cruelty, which was not considered by the learned Trial Court. On all these facts, a prayer has been made to allow the present appeal, set aside the judgment and decree, and pass an order for dissolution of marriage between the parties under Section 13 of the Act, 1955, on both the grounds of cruelty and desertion.

12. *Per contra*, Mr. Ranjan Kumar, learned counsel appearing on behalf of the respondent-wife, has submitted that the impugned judgment and decree do not warrant any interference. The fact that the

respondent has been living separately since 2015 is not in dispute, but the reason for her ouster has been categorically stated to be that her dignity was compromised, an allegation of an extramarital relationship was made against her, and she was tortured for illegal demands for dowry. The respondent, in her written statement, had categorically stated that she was ready to restore conjugal life and, even during mediation before this Court, had made efforts for the restitution of conjugal life, but to no effect.

13. Learned counsel for the respondent-wife draws this Court's attention to the order dated 05.05.2026 passed by a Co-ordinate Bench of this Court, wherein it has been recorded that the respondent-wife, refuting the allegations made by the appellant-husband, stated that she was willing to live together so that she might also experience the role of mother to both children, but even then the appellant-husband remained adamant in his refusal to cohabit. Resultantly, the Co-ordinate Bench of this Court, in terms of the judgment of the Hon'ble Supreme Court in the case of ***Rajnesh Vs. Neha & Another,*** reported in ***(2021) 2 SCC 324,*** directed the parties to file affidavits of their movable and immovable property for consideration of the case of interim maintenance/alimony, and this Court also impleaded the Indian Explosive Pvt. Ltd., Gomia, through its General Manager, as a party to the proceedings to obtain details of the present appellant's salary. Several efforts at mediation were made, which failed. On the merits, learned counsel submits

that cruelty by the wife on the husband was not proved, and no case of desertion is made, as the wife still intends to restore conjugal life with her husband. Therefore, the *animus deserendi* was completely absent. The husband, not being ready to cohabit, cannot take the plea of desertion, as he cannot be rewarded for his own wrongs. On these aspects of the case, the prayer is to dismiss the appeal.

FINDINGS

14. Heard the learned counsel for the parties and perused the material available on record, including the Trial Court records. The points for determination, which arise for consideration before us, considering the rival contentions raised by the parties, are hereunder: -

i) Whether the appellant was successful in establishing a case that the respondent had committed acts of cruelty on him is sufficient for grant of a decree of divorce in terms of Section 13(1)(i-a) of the Act, 1955.

ii) ***The second point for determination is whether a decree for divorce could have been granted in terms of Section 13(1)(i-b) of the Act, 1955 i.e. on the ground of desertion by the wife-respondent on the husband-appellant****.*

15. The two points above for determination will put the *lis at rest*. Before coming to the factual aspects of the case, we would like to observe that, though cruelty has not been defined under the provisions of the Act, 1955, for the purpose of divorce it should be

such that matrimonial life becomes incompatible and conjugal life cannot be restored on account of such behaviour by either spouse.

16. Cruelty can be either physical or mental, or both. In the present case, although there are allegations of physical cruelty, namely that the respondent frequently quarrelled with her husband, i.e. the appellant, and the mother-in-law, the appellant has brought three witnesses, apart from himself, and examined them in Court to support this contention. Two of them appear to be his colleagues and friends, who are not family members. Their evidence, therefore, cannot be accepted without an element of suspicion. Evidence from a family member, particularly the mother, who is also alleged by the respondent to be a victim of such quarrels, would have corroborated the present appellant's case, but such evidence has not been brought on record. The daughter, who has been examined in this case as a witness, was about 11 years old. It can always be considered that when a minor child is residing with only one of her parents, the possibility of poisoning of mind against the other spouse/parent cannot be ruled out. Even in her cross-examination, P.W.-3 has admitted that her entire evidence was prepared under the dictation of her father. Under such circumstances, and in the absence of sufficient evidence showing her (P.W.-3, the daughter of the parties) competence and neutrality in deposing before the Court, and also in view of her own statements made in course of cross-examination, the evidence of the minor child cannot be read into in order to

conclude the allegations of cruelty made by the respondent against the appellant.

17. So far as the evidence of the appellant is concerned, although he has stated that he was subjected to both physical and mental cruelty, that statement is not corroborated by any credible evidence. No complaint was made before any competent authority, nor was any effort made towards reconciliation at any time. These facts lead to the conclusion that the allegations of cruelty were not proved by the present appellant.

18. Coming to the second dimension of cruelty, i.e. mental cruelty, which centres on an allegation that the wife is alleged to have had an extramarital relationship. Such allegations, if proved, may amount to mental cruelty in appropriate cases, but in the present case there are allegations and counter-allegations. The husband's allegations begin with an assertion that his wife had an extramarital relationship, including statements that she used to talk to an unknown male over the husband's own mobile phone. To our considered view, such allegations are typical gender-based stereotypes, where, if a woman talks to a man, even if he is a friend, charges of adultery or of an extramarital relationship are levelled. We are, therefore, of the considered view that such allegations amount to cruelty towards the wife. Counter-allegations by the wife of an extramarital relationship against her husband, without appropriate proof, may also amount to cruelty. However, in this case, the allegations were made by the

husband against his wife. Thus, we are of the considered view that no case of mental cruelty is made out.

19. So far as the allegation of desertion is concerned, although no case under Section 13(1)(i-b) of the Act, 1955 was instituted, the pleadings do refer to desertion, and an issue on the point of desertion has also been framed. The law is settled that merely not referring to any specific provision of law will not be fatal to a party's case if the pleadings are to that effect and the provision of law also allows such pleading. In the present case, not only are there pleadings, but the issue has also been framed.

20. As already referred to, an order passed by a Co-ordinate Bench of this Court records that the wife expressed her desire to restore conjugal life, which was refused by the present appellant. Such a statement sufficiently establishes the absence of *animus deserendi*, thereby establishing the element of desertion for the purpose of divorce. Certain documents, marked as the Exhibit-X series, which have not been disputed by the parties during the course of the hearing, also show that even in the year 2015 there was a compromise. However, it appears that the compromise was entered into only for the purpose of settling the criminal case, as despite the terms of the compromise requiring the parties to live together, the same appears not to have been complied with.

21. A maintenance case was filed by the wife, and even in an order passed under Section 24 of the Act, 1955, where interim

maintenance of just Rs.3000/- was ordered, the husband challenged the same by filing a C.M.P. before this Court, which, though dismissed, speaks volumes about the conduct of the present appellant. The order dated 01.05.2015 passed in Cr.M.P. No.867 of 2015 shows that, in terms of a compromise between the parties, they were living together. An application was filed by the present respondent for permission to compound the said case in the year 2015 itself, as the parties had restored conjugal life, as is apparent from the documents, which is permission to compromise the case relating to Baghmara P.S. Case No.109 of 2014, which is marked as Exhibit-X/10. These entire documents, the oral evidence produced by the parties, and the other preceding discussions clearly establish that the case of desertion was also not established.

22. Having considered the matter, we are of the considered view that the points for determination formulated by us must be decided against the appellant and in favour of the respondent, holding that the appellant failed to make out a case of cruelty or desertion under Section 13(1)(i-a) or (i-b) of the Act, 1955, for dissolution of marriage by a decree of divorce.

23. Since an order under Section 24 of the Act, 1955, was passed, which was challenged before this Court and the same was affirmed. We, therefore, do not want to pass any separate order on the said aspect of interim maintenance. However, the respondent is always at liberty to move the appropriate application for modification of the

order in view of any changed circumstance, if she so desires, which may be decided by the court of competent jurisdiction following the principles of law after giving an opportunity of hearing to both the parties.

24. With the above observations, the present First Appeal is accordingly **dismissed** without any order as to costs.

25. Pending Interlocutory Application(s), if any, do not survive and stand disposed of.

(M. S. Sonak, C.J.)

(Manoj Prasad, J.)

November 3rd, 2026
N.A.F.R.
Madhav/-
Uploaded on: 03/11/2026