



2025:CGHC:59613-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 63 of 2022

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
		Operative	Full
17.09.2025	09.12.2025	--	09.12.2025

... Appellant

Versus

... Respondent

For Appellant	:	Mr. Chandrakaditya Pandey, counsel on behalf of Mr. Dharmesh Shrivastava, Advocate.
For Respondent	:	None.

Hon'ble Smt. Justice Rajani Dubey, J.
Hon'ble Shri Justice Amitendra Kishore Prasad, J.
C,A,V, Judgment

Per Rajani Dubey, J.

1. This appeal is filed by the appellant against the impugned judgment and decree dated 16.03.2022 passed by learned Judge, Family Court, Kawardha, District- Kabirdham (C.G.) in Civil Suit No. 48A/2017, whereby the learned Family Court has granted decree of the civil suit filed by the respondent/applicant under Section 13(1)(a) of the Hindu Marriage Act, 1955.
2. Brief facts of the case are that the marriage between the appellant and respondent was solemnized on 05.06.2015 at Khairagarh according to Hindu rituals. The respondent/applicant preferred an application under Section 13(1) (a) of the Hindu Marriage Act, 1955 against the appellant/non-applicant seeking decree of dissolution of marriage on the ground of getting disclosure of the fact that the appellant is not getting her menstrual discharge. As per the application filed by the respondent/applicant, the financial condition of the appellant's father was not good at the time of marriage, and the respondent is the one who bore the entire expenses of the marriage. At the time of marriage, in the family of respondent, his old parents were there, his two nephews and two nieces used to study in his house and their responsibility was upon the respondent/applicant. The appellant behaved well with the respondent for the initial two months of their marriage, then she used to nettle him by saying that you have opened orphanage, you have taken contract of all people and she told him that she will not cook food to them, in this way the appellant used to have quarrel with the respondent and further she misbehaves with the parents of the respondent as she used to have dispute with them. Despite several efforts by the respondent to make his wife/appellant understand, she did not change her behaviour and she kept her

disrespectful behaviour towards the parents of the respondent. The respondent used to look after the well-being of the appellant/wife, one day, the appellant apprised the respondent that she had a skip in her menstrual cycle, the respondent was so blissful as he thought that it was a good news and he took his wife/appellant for her medical checkup to Doctor Sarita Dubey who was gynecologist, then the appellant told Doctor that she is not getting her menstrual cycle since 10 years. Thereafter, the mother of the appellant went to Doctor Gulati for getting medical checkup of her daughter and the doctor told her that there is serious issue in the uterus of the appellant/non-applicant that is why there is trouble in having children, then the respondent asked her that why she married him, to which she replied that if she had told him the truth before, he would have said no, so now he has to bear her. As per the application under Section 13 (1) (a) of the Hindu Marriage Act, 1955 it is further stated by the respondent/applicant that as he did not give the said Rs. 40,000/- to the brother of the appellant/non-applicant, the appellant/non-applicant stopped having food and stopped talking to him, as such he transferred Rs. 40,000/- to the account of his wife/appellant's brother. The appellant was well aware of the fact before her marriage with the respondent/applicant that she is unable to conceive, yet she concealed this fact and married the respondent/applicant. The appellant/non-applicant is quarrelsome person and stubborn as well and she subjected the respondent/applicant and his family members to mental cruelty. In the month of August, 2016 the respondent/applicant took his father to Dr. Shashank Gupta for treatment, during this time, the appellant/non-applicant tortured the mother, nieces and nephew of the respondent/non-applicant. The father of the respondent/non-

applicant was died on 17.09.2016 and after the completion of *Terahvin*, the appellant/non-applicant called her brother and went to her parental home. When the respondent/applicant returned from his work, at that time he noticed that the appellant/non-applicant has taken all her clothes, ornaments and cash amounting to Rs. 2 lakhs which was kept in almirah and she was not there in the house. Later, the respondent/applicant came to know from his family members that the appellant/non-applicant left for her parental home. Thereafter, the respondent/applicant went to parental home of his wife to bring back her, however he had dispute with the appellant's brother, mother and aunt and they threatened him by saying that they will send his entire family to jail, the respondent/applicant headed back to his home to escape from the dispute. In this way, the appellant/non-applicant is residing in her parental home. However, no marital relationship has been established between the appellant/non-applicant and the respondent/applicant for the last one year, as such on these grounds, the respondent/applicant prayed before the Family Court for decree of dissolution of marriage.

3. The appellant/non-applicant being served notice of the Family Court appeared and filed her reply to the application in which she has clearly mentioned that the entire marriage expenditure was borne by her father and the entire dowry articles as per the demand of the in-laws including husband was given by her father, in which Double Bed, Maharaja Sofa, Dining Table, Washing Machine, LED, AC, Fridge, Almirah, Dressing Table etc. and golden and silver ornaments were given as dowry. It was further stated that the entire contents written in para 4 of the application of the respondent/applicant was false and fabricated and she was

subjected to cruelty as she was often called as barren woman. She further mentioned in her reply that she was taking care of all the family members in her matrimonial house and after marrying the respondent/applicant, the maid was released from work and the entire work load was on the shoulder of the appellant/non-applicant. It was specifically denied by the appellant/non-applicant regarding her menstrual problem and she was taken to Dr. Sarita on the ground that her husband wants child at the earliest and further stated that as per the opinion of the Dr. Gulati, it was told that the womb (Bachchedani) was closed due to which there is difficulty in pregnancy then her husband asked to the doctor to give a test tube baby and the doctor had refused him by saying that the problem is temporary and Dr. Gulati prescribed her some medicine and advised for Yoga. The contentions of the entire paragraphs of the application filed by the respondent/applicant was denied and in reply to para 6 it was specifically mentioned that the brother of the appellant/non-applicant was appointed as a worker in the shop of the respondent/husband by saying that he will be paying a sum of Rs. 15,000 to him, however he did not pay him for a period of four months, as such he returned to his house. It was further mentioned that the allegations were false and fabricated and the doctor has clearly opined that the problem is temporary and prescribed some medicines, but on false and fabricated grounds an application was filed though she is residing in her matrimonial house as she was subjected to cruelty by her in-laws including husband. On the basis of aforesaid submission the appellant/non-applicant prayed before the learned Family Court to dismiss the claim of the respondent/applicant.

4. Learned trial Court after getting the application under Section 13 (1) (a) of the Hindu Marriage Act, 1955 and in the reply filed by the appellant/non-applicant as many as four issues were framed in the case. Before the learned Family Court, the respondent/applicant and the appellant/non-applicant produced themselves as witnesses and no other witnesses were produced by either of the parties. Learned Family Court , Kawardha, District Kabirdham (C.G.) after appreciation of oral and documentary evidence of both the parties vide order dated 16.03.2022, granted the decree of divorce in favour of the respondent/husband. Hence, this appeal filed by the appellant/wife before this Court.
5. Assailing correctness and validity of the impugned judgment, learned counsel for the appellant/wife submits that the impugned judgment dated 16.03.2022 is perverse, illegal, erroneous and contrary to the facts and circumstances of the case as well as to the evidence available on record, therefore, it is liable to be quashed to the extent of rejecting prayer for decree of divorce. The circumstances as appeared from the evidence were not considered in proper perspective. It is further respectfully submitted by the appellant that the evidence of both the parties ought to have been considered by the learned trial Court. The appellant has established that the respondent and his family members behaviour was bad and abusing with her, but the learned trial Court failed to appreciate the evidence properly. The learned trial Court has allowed the application filed by the respondent/applicant on the ground that as per medical documents, the appellant is not capable to give birth of a child which is a main cause of dispute between the parties, though the incapability was not proved by the doctor and the

contention of the applicant/respondent was specifically denied by the appellant/non-applicant and mentioned that she was taken to Dr. Gulati who prescribed some medicines and advised the appellant for Yogasan and clearly opined that the difficulty/problem is temporary and curable. The learned trial Court has erred in considering that the appellant/non-applicant treated the respondent/applicant with cruelty on the ground that there was a dispute between the parties regarding child and it is alleged by the applicant/respondent that appellant/non-applicant is incapable to give birth to a child, though the same could not be proved before the learned trial Court. In the entire case of the respondent/applicant, no such document was produced regarding incapability of the appellant/non-applicant and even the filed document was corroborated by the evidence of its author and no doctor was examined to prove the medical document filed by the applicant/respondent and the medical document did not say that the appellant/non-applicant is incapable, but Dr. Gulati has prescribed some medicines and advised Yoga and clearly gave opinion that the problem is a temporary one. The appellant has clearly established her case regarding cruelty against her by in-laws including husband but she did not leave her matrimonial house, however on false and fabricated grounds she was sent to her parental house and the application for dissolution of marriage was also filed on false and frivolous grounds, though she was subjected to cruelty as her husband called her barren, though her problem was temporary and doctor has prescribed her some medicines. The respondent/applicant failed to establish his case and the learned trial Court also erred in appreciating the Section 13 (1) (i-a) of the Hindu Marriage Act, 1955 in

proper perspective, therefore, the impugned judgment and decree dated 16.03.2022 is liable to be set aside. In support of his contentions, he places reliance upon the decisions of Hon'ble Apex Court in the matters of **Sonu Kumar Vs. Rina Devi** reported in **2023 SCC OnLine Pat 2247**, in the matter of **Uttam Kumar Bose Vs. State of West Bengal and Another** reported in **2023 SCC OnLine Cal 103**.

6. None for the respondent, despite service of notice.
7. We have heard both the counsel for the parties and perused the material available on record with utmost circumspection.
8. Before the learned Family Court it is an admitted position in this case that the marriage between the parties was solemnized on 05.06.2015 as per Hindu Rites and Rituals at Village- Khairagarh, District- Rajnandgaon (C.G.).
9. On the basis of pleadings made by the parties, learned Family Court framed the issues, which are reproduced hereinbelow for ready reference as under:- (4 issues)

वाद प्रश्न	निष्कर्ष
(1) क्या उभयपक्ष के विवाह के अनुष्ठापन के पश्चात् याचिकाकर्ता पति के साथ प्रत्यर्थी पत्नी ने क्रूरता का व्यवहार किया है ?	"हां"
(2) क्या दूसरे पक्षकार प्रत्यर्थी पत्नी ने याचिकाकर्ता पति की अर्जी के पेश किये जाने के अव्यवहित पूर्व कम से कम दो वर्ष की निरन्तर कालावधि पर आवेदक	"नहीं"

पति को अभित्यक्त रखी है ?	
(3) क्या याचिकाकर्ता पति विवाह-विच्छेद की आज्ञाप्ति का अनुतोष पाने का अधिकारी है ?	"हां"
(4) सहायता एवं व्यय ?	"निर्णय की कंडिका-41 के अनुसार"

The appellant in her written statement pleaded that the respondent/husband tortured her and she further stated in para 5 of her reply that after taking medications, she has become capable of having a child.

10. Respondent/husband Brijbhushan Choubey (PW-1), he filed Ex. A/01 Thyroid test of the appellant/wife at Dr. Lal Pathology, Ex. A/02 Medical Bill, Ex. A/03 Hysterosalpingography (HSG) report of the appellant/wife, Ex. A/04 Life Care Scan and Research Centre Bill of the respondent/husband, Ex. A/05 to Ex. A/07 Life Care Scan and Research Centre Bills of the appellant/wife, Ex. A/08, Prescription of the doctor regarding treatment of appellant/wife at Gulati Nursing Home, Ex. A/09 Sonography test report of the appellant/wife, Ex. A/10 Hysterosalpingography (HSG) report of the appellant/wife at Life Care Scan and Research Centre, Ex. A/11 semen test report of the respondent/husband at Life Care Scan and Research Centre, Ex. A/12 semen test report of the respondent/husband at Medi Path Lab Raipur. He denied this suggestion in para 16 of his cross-examination that he was given LED TV, AC, Fridge, Dining Table, Maharaja Sofa, Dressing Table, Double Bed, Washing Machine, Godrej Almirah and household utensils in dowry and they are still with him. He admitted this

suggestion of appellant/wife that on the advice of Dr. Shashank Gupta, he took his wife to Dr. Sarita Dubey. In para 23 of his cross-examination, it was asked in the form of question and answer which is reproduced herein for ready reference:-

“**23.** प्रश्न- वर्तमान समय में आधुनिक ईलाज एवं वैकल्पिक ईलाज महिलाओं का गर्भधारण करने संबंधी बहुत से व्यवस्थाएं सहज उपलब्ध हैं, आपका क्या कहना है ?

उत्तर- मैं संतानोत्पत्ति में सक्षम हूं व्यवस्थाएं तो हैं, किन्तु मैं उनका उपयोग नहीं करना चाहता हूं। यदि मुझे अनावेदिका पहले से बता देती कि वह संतानोत्पत्ति की योग्य नहीं है तो मैं इस बारे में सोच सकता था, किन्तु उसके द्वारा मुझे इस संबंध में नहीं बताया गया, जांच कराने पर स्थिति साफ हुई और मेरा पांच साल खराब हुआ।”

11. The appellant/wife (DW/01) admitted this suggestion that her treatment was going on and she has stated that after taking medications, she has become capable of having a child and she admitted this suggestion that she has not produced any Doctor Certificate in this regard. Both the parties have stated that since 2016 they are living separately.
12. Learned Family Court has minutely appreciated the oral and documentary evidence and finds that issues No. 1 and 3 are in favour of the respondent/husband and rightly passed the decree of divorce in favour of him. Thus, we do not find any illegality or irregularity warranting interference by this Court in the impugned judgment passed by learned Family Court.
13. As regards permanent alimony, considering the facts and circumstances of the case, the socio-economic status of the parties and looking to the guideline of the Hon'ble Apex Court in the matter of *Sau.Jiya vs. Kuldeep* reported in 2025 SCC OnLine SC 213, we find

that awarding an amount of Rs. 5,00,000/- (Rupees Five Lakhs only) as a one time settlement in favour of the appellant-wife shall serve the purpose of equity and meet the ends of justice. This amount shall cover all the pending and future claims of the appellant against the respondent/husband. The respondent/husband is, therefore, directed to pay the said amount as permanent alimony to the appellant/wife within a period of four months from today.

14. A decree be drawn up accordingly.

Sd/-
(Rajani Dubey)
JUDGE

Sd/-
(Amitendra Kishore Prasad)
JUDGE