# IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

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HON'BLE SMT. JUSTICE ANURADHA SHUKLA

ON THE 3rd OF NOVEMBER, 2026

FIRST APPEAL No. 1573 of 2025

CNR No.: MPHC030237852025

*AKASH*

*Versus*

*SMT. KAJAL WIFE AKASH*

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Appearance:

*Shri Rinku Rathour - Advocate for the appellant.*

*Ms.Monica Mishra - Advocate for the respondent.*

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JUDGMENT

*Per: Justice Anuradha Shukla*

In this first appeal filed under Section 19 of the Family Courts Act, 1984, the appellant is challenging the impugned judgment and decree passed on 22.07.2026 by Principal Judge, Family Court Datia in RCSHM/126/2024, whereby his divorce petition was dismissed.

2. Admittedly, the parties were married on 24.06.2021 and are living separately since that year itself. The petition was filed on the grounds that respondent/wife was not happy with this marriage and their marital life was in turmoil ever since the beginning. On her insistence, appellant took her in August 2021 to her father's house and in September 2021, when he went there to bring her back, she put certain conditions for coming back, which included that she would not cook food for the family members and she would also live separately

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from them. Appellant agreed to all these conditions but this arrangement, too, did not work for very long and just 13 days later, respondent left the house along with the jewelry and also the cash amount of Rs.50,000/- that was available in the house. Attempts were made to bring her back but appellant and her relatives were insulted. On 02.09.2023 appellant filed a petition under Section 9 of Hindu Marriage Act 1955 (hereinafter referred to as the Act) for the relief of restitution of conjugal rights and despite service of notice, respondent decided not to contest it. An ex parte decree was passed in favour of appellant about which the respondent was duly informed, through notice and also personally, but respondent failed to honour the decree. It was further claimed that the respondent is of doubtful character and does not want to join the marital life with her husband. Accordingly, divorce decree on the grounds of cruelty and desertion was prayed for.

**3.** Respondent contested the divorce petition on the ground that she was being continuously harassed by the appellant and his family members for demand of dowry; her jewelry was snatched and a threat was given that if the demand of dowry was not fulfilled, respondent would be set on fire. It is claimed that the ex parte decree of restitution of conjugal rights was obtained fraudulently and without getting the notice served upon the respondent. It was alleged that appellant is keen to remarry and therefore has filed the divorce petition. Accordingly, a request was made to dismiss the divorce petition.

**4.** Issues were framed and the parties were directed to produce their evidence. Appellant examined himself and witness Manoj Jatav, the father of appellant, and to rebut their testimony, respondent alone appeared in the witness box. The trial Court, after analyzing the evidence of both the parties, dismissed the divorce petition. Hence this appeal.

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5. The appeal has been argued on the ground that the trial Court failed to appreciate the evidence in correct perspective. It was ignored that respondent was living separately for the last four years which not only amounted to desertion but was also cruelty to the appellant. There was no reason for the respondent to insist upon separate living still she pressurized the appellant to leave the company of his parents and that too amounted to cruelty. The matrimonial relationship between the parties has reached to a dead end and therefore, in the light of the irretrievable breakdown of marriage, the divorce decree should be passed. A request has been made to allow the appeal.

6. Counsel for the respondent has opposed the appeal claiming that the judgment warrants no interference as appellant wants to take advantage of his own wrong and the trial Court was justified in dismissing the divorce petition.

7. We have heard learned counsel for the parties and examined the record.

8. The ground of cruelty argued here rests on the fact that respondent/wife is guilty of cruelty by refusing to cook food and insisting that the appellant should live separately from his parents. Allegations made in this regard have been rebutted by the respondent/wife. It is relevant that the alleged incident relates back to the year 2021 itself, the year in which marriage between the parties was solemnized and in the year 2023, the petition for seeking restitution of conjugal rights was filed, still these allegations were missing in the petition. The summary of facts given in the judgment of Ex.P/1, whereby the petition for restitution of conjugal rights was decided, does not include any such facts of declining to cook food for and live along with the family members of the appellant. An insistence to live in the city does not tantamount to pressurize the other spouse to forsake the company of their parents.

9. Further, the petition filed for seeking divorce itself clarifies that the

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alleged cruelty committed on this ground was condoned by the appellant. Para 4 of the divorce petition suggests that respondent/wife agreed in September, 2021 to come back along with the appellant under the conditions that she would not cook food for the family members and would also not live along with them. What is most intriguing is that the same para further discloses that appellant/husband agreed to both these conditions and brought back the wife along with him. Section 23(1)(b) of the Act provides that in any proceeding under the Act the decree of divorce can be granted only if the Court is satisfied that, in case the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty. Here, the pleadings of divorce petition clearly reveal that the ground of cruelty that is being raised here by the appellant/husband was consciously condoned by him in the year on 30.09.2021 itself.

**10.** Learned counsel for the appellant has relied upon the decision of **Narendra Vs. K.Meena - AIR 2016 SC 4599** , wherein it was held by the Apex Court that wife's insistence on living separately from the dependent parents of husband is a cruelty to him. We have considered the case law, however, it cannot be applied in the facts of the case for the simple reason that on the insistence of wife, appellant/husband had himself agreed to her condition of not cooking food and living separately from his parents. Once appellant himself had made up his mind to abandon his parents, he cannot shift this blame on the respondent/wife at any subsequent stage. For the reasons given in the discussion made so far, we do not find appellant to be entitled to a decree of divorce on the ground of cruelty.

**11.** The next allegation is that the appellant/husband had obtained a decree for restitution of conjugal rights against the respondent/wife but she failed to honour the decree and therefore a ground of divorce on the basis of desertion

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became available to the husband, which was wrongly denied by the trial Court. The impugned judgment passed by the trial Court reflects that the decree on the grounds of desertion was rejected in the light of Explanation (ii) to Section 13 (1A) of Act, which allows a decree of divorce on this ground only if :-

> "(ii) That there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree of restitution of conjugal rights in a proceeding to which they were the parties."

**12.** Referring to this mandatory provision the trial Court observed that no ground of divorce is made out in favour of appellant/husband, as the decree for restitution of conjugal rights was passed on 07.03.2024 and the divorce petition was filed in a period of less than three months therefrom, i.e. on 21.05.2024. The trial Court, therefore, held that the mandatory requirement was not complied with by the appellant, for which the decree of divorce can not be granted in his favour.

**13.** The legal and the factual aspects discussed by the trial Court in refusing a decree of divorce on the basis of desertion are not shown to be fallacious in the appeal memo and even during the course of the arguments, the learned counsel for the appellant failed to highlight how this finding of the trial Court was incorrect. In the entirety, we find no illegality or any incorrect factual/legal assessment on the part of the trial Court, in rejecting the divorce decree on the ground of desertion, by taking recourse to the provision of Section 13 (1A), Explanation (ii) of the Act and dismissal of this ground cannot be successfully assailed here.

**14.** Summarizing the discussion, we find no merit in this first appeal and therefore, upholding the decree of dismissal of divorce petition, the appeal is **rejected.**

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15. The decree be drawn accordingly, and the record of the trial Court be sent back to it, along with the copy of this judgment and the decree to be drawn.

(G. S. AHLUWALIA)
JUDGE

(ANURADHA SHUKLA)
JUDGE

SP

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