2026:CGHC:4464-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FAM No. 43 of 2019

{Arising out of judgment and decree dated 7-12-2018 in Civil Suit No.76A/2014 of the Judge, Family Court, Mahasamund}

Udayram Basant, S/o Kirtan Basant, Aged about 49 years, R/o Village Rampur, Post Braneedadar, P.S. Basna Nagar, District Mahasamund, Chhattisgarh.

... Appellant

versus

Smt. Jyoti, W/o Udayram Basant, Aged about 42 years, Present R/o Talapara, Ekta Chowk, Bilaspur, District Bilaspur, Chhattisgarh.

... Respondent

For Appellant	**:**	Mr. Badruddin Khan, Advocate.
For Respondent	**:**	Mr. Animesh Verma, Advocate.

Division Bench: -
Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Arvind Kumar Verma, JJ.

Judgment On Board
(27/01/2026)

Sanjay K. Agrawal, J.

1. Invoking the jurisdiction of this Court under Section 19(1) of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 (for short, 'the Act of 1955'), the appellant herein/husband has preferred this appeal calling in question legality, validity and correctness of judgment & decree dated 7-12-2018 passed by the Judge, Family Court, Mahasamund in Civil Suit No.76A/2014, by

which the appellant's/husband's application claiming decree for dissolution of marriage on the grounds enumerated under Sections 13(1)(ia) & (ib) of the Act of 1955, has been dismissed finding no merit.

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

2.1) Marriage of the appellant herein and the respondent herein was solemnized on 29-4-1993 at Talapara, Bilaspur, as per Hindu rites and customs and out of their wedlock, they were blessed with a daughter namely, Rashmi and a son namely, Sandeep. Thereafter, the appellant-husband and the respondent-wife both resided separately from September, 2001 leading to filing of Civil Suit No.24-A/2002 on 3-7-2002 by the husband before the 1st Additional District Judge, Bastar at Jagdalpur on the grounds enumerated under Sections 13(1)(ia) & (ib) of the Act of 1955 which was dismissed by the said Court on 24-4-2004 finding no merit feeling aggrieved against which the husband had filed appeal being First Appeal No.109/2004 before this Court and this Court also by judgment dated 18-6-2007 dismissed the appeal affirming the judgment & decree of the trial Court holding that the husband has failed to establish the grounds under Sections 13(1)(ia) & (ib) of the Act of 1955.

2.2) After lapse of 11 years, on 1-12-2014, the appellant herein/ husband again preferred Civil Suit No.76A/2014, now, before the Family Court, Mahasamund stating that from September, 2001,

husband & wife both are residing separately and therefore marriage has irretrievably broken down and as such, since the marriage between them cannot revive, decree of divorce be granted in his favour.

2.3) The respondent herein/wife filed reply before the Family Court stating that since the earlier suit filed by the husband had already been dismissed on 24-4-2004 affirmed in appeal, the present application/suit is hit by the principle of *res judicata* contained in Section 11 of the Code of Civil Procedure, 1908 (for short, 'the Code') and denied the other allegations made.

2.3) The Family Court, on the basis of material available on record, framed following four issues and one additional issue and arrived at the findings recorded therein:-

क्र.	वादप्रश्न	निष्कर्ष
1.	क्या प्रतिवादिनी द्वारा सितम्बर 2001 से वादी का अभित्यजन कर दिया गया है ?	"प्रमाणित नहीं"
2.	क्या प्रतिवादिनी द्वारा वादी के साथ मारपीट एवं दुर्व्यवहार कर क्रूरतापूर्ण व्यवहार किया गया ?	"प्रमाणित नहीं"
3.	क्या वादी, प्रतिवादिनी से विवाह विच्छेद की आज्ञप्ति प्राप्त करने का अधिकारी है?	"प्रमाणित नहीं"
4.	सहायता एवं व्यय?	निर्णय की कंडिका 20 के अनुसार

अतिरिक्त वादप्रश्न

5.	क्या वादी का वाद पूर्व न्याय के सिद्धांत के आधार पर प्रचलन योग्य नहीं है।	"हॉ"

2.4) The Family Court by its impugned judgment held that the application/suit is hit by the principle of *res judicata* and also on

merits held that the plaintiff/husband has failed to establish the ground under Section 13 of the Act of 1955 against which this appeal has been preferred.

3. Mr. Badruddin Khan, learned counsel appearing on behalf of the appellant herein/husband, would submit that the Family Court is absolutely unjustified in dismissing the suit by recording a finding which is perverse to the record and the principle of *res judicata* is not applicable to matrimonial offences and therefore the judgment & decree impugned be set aside and decree be granted in favour of the appellant herein/husband.

4. On the other hand, Mr. Animesh Verma, learned counsel appearing on behalf of the respondent herein/wife, would support the impugned judgment & decree and oppose the appeal and submit that the Family Court has rightly dismissed the suit invoking the principle of *res judicata* contained in Section 11 of the Code and as such, the appeal deserves to be dismissed.

5. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.

6. After hearing learned counsel for the parties and after going through the record, the questions for consideration would be,

    1. Whether the suit filed by the appellant-husband was hit by the principle of *res judicata* contained in Section 11 of the Code?

2. Whether the appellant-husband is entitled for decree/divorce on the ground of cruelty under Section 13(1)(ia) and desertion under Section 13(1)(ib) of the Act of 1955?

Re-Question No.1: -

7. Admittedly, on 3-7-2002, the appellant herein-plaintiff-husband had filed suit for decree for dissolution of marriage on the grounds contained in Sections 13(1)(ia) & (ib) of the Act of 1955 on the allegation that both were residing separately in which the trial Court has clearly recorded a finding that the grounds enumerated under Sections 13(1)(ia) & (ib) of the Act of 1955 are not established and the cause of action pleaded was of September, 2001. The plaintiff/ appellant herein/husband preferred an appeal before this Court and the said first appeal was dismissed by this Court by recording a finding that the defendant/wife was pushed by the plaintiff/husband and she suffered fracture. The said finding was recorded in paragraphs 9 & 10 of the judgment dated 18-6-2007 passed in F.A. No.109/2004, which state as under: -

> "9. Having considered the submissions of learned counsel for the appellant, I have perused the record. It is pertinent to note that the appellant herein did not produce the copy of the notice sent by him to the respondent to show that the appellant had asked the respondent to return to her matrimonial home and to restore marital life. The testimony of Gokul Prasad Basant was rightly discarded by the learned 1st Additional District Judge as highly contradictory to the testimony of the appellant. The appellant admitted that the respondent had sustained a fracture on her left leg in September 2001 and the father of the respondent had taken her to Bilaspur for treatment. However on 7.9.2001, he had again brought the respondent to his village Rampur for treatment and the respondent was living with her parents at Bilaspur from

> 9.9.2001. Learned trial Judge, on proper appreciation of the evidence adduced by the parties and by a well reasoned order, recorded a finding that in September 2001, the respondent had sustained fracture due to being pushed by the appellant and thereafter she went to her maternal home with her father and the appellant had thereafter made no efforts to bring her back. The learned trial Judge rightly placed reliance on the testimony of the respondent that the appellant had never made any effort to take her back to her matrimonial home since September 2001. The respondent had categorically stated that she wanted to live with her husband and had never misbehaved with him.
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> 10. Having thus perused the impugned judgment dated 24th April 2004, I am of the considered opinion that the learned 1st Additional District Judge has, on proper appreciation of the evidence adduced by the parties, recorded a finding that the appellant/petitioner has failed to establish the grounds under Section 13(1)(ia) and (ib) of the Act, 1955. Facts of the case law, cited by the learned counsel for the appellant, are distinguishable and do not apply to the present case. The impugned judgment refusing to grant a decree of divorce between the parties is thus impeccable and does not call for any interference."

8. The aforesaid finding was recorded by this Court affirming the finding of the trial Court that the cause of action, allegedly, for filing application for dissolution of marriage, is said to have arisen in September, 2001. It was not taken to further appeal court by the appellant/husband and as such, the finding recorded with regard to the cause of action in September, 2001 and finding recorded therein has become final.

9. At this stage, the principle of *res judicata* as contained in Section 11 of the Code may be noticed herein. Section 11 of the Code states as under: -

> "**11. Res judicata.**—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the parties or between parties under whom they or any of them

> claim litigating under the same title in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

10. The principle enunciated in Section 11 of the Code provides that no Court should try any "suit" or "issue" in which the matter directly and substantially in issue has been directly and substantially decided in a formal suit. Section 11 of the CPC engrafts this doctrine with a purpose that "a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action" (see *Escorts Farms Ltd v. Commr, Kumauon Division, Nainital*, (2004) 4 SCC 281).

11. Section 13 of the Act of 1955 provides for grant of divorce in certain cases. It mandates that any marriage solemnized whether before or after the commencement of the Act may be dissolved on a petition presented either by the husband or by the wife on any of the grounds specified therein. Clause (ia) of sub-section (1) of Section 13 of the Act of 1955 declares that a decree of divorce may be passed by a Court on the ground that after the solemnization of marriage, the opposite party has treated the petitioner with cruelty. Similarly, clause (ib) of sub-section (1) of Section 13 of the Act of 1955 declares that a decree of divorce may be passed by a Court on the ground that the opposite party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.

12. At this stage, it would be appropriate to notice Section 21 of the Act of 1955, which states as under: -

> "**21. Application of Act 5 of 1908.**—Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908."

13. The principle of *res judicata* may apply in certain cases also in a proceedings under the Act of 1955. The Supreme Court in the matter of **Guda Vijayalakshmi v. Guda Ramachandra Sekhara Sastry**[1] has considered the applicability of Section 11 of the Code to proceedings under the Act of 1955 and held that Section 11 will be applicable to proceedings before the Act of 1955 by observing as under: -

> "3. ... In terms Section 21 does not make any distinction between procedural and substantive provisions of C.P.C. and all that it provides is that the Code as far as may be shall apply to all proceedings under the Act and the phrase "as far as may be" means and is intended to exclude only such provisions of the Code as are or may be inconsistent with any of the provisions of the Act. It is impossible to say that such provisions of the Code as partake of the character of substantive law are excluded by implication as no such implication can be read into S. 21 and a particular provision of the Code irrespective of whether it is procedural or substantive will not apply only if it is inconsistent with any provisions of the Act. For instance, it is difficult to countenance the suggestion that the doctrine of res judicata contained in Section 11 of the Code which partakes of the character of substantive law is not applicable to proceedings under the Act. Res judicata, after all, is a branch or specie of the Rule of Estoppel called Estoppel by Record and though Estoppel is often described as a rule of evidence, the whole concept is more correctly viewed as a substantive rule of law. (See: Canadian and Dominion Sugar Co., Ltd. v. Canadian National (West Indies) Steamships, Ltd. (1947) AC 46, at p. 56 (P.C.)."

1 AIR 1981 SC 1143

14. At this stage, Section 10 of the Family Courts Act, 1984, which provides for procedure applicable to the matrimonial disputes, needs to be noticed. It reads as under: -

> "**10. Procedure generally.**—(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.
>
> (2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.
>
> (3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other."

15. A careful perusal of sub-section (1) of Section 10 above, would show that subject to the other provisions of the Family Courts Act, 1984 and the rules, the provisions of the Code of Civil Procedure, 1908 and of any other law for the time being in force shall apply to the suits and proceedings before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court. Further, by virtue of sub-section (3) of Section 10, it is provided that nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement

in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other. As such, it is quite clear that the provisions of the Code, subject to any other provisions of the Family Courts Act, 1984 shall be applicable to the proceedings of the Family Court.

16. Furthermore, the Supreme Court in the matter of **State of Maharashtra and another v. National Construction Company, Bombay and another**[2] held that both the principle of res judicata and Rule 2 of Order 2 of the Code are based on the rule of law that a man should be twice vexed for one and the same cause, and observed as under: -

> "9. ... Both the principle of res judicata and Rule 2 of Order 2 are based on the rule of law that a man shall not be twice vexed for one and the same cause. In the case of *Mohd. Khalil Khan* v. *Mahbub Ali Mian*[3] (AIR at p. 86), the Privy Council laid down the tests for determining whether Order 2 Rule 2 of the Code would apply in a particular situation. The first of these is, "whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation for the former suit". If the answer is in the affirmative, the rule will not apply. This decision has been subsequently affirmed by two decisions of this Court in *Kewal Singh* v. *Lajwanti*[4] (SCC at p. 295 : AIR at p. 163) and in *Inacio Martins case*[5].

17. Coming to the facts of the present case, it is quite vivid that the first matrimonial case for dissolution of marriage filed by the husband under Section 13 of the Act of 1955, was filed on the ground of cruelty and desertion and the cause of action is said to have accrued as per

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2 (1996) 1 SCC 735
3 AIR 1949 PC 78 : 52 CWN 812 : 75 IA 121
4 (1980) 1 SCC 290 : AIR 1980 SC 161
5 (1993) 3 SCC 123

the judgment of the trial Court, in September, 2001. Even in the second application/suit filed, as per paragraphs 8 & 9 of the plaint/suit, it appears that the cause of action in this case also had arisen in September, 2001. Issue was also framed as to whether the respondent herein/wife has deserted the appellant herein/husband from September, 2001. The second matrimonial case is also based on the same cause of action relating to the infliction of cruelty and desertion which was earlier pleaded and not found established by the trial Court as well as by the appellate Court (this High Court) in appeal preferred by the appellant herein/husband. A careful perusal of the record, would show that it is not the case that the cause of action in the instant suit has arisen after dismissal of first suit i.e. on 24-4-2004 by the trial Court and after dismissal of first appeal by this Court on 18-6-2007. As such, the grounds of cruelty and desertion based on the cause of action that has arisen in September, 2011 have been considered and decided finally and therefore there is legal impediment in shape of Section 11 of the Code for processing and deciding the second suit relating to cruelty and desertion on the principle of *res judicata*. It is not the case of the appellant/husband that the second suit is based on new and subsequent cause of action after dismissal of earlier suit on 24-4-2004 affirmed by this Court in first appeal on 18-6-2007.

Re-Question No.2: -

18. It is true that the judgment of the trial Court decided on 24-4-2004 affirmed by the appellate Court on 18-6-2007 were not filed and

exhibited by the appellant herein/husband, they were admitted documents and strict rule of evidence would not be applicable by virtue of Section 14 of the Family Courts Act, 1984. Since the trial Court has decided the earlier suit filed by the appellant herein/ husband by dismissing the same and the same has been affirmed by this Court in first appeal, in our considered opinion, the Family Court is right in dismissing the second suit considering those documents without applying strict rule of evidence and admitting those documents. As such, the principle of *res judicata* would apply to proceeding under Section 11 of the Code as held by the Family Court and by the Supreme Court in **Guda Vijayalakshmi** (supra) and in **National Construction Company's** case (supra) and further, the principle of *res judicata* has rightly been pressed into service by the respondent herein/wife and rightly applied by the Family Court. In that view of the matter, the Family Court is justified in holding that the second application/ suit for dissolution of marriage filed on behalf of the appellant herein/husband is hit by the principle of *res judicata*.

19. The Family Court has considered both the grounds on merits also and after considering the pleadings and evidence on record, came to the conclusion that the grounds under Sections 13(1)(ia) & (ib) of the Act of 1955 are not established. We have perused the record and after perusing the evidence on record, we find that both the grounds are not established, even otherwise, on merits and as such, we are of the considered opinion that issue between the parties is separation

on the ground of cruelty and desertion which has been considered and cause of action arose in September, 2001 and the suit/ application seeking dissolution of marriage by decree of divorce filed on behalf of the husband has been dismissed and the same has been affirmed by this Court in first appeal and in second round of litigation, the husband again pleaded and led evidence on the same cause of action. Even on merits, the appellant/husband has no case. As such, we do not find any merit in this appeal.

20. Therefore, this Court has no option except to dismiss the appeal filed on behalf of the appellant herein/husband. As such, in view of the aforesaid discussion, the appeal deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

21. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Sd/-
(Arvind Kumar Verma)
JUDGE

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