

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK KUMAR SINGH

&

HON'BLE SHRI JUSTICE HIMANSHU JOSHI

ON THE 23rd OF FEBRUARY, 2026

FIRST APPEAL NO.448 of 2025

JITESH KUMAR TOLANI

Versus

SMT. VARSHA TOLANI

Appearance:

***Shri Siddharth Sharma – Advocate through Video Conferencing
with Shri Mayank Upadhyay – Advocate for the appellant.***

***Shri Sanjay Agrawal- Senior Advocate with Ms. Ankita Singh
Parihar – Advocate for the respondent.***

Reserved on : 09.02.2026

Pronounced on : 23.02.2026

J U D G M E N T

Per : Justice Vivek Kumar Singh

This first appeal under Section 19 of the Family Courts Act, 1984 has been filed by the appellant/husband being aggrieved by the judgment and decree dated 14.02.2025 passed by First Additional Principal Judge, Family Court, Bhopal (M.P.) in Regular Civil Suit No.HM-1557/2021, whereby the application under Section 13(1)(ia)(ib) of Hindu Marriage

Act, 1955 (for brevity 'HM Act, 1955') filed by the appellant/husband seeking dissolution of marriage on the ground of 'cruelty' has been dismissed.

2. Factual matrix of the case, in short, are that the marriage between the appellant and the respondent was solemnized on 28.11.2011 as per Hindu rites and customs without any dowry. Out of the wedlock, they have two daughters aged about 11 years and 9 years respectively. As alleged by the appellant, the respondent is suffering from mental ailment due to which she always gets annoyed, frustrated and angry without any reason. It is also alleged that the parents of the respondent were fully aware of her mental illness before marriage. However, concealing the said fact, they got the respondent married with the appellant. After 15 days of the marriage, the respondent started creating disputes with the parents of the appellant. The acts of the respondent were regularly informed to her parents. Many times, the respondent tried to commit suicide and when the appellant resisted, she started showing aggression resorted to all kinds of abusive tantrums and used filthy language towards the appellant and his family. To reconcile the relationship between the appellant and the respondent, their families raised the dispute for mediation before Nagar Sindhi Kalyan Panchayat, where the respondent had clearly admitted the

fact that she is suffering from mental ailment and she is under medical treatment for the same. Thereafter, on 05.01.2017, the respondent alongwith her younger daughter left her matrimonial house taking away all her belongings including *Stridhan* and thereby deserted the appellant. On 17.02.2017, the appellant sent a notice to the respondent for restitution of conjugal rights. Pursuant to that, the respondent returned back to her matrimonial home after few days. She again left her matrimonial home in the month of December, 2018 and again came back in the month of April, 2019. Finally, on 27.10.2021, the respondent left the matrimonial home and never came back. Since then, the elder daughter resides with the appellant/husband and the younger daughter with the respondent/wife. Being aggrieved by the repeated abandonment, the appellant preferred a suit under Section 13(1)(ia)(ib) of HM Act, 1955 seeking decree of divorce, which was dismissed by the learned Family Court on erroneous grounds and without proper appreciation of material evidence available on record.

3. Being aggrieved by the impugned judgment and decree passed by the learned Family Court, the appellant has preferred the instant first appeal on the grounds that Family Court has erred in rejecting the application under Section 13(1)(ia)(ib) of HM Act, 1955 seeking

dissolution of marriage on the ground of cruelty and desertion.

4. Learned counsel for the appellant submits that the learned Family Court has committed a grave error in ignoring the consistent pleadings and evidence on record demonstrating a continuous pattern of cruel conduct on the part of the respondent. It is further submitted that the respondent repeatedly left her matrimonial home without there being any reasonable cause and finally abandoned the appellant on 27.10.2021 inflicting immeasurable mental agony, torture and uncertainty to the appellant. Such repeated abandonment squarely fulfills the ingredients of desertion as contemplated under Section 13(1)(ib) of HM Act, 1955. It is also submitted that the learned Family Court has failed to appreciate that desertion is not a single act but a continuous cruel conduct of the respondent and that conduct of the respondent clearly established *animus deserendi* especially when the final separation continues since October, 2021 till date without any genuine attempt of restitution.

5. Learned counsel for the appellant succinctly submits that the respondent is habitual of threatening to commit suicide, which caused extreme mental trauma to the appellant and his family members and therefore, the learned Family Court adopted an unduly narrow approach by requiring physical violence to establish mental cruelty, whereas settled

law recognized that mental cruelty alone is sufficient to grant divorce when it renders co-habitation insupportable.

6. In support of his relentless submissions, learned counsel for the appellant has relied upon a judgment of the Hon'ble Supreme Court rendered in the case of **A. Jayachandra Vs. Aneel Kaur** reported in **(2005) 2 SCC 22**, wherein it has been held that cruelty must be assessed in the background of parties' social status, mental condition and overall circumstances and that persistent mental agony is sufficient to dissolve the marriage.

7. Further, learned counsel for the appellant seamlessly submits that the learned Family Court has failed to appreciate the fact that the parties are living separately for a considerable period and the marriage has irretrievably broken down with no emotional, physical or social bonding surviving between them and completely overlooked the cumulative effect of continuous cruel conduct. It is further submitted by learned counsel for the appellant that if the impugned judgment is allowed to stand, it would compel the appellant to continue in a dead and emotionally destructive marriage, which is not the object and spirit of Hindu Marriage Act.

8. On the other hand, learned counsel for the respondent has categorically denied all the allegations of cruelty and has consistently

pleaded that respondent was always willing to reside with the appellant. She has falsely been accused and defamed in the society. It is further submitted that the appellant was in constant touch with his female friends even after their marriage and when the respondent raised this issue, she was threatened and blackmailed of desertion by the appellant. He forcefully submits that at the time of marriage, the parents of the respondent had given gold jewelry of 500 gm (50 tola) and a cheque of Rs.3,00,000/- (Rupees Three lakhs) and spent Rs.10,00,000/- (Rupees Ten lakhs) in their marriage. Learned counsel further submits that the appellant is the owner of a jewelry shop at Bairagarh, District Bhopal from which he earns Rs.05 lakh per month. It is further submitted that on 21.01.2016, father of the respondent got a Fixed Deposit of Rs.2,50,000/- in the name of Kyara Tolani (elder daughter of the appellant) in the Corporation Bank and handed over to the appellant's father.

9. The learned counsel for the respondent vehemently argued on the question of maintainability of the suit, which was filed before the Family Court and submitted that present appeal against the said suit is also not maintainable and deserves to be dismissed. It is submitted that earlier also an application under Section 13(1) of HM Act, 1955 was filed by the appellant on 20.10.2018 for dissolution of marriage on the grounds of

cruelty and desertion, which was withdrawn vide order dated 15.04.2019 on account of compromise arrived at between the parties. It is pertinent to mention here that at time of withdrawal of the said suit, no liberty was sought by the appellant to prefer a fresh suit on the same ground and for the same cause if the situation arises. As a result of compromise arrived at between the parties, the respondent also withdrew the maintenance application filed under Section 125 of Cr.P.C. Subsequently, in the year 2021, again a fresh suit under Section 13(1) of HM Act, 1955 was filed by the appellant, which was dismissed by the Family Court vide order dated 14.02.2025, against which the present appeal has been filed. In support of his submission, learned counsel for the respondent has drawn attention of this Court towards the provisions contained in Order 23 Rule 1(4)(b) of CPC which reads as under :-

“Where the plaintiff withdraws any suit or part of the claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or part of the claim”

10. To bolster his submission, learned counsel for the respondent further relied upon a Division Bench decision of Gwalior Bench of this Court in the case of **Abhishek Sharma Vs. Smt. Aparna Tomar (F.A. No.2152/2024)**, wherein it has been held as under :-

“(16) In the considered opinion of this Court, it was found that the pleadings of respondent in both the suits are on the same set of facts. According to the provisions of Order XXIII Rule 1(3) and (4) of CPC, respondent had sought withdrawal of her earlier suit without any relief and filed a fresh suit on the same set of facts, therefore, she is precluded from instituting any fresh/subsequent suit in respect of the same subject matter or such part of the claim.”

11. Furthermore, to buttress his submission, learned counsel for the respondent has also relied upon the certain pronouncements of the Hon’ble Supreme Court rendered in the cases of **Gurbux Singh Vs. Harminder Kaur** reported in AIR 2011 SC 114; **Satish Sitole Vs. Ganga** reported in AIR 2008 SC 3093; **Neelam Kumar Vs. Dayarani** reported in AIR 2011 SC 193; **Ashok Kumar Jain vs. Sumati Jain** report in 2013(1) A.N.U. 361 SC and **Darshan Gupta Vs. Radhika Gupta** report in 2014(1) MPLJ 8 SC. Reliance has also been placed on certain judgments of this High Court in the cases of **Parag Pandit Vs. Sadhana Pandit** report in AIR 2022 MP 113, **Prakash Rao Vs. Smt. Jyoti** report in 2012(2) MPHT 253 and **Dinesh Tripathi Vs. Vandana Tripathi** report in 2018(2) MPWN 30.

12. Heard learned counsel for the parties and perused the record.

13. In view of the aforesaid facts and the arguments advanced by learned counsel for the parties, the first question, which arises for

consideration, is as to whether this First Appeal is maintainable or not?

14. The aforesaid question of maintainability of this first appeal entirely depends upon the maintainability of suit (Regular Civil Suit No.HM-1557/2021) filed by appellant/husband before the learned Family Court. In this regard, it is profitable to refer to the provision contained in Order XXIII Rule 1(4) of CPC, which necessitates that if a plaintiff abandons a suit or withdraws from a claim without court permission, they are precluded from filing a fresh suit regarding the same subject matter or part of the claim. However, the Supreme Court in the case of **Vimlesh Kumari Kulshrestha Vs. Sambhaji Rao** reported in **(2008) 5 SCC 58** has held that *“High Court was wrong in dismissing second suit on the ground that it was hit by Order 23 Rule 1(3)(b) merely because specific permission to file second suit was not obtained, therefore, Order 23 Rule 1(3)(b) did not apply to the facts and circumstances of the case.”* Thus, we are of the considered view that in the matrimonial cases, cruelty or desertion is often considered to be a continuing or recurring cause of action. If the second suit is filed on a fresh cause of action (new acts of cruelty or a fresh period of desertion) then the subsequent suit is maintainable. Therefore, the bar under Order XXIII Rule 1(4) of CPC is not applicable in such cases.

15. From the facts of this case, it is clear that after the oral compromise arrived at between the parties on the deliberations of senior social workers of Sindhi community, both the parties were residing together but after some time the respondent again deserted the appellant and subjected him to mental agony. Thus, the subsequent suit for granting decree of divorce filed by the appellant shall be considered to be maintainable as the action of cruelty is often considered to be a continuing cause of action. In the present set of facts and circumstances of the case, such cause of action shall also be considered to be a fresh cause of action. Hence, on the basis of maintainability of subsequent suit, this appeal preferred against the said suit is also maintainable.

16. The second question for consideration is whether such action of repeated desertion by the respondent falls within the ambit of "cruelty" or not and whether the appellant was subjected to such cruelty or desertion?

17. To answer the aforesaid question, it is apposite to refer to the law laid down by the Supreme Court in the case of **Samar Ghosh vs. Jaya Ghosh, (2007) 4 SCC 511**, in which the Apex Court has illustrated the instances of human behaviour, relevant for dealing with the cases of "mental cruelty" and has also considered the aspect of "irretrievable

breakdown" and observed that the same can be made a ground for divorce, which are as under:-

"(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant

danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) 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.

(x) 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 behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) 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. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

18. Additionally, Hon'ble Supreme Court in the case of **A. Jayachandra Vs. Anel Kaur** reported in **(2005) 2 SCC 22** has dealt with essential ingredients to constitute "mental cruelty" and observed as under :-

"12. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as

noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.”

19. Further, in the case of **Shri Rakesh Raman Vs. Smt. Kavita 2023 Live Law (SC) 353**, the Hon'ble Apex Court has manifestly observed that long separation, in absence of cohabitation and complete breakdown of all meaningful bonds and existing bitterness between husband and wife, has to be read as "cruelty" under Section 13(1)(i-a) of the HM Act.
20. Furthermore, the Hon'ble Apex Court in the case of **Shilpa Sailesh Vs. Varun Sreenivasan (2023) AIR (SC) Civil 2212** has clearly observed that grant of divorce on the ground of irretrievable breakdown of marriage

by the Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both the parties. It is obvious that this Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way to look forward. That the marriage has irretrievably broken-down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the Court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor.

21. After considering the submissions made by learned counsel for the parties, it is apparent that the appellant and respondent had lived together only for few years and thereafter, they are living separately till date. On

05.01.2017, the respondent alongwith her younger daughter left the house taking all her belongings, *Stridhan* and other things and thereby deserted the appellant, which falls within the ambit of cruelty. Even after the oral compromise arrived at between the parties on the deliberations of senior social workers of Sindhi community, the respondent again deserted the appellant for a period of about two years and denied access to her younger daughter, thereby subjecting the appellant to mental agony. Thereafter, again in the year 2021, the respondent finally left the matrimonial house and also took her younger daughter alongwith her, which also implies mental cruelty. Learned Family Court has overlooked the fact that the respondent was non-committal towards the marriage and refused to cohabit with the appellant continuously which resulted into mental agony. Learned Family Court also failed to appreciate one important fact that due to such mental agony caused by the respondent towards appellant, he was unable to carry out his day-to-day activities unhindered. The respondent also sowed the seed of fear in the mind of appellant that at any time she may file a false complaint against him and his family members which would defame them in the society and would cause indelible and irreparable mental harassment. The respondent has continuously deserted the appellant on several occasions, due to which the marriage between them has suffered to the extent of irretrievable breakdown.

22. Thus, in the conspectus of facts and circumstances of the case, it is noticeable that the relationship between the parties has evidently grown sour beyond the point of return and such a long period of separation has turned these differences irreconcilable. It is unfortunate that the parties have already spent a considerable long period of their adult lives fighting marital battles in the courtrooms. The parties still have a considerable natural life ahead of them to look forward to. Therefore, we are inclined to allow the appeal preferred by the appellant/husband and grant divorce on the ground of irretrievable breakdown of marriage, which also falls within the ambit of mental cruelty in the terms of Section 13(1)(ia) of HM Act, 1955. In these circumstances, this Court deems it fit and proper to dissolve the marriage solemnized between the appellant and the respondent on 28.11.2011.

23. Resultantly, the first appeal is **allowed**. The impugned judgment and decree dated 14.02.2025 passed by First Additional Principal Judge, Family Court, Bhopal (M.P.) in Regular Civil Suit No.HM-1557/2021 is hereby **set aside**.

24. So far as the question of grant of permanent alimony is concerned, in the present case, no application has been moved by the respondent-wife seeking maintenance/permanent alimony under Section 24 or 25 of the

H.M. Act, 1955. However, when the parties are suffering on account of non-filing of applications, the Court should *suo motu* exercise powers under Section 25 of the H.M. Act, 1955. In matrimonial cases, the Court has to ascertain the financial capacity/status of the parties depending on source of income and expenditure to determine the amount of maintenance/permanent alimony as per the decision of the Apex Court in the case of **Rajnish Vs. Neha & Anr.** reported in **(2020) 12 SCC 702**. The learned Family Court while determining the amount of interim maintenance to the respondent-wife analysed the assets, liabilities and income of the appellant and upon considering the overall source of his income, the amount of Rs.20,000/- (Rupees Twenty Thousand) per month was fixed as interim maintenance. To avoid multiplicity of proceedings and overlapping maintenance orders under different statutes, it would be appropriate to convert the monthly maintenance into permanent alimony or one time settlement of financial claims between the parties, with an intention to secure a long term financial stability in one consolidated determination.

25. Looking to the totality of facts and circumstances of the case, in the interest of justice, we consider it to be just and proper to allow permanent alimony to the tune of Rs.25,00,000/- (Rupees Twenty Five Lakhs) in

favour of respondent-wife, which shall be payable to respondent by the appellant-husband either by way of Demand Draft or any other mode within a period of six months from the date of this judgment. Marriage between the parties is hereby dissolved by way of granting aforesaid permanent alimony.

26. Registry is directed to draw a decree accordingly.

27. Parties to bear their own costs.

Appeal allowed.

(VIVEK KUMAR SINGH)
JUDGE

(HIMANSHU JOSHI)
JUDGE

Shanu