

{FA(MAT)No.189/2024}



CGHC010193962024

2026:CGHC:41301-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 189 of 2024

*{Arising out of judgment and decree dated 2-4-2024 in Civil Suit
No.169A/2022 of the Judge, Family Court, Ambikapur, District Surguja}*

Judgment reserved on: 15-9-2026

Judgment delivered on: 23-9-2026

Judgment (Full) uploaded on: 23-9-2026

Archana Singh, W/o Anand Kumar, D/o Virendra Singh, aged about 32 years, R/o Village Bhagwanpur, District Ballia (U.P.), Present R/o Ring Road, West Choprapara, Ambikapur, District Surguja (Chhattisgarh)

(Plaintiff)

... Appellant

versus

Anand Kumar Gupta, S/o Ramashankar Gond, aged about 35 years, R/o Village Near Hanuman Mandir, Lahang Dumri, District Bhojpur, Aara Bihar

(Defendant)

... Respondent

For Appellant : Ms. Jigyasa Singh, Advocate on behalf of Mr. Anurag Singh, Advocate.

For Respondent : None present.

Division Bench: -

Hon'ble Shri Parth Prateem Sahu and
Hon'ble Smt. Sushma Sawant, JJ.

C.A.V. Judgment

Sushma Sawant, J.

1. Invoking the jurisdiction of this Court under Section 19(1) of the Family Courts Act, 1984, the appellant herein/plaintiff has preferred this appeal challenging the judgment & decree dated 2-4-2024 passed by the Judge, Family Court, Ambikapur, District Surguja in **Civil Suit No.169A/2022 (Archana Singh v. Anand Kumar)** by which her application for grant of decree of divorce against the respondent herein/defendant, has been rejected finding no merit.
2. Vide an Application under Order XLI Rule 27 of the Code of Civil Procedure, 1908, the appellant herein/plaintiff has requested that Annexure-A (copy of FIR dated 25/08/2026 registered under Crime No.101/2026 at Mahila Thana, Ambikapur) be taken on record.
3. The aforesaid challenge has been made on the following factual backdrop: -

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the Family Court.)

Factual Matrix

:-Case of the Appellant/Plaintiff before the Family Court:-

4. Appellant herein/plaintiff **Archana** filed Original **Civil Suit No.169A/2022 (Archana Singh v. Anand Kumar)** for a decree of divorce on the ground of 'cruelty' committed by respondent herein/defendant **Anand Kumar**. According to the plaint allegations, the marriage of appellant herein/plaintiff **Archana** was solemnized with

respondent herein/defendant **Anand Kumar** in accordance with the Hindu rites and customs, on 5-12-2021 at the residence of the plaintiff's maternal uncle situate at Village Sawan Chhapra, Post Beria, District Ballia (U.P.). After the marriage, parties resided together for about one month and during the said period, the defendant/husband used to abuse and assault the plaintiff/wife. Being harassed and distressed with the behaviour of the defendant/ husband, the plaintiff/wife informed her elder brother Pawan and her mother over the telephone, whereupon her elder brother and mother tried to talk to the defendant, but he abused them and also refused to converse with them. Thereafter, the plaintiff/wife went to Ambikapur along with her mother and brother. In the month of April, 2022, the plaintiff returned to her matrimonial home with the defendant. For some time, the defendant behaved properly with her, however, after few days, he again started hurling filthy abuses on the plaintiff and threatening to kill her. Consequently, the plaintiff/wife returned to Ambikapur along with her brother.

5. Thereafter, after lapse of some time, the defendant/husband again subjected the plaintiff/wife to physical assault and when her two younger sisters protested against such conduct, the defendant/ husband went to his house and started sending text messages containing filthy abuses on the mobile phones of the plaintiff and her two sisters as a result of which, the plaintiff and her sisters got frightened. Since the solemnization of marriage, the plaintiff was unable to lead a peaceful and harmonious matrimonial life with the defendant.

6. It is the further case of the plaintiff that the defendant also used to demand air-conditioner from the plaintiff as dowry and in the event of non-fulfillment of the said demand, he used to threaten her that he would sell her jewellery in order to satisfy his demand. Being harassed and distressed by such conduct, the plaintiff left the defendant and went to her parental home at Ambikapur, where she has been residing separately from the defendant, ever since. On the aforesaid factual premise, it was prayed that the suit filed for divorce be decreed.

:-Written Statement of the Respondent/Defendant before the Family Court:-

7. It is noteworthy that despite due service of summons, the respondent herein/defendant remained absent on 16-6-2023 before the Family Court. Consequently, the learned Family Court proceeded *ex parte* against him. Therefore, no written statement was filed on his behalf.
8. The Family Court after appreciating oral and documentary evidence available on record, framed following issues and answered the issues as under:-

S.No.	Question for Consideration	Finding
1.	क्या प्रतिवादी ने वादिनी के साथ विवाह के अनुष्ठान के पश्चात् कूरता का व्यवहार किया ?	“प्रमाणित नहीं”
2.	क्या वादिनी विवाह-विच्छेद की आज्ञा प्राप्त करने की अधिकारी है ?	“प्रमाणित नहीं”
3.	सहायता एवं वाद व्यय ?	“कंडिका 20 के अनुसार”

9. Parties were given an opportunity to adduce evidence and after completion of trial, the suit of the appellant herein/plaintiff/wife has

been dismissed vide **Judgment dated 2-4-2024**, being aggrieved against which, this appeal has been filed on the following grounds:-

(i) That the impugned judgment is illegal, erroneous and contrary to law.

(ii) That the learned Family Court while passing the impugned judgment has failed to appreciate the facts and circumstances of the case in its correct perspective resulting in erroneous finding and consequent order.

(iii) That the learned Family Court has grossly erred in recording perverse finding with respect to cruelty .

(iv) That the learned Family Court has also failed to appreciate that the evidence led by the plaintiff was not rebutted by the defendant and the same should have been considered for grant of decree of divorce.

(v) That the learned Family Court has failed to appreciate that in order to constitute ground for cruelty, the relation between parties is of such intense that they cannot live with mental agony, torture and distress.

:-Pleadings and Proceeding before the Appellate Court :-

:- Details of application under Order 41 Rule 27 of the Code of Civil Procedure: -

10. An Application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 has been moved by the appellant/plaintiff with a request that **Annexure A** (Copy of FIR dated 25/08/2026 of Crime No.101/2026

registered at Mahila Thana, Ambikapur) be taken on record, on the ground that during pendency of this appeal, non-cognizable report was lodged by the appellant on 25-08-2026, as the respondent continued to visit and harass her including at her place of office at Ambikapur and insisted her to sign on papers for divorce following which she approached the police. The aforesaid document is relevant and necessary for proper adjudication of the dispute between parties.

-: Reply to Application under Order 41 Rule 27 of the Code of Civil Procedure:-

11. Respondent/defendant Anand Kumar, remained absent before this Court even after service of notice; therefore, *ex parte* proceedings have been carried out against him vide order dated 17-8-2026. Therefore, no reply was filed on his behalf.
12. Heard on the First Appeal and the above mentioned Application. In the context of the appeal and arguments, evidence and documents, available on record of the Family Court were examined.
13. In order to dispose of this First Appeal and the Application under Order XLI Rule 47 of the Code of Civil Procedure, the following questions are to be considered:-
 - (i) Whether the documents submitted through Application under Order XLI Rule 47 of the Code of Civil Procedure, can be taken on record ?

(ii) Whether the Family Court is justified in rejecting the application filed by the Appellant-Wife for grant of decree of divorce on the ground of cruelty ?

(iii) Whether the Appellant-Wife is entitled for decree of divorce as claimed?

:-Arguments of the Appellant/Plaintiff :-

14.The counsel for the Appellant/Plaintiff assails the judgment of the Family Court mainly on the ground that the impugned judgment of the Family Court suffers from non-appreciation of materials on record and contrary to the settled principle of Matrimonial Law. The learned Family Court has failed to appreciate the pleadings and evidence in their proper perspective and has not considered the cumulative effect of the conduct complained of.

15.Relying upon the judgment of the Supreme Court in the matter of ***Vishwanath Agrawal v. Sarla Vishwanath Agrawal, (2012) 7 SCC 288***, learned counsel submits that cruelty may be mental or physical and its determination requires consideration of the nature of the conduct and its impact upon the complaining spouse. The court is required to assess the matrimonial conduct in the context of the cumulative effect of circumstances proved on record.

16.The learned counsel relying upon the judgment of the Supreme Court in the matter of ***Sanjay Kumar Singh v. State of Jharkhand, (2022) 7 SCC 247***, submits that the First Information Report regarding behaviour of the respondent is relevant for adjudication of

dispute between the parties. It is further argued that the application filed under Order XLI Rule 27 of the Code of Civil Procedure deserves to be allowed.

:-Arguments of the Respondent/Defendant :-

- 17.No argument has been advanced on behalf of the respondent, as he has been proceeded *ex parte*.
18. Notice sent to the respondent herein by this Court was returned unserved with a note that he has refused to accept the speed post notice and according to the service report, notice sent by ordinary more was returned unserved with a note that the respondent is not present. A bare perusal of the impugned judgment would also show that the respondent had not appeared before the Family Court even after service of summons and he was proceeded *ex parte*. In that view of the matter, particularly in light of the service report of the speed post wherein it has been mentioned that the respondent has refused to accept the notice, vide order dated 17-8-2026, this Court has proceeded *ex parte* against the respondent declaring the service of notice upon the respondent to be complete and proceeded further in the matter by admitting the appeal and listing the appeal for final hearing.

:- Details of evidence and documents available before the Family Court:-

19. Before the Family Court, witnesses on behalf of the appellant/plaintiff have been examined as **Archana Singh (PW-1)** and her mother **Rukmani Devi (PW-2)**. As respondent/defendant was proceeded *ex parte*, no oral or documentary evidence was adduced on his behalf.

-:Details of documents submitted by the Plaintiff: -

S.No.	Details of document	Exhibit
1.	Invitation Card of Marriage	Exhibit-1
2.	Printed copy Screen Shot of WhatsApp message	Exhibit-2
3.	Printed copy Screen Shot of WhatsApp message	Exhibit-3
4.	Court Summons	Exhibit-4

-:Analysis of the Appellate Court:-

Points for determination No. (i) -

20. First of all, considering the fact that whether the documents submitted by the appellant/plaintiff through Interlocutory Application No.2 (under the provisions of Order 41 Rule 27 of the Code of Civil Procedure, 1908) can be taken on record?

21. For this purpose, it would be appropriate to refer to the provisions contained in **Order 41 Rule 27 of the Code of Civil Procedure, 1908**. Under this provision, no additional evidence during the appeal, whether oral or documentary, is admissible; except in the following circumstances:-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause.

22. Upon examining the present case, in the context of the aforesaid provision, it is not reflected from the record of the Family Court that the appellant/plaintiff had produced these documents before the Family Court and the Family Court has refused to accept them. Apart from this, the grounds mentioned in the application filed by the appellant/plaintiff are also not to the effect that, despite exercising due diligence, she was not aware of these documents or that she was unable to produce these documents before the Family Court.

23. Now, let us consider clause (b) of the aforesaid provision of Order 41 Rule 27 of the Code of Civil Procedure, 1908. The submitted document is merely Notices and the complaint made to the police authorities. From this document, at the most, only this fact would emerge: that the appellant/plaintiff had filed a complaint at the police station against the respondent/defendant regarding an incident of harassment at the office and forcing her to sign certain documents. However, there is no material on record to indicate the outcome of the FIR, whether any private complaint was submitted before any Court, or whether the matter proceeded to trial. In absence of such information, the allegations contained in the First Information Report cannot be said to have been either proved or disproved. Therefore, there is no justification for taking the said complaint on record or placing reliance upon it for deciding the present appeal.

24. Since the requirements of Order 41 Rule 27 of the Code of Civil Procedure, 1908 have not been fully complied with, it is neither possible to admit the documents at the appellate stage nor the document is necessary for the adjudication of the case.
25. Hence the application filed by the appellant under Order XLI Rule 27 of the CPC is hereby rejected. The judicial precedent in ***Sanjay Kumar Singh*** (*supra*) relied upon by the appellant is not relevant to the facts and circumstances of the present case.
26. Therefore, in the context of this appeal, it would be appropriate to examine the evidence adduced in the Family Court, as evidence has been adduced before the Family Court on behalf of the appellant/plaintiff after sufficient opportunity has been provided.

Points for determination No. (ii) and (iii) -

27. Both the issues are interdependent on each other and, therefore, they are being decided together.
28. Although the appellant/plaintiff has instituted the suit merely seeking a declaration of dissolution of marriage, she has clearly stated in both her pleadings and evidence that her marriage was solemnized according to Hindu rites and customs. The marriage invitation card **Ex.P.1** produced by the appellant also corroborates the fact that the marriage was solemnized according to Hindu rites and customs. Therefore, the provisions contained in Section 13 of the Hindu Marriage Act, 1955 are applicable to the present case. The relevant provisions thereof are reproduced hereunder for ready reference::

{FA(MAT)No.189/2024}

“13. Divorce.—(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

(i) xxx xxx xxx

(i-a) has, after the solemnization of the marriage, treated the petitioner with **cruelty**; or

(i-b) xxx xxx xxx”

29. Section 13(1)(i-a) of the Hindu Marriage Act, 1955 provides that a decree of divorce can be granted in case after the solemnization of marriage, the petitioner has been treated with 'cruelty'. Since the present proceedings have been instituted by the appellant on the ground of **cruelty**, the question that arises for consideration is, whether the appellant has been able to establish the said ground by cogent and reliable evidence.

30. Appellant **Archana Singh (PW-1)** has adduced evidence in support of her pleadings, which has been corroborated by her mother **Rukhmani Singh (PW-2)**. Despite being afforded an opportunity, the respondent neither presented his case nor challenged the testimony of the appellant and her mother. Therefore, an adverse inference can be drawn against him. However, the Family Court upon consideration of pleadings as well as oral and documentary evidence on record, concluded that the Appellant/Plaintiff wife has failed to prove commission of 'cruelty' by the Respondent/defendant husband upon her.

31. It is noteworthy that the concept of cruelty varies from person to person. The word 'cruelty' has not been specifically defined in the

Hindu Marriage Act, 1955. However, the Supreme Court in the matter of **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511**, has laid down some situations or instances of human behaviour that would constitute mental cruelty. Paragraph 101 of the report states as under :-

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(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 sterilisation 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.”

32. The judicial precedent in **Vishwanath Agrawal** (supra) relied upon by the appellant also lays down the same principle. The Supreme Court, in the said judgment, has expressed a similar view. The relevant extract is reproduced herein-below:-

“22. The expression “cruelty” has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.”

33. In the light of the aforesaid judicial pronouncements, an examination of the present case makes it clear that the appellant is a working woman, and subjecting her to such harassment would certainly fall within the ambit of cruelty. The WhatsApp chats **Exs.P.2 & Ex.P.3** produced on record concerning the family members, viewed in their proper perspective, clearly disclose conduct falling within the ambit of mental cruelty.

34. Although the learned Family Court has discarded the said WhatsApp chats on the ground that there is no evidence establishing the identity of the holder of the mobile phone and that the chats are incomplete, it is significant that the husband has not specifically denied or controverted the contents thereof. In such circumstances, the said material cannot be altogether brushed aside or ignored.

35. Though the appellant has not complied with the provisions of the Evidence Act in respect of the WhatsApp chats, however, the Family Court is not fettered by the strict rules of relevancy and admissibility in the same manner as an ordinary civil court. Section 14 of the Family

Courts Act, 1984, confers a wider discretion upon the Family Court to receive such material as, in its opinion, may assist it in effectively adjudicating the dispute. Section 14 of the Family Courts Act states as under: -

“14. Application of Indian Evidence Act, 1872.—A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).”

36.A careful perusal of Section 14 of the Family Courts Act, 1984, would reveal that the Family Court is entitled to receive as evidence any report, statement, documents, information or matter which in its opinion would assist the said Court to deal effectually with a dispute irrespective of whether the same would otherwise be relevant or admissible under the Indian Evidence Act, 1872.

37.Furthermore, the respondent had an opportunity to appear before the Court and challenge the WhatsApp chats marked as **Exs.P.2 & P-3**. He could have contended that the mobile number mentioned in the said documents did not belong to him or that he had not sent any such messages.

38.Since the documents marked as **Exs.P-2 & P-3** produced by the appellant, have remained unchallenged, there is no reason to disbelieve them. A perusal of these documents reflects the mindset of the respondent, indicating that he did not hold a respectful or appropriate view even towards his sisters-in-law. Such conduct, particularly when directed towards the family members of the wife, would undoubtedly

cause deep mental anguish and constitute grave mental cruelty to any wife.

:-Conclusion:-

39. In view of the foregoing discussion and for the reasons recorded herein-above, we are of the considered view that the impugned judgment & decree passed by the learned Family Court suffer from errors in appreciation of the material on record warranting interference in appeal.
40. Consequently, the appeal is allowed and the impugned judgment & decree dated 2-4-2024 passed by the Judge, Family Court, Ambikapur, District Surguja in Civil Suit No.169A/2022 are set aside. It is held that the plaintiff/wife is entitled for decree of divorce, as such, it is hereby granted in favour of the plaintiff/ wife and against the defendant/ husband. Accordingly, the marriage solemnized between the plaintiff/ wife and the defendant/husband on 5-12-2021 is hereby dissolved by a decree of divorce.
41. The plaintiff/wife has not claimed any permanent alimony by making application or in the written statement, therefore, liberty is reserved in her favour for claiming permanent alimony by making a separate application under Section 25 of the Act of 1955.
42. Decree be drawn-up accordingly.

Sd/-
(Parth Prateem Sahu)
JUDGE

Sd/-
(Sushma Sawant)
JUDGE