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HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Miscellaneous Appeal No. 1319/2024
CNR: RJHC010276732024 | URN: CMA / 3138U / 2024

Smt. Lakshmi Choudhary W/o Gajendra Choudhary, Aged About 33 Years, D/o Moolaram Ji Jat, R/o Fatehgarh, Dist. Jaisalmer, Rajasthan. Presently Posted As Junior Accountant, Municipality, Jaisalmer, Jaisalmer, Rajasthan.

----Appellant

Versus

Gajendra Choudhary S/o Kojaramji, R/o Balotra, Tehsil Pachpadra, Dist. Barmer, Rajasthan.

----Respondent

Connected With

D.B. Civil Miscellaneous Appeal No. 1308/2024
CNR: RJHC010276722024 | URN: CMA / 3123U / 2024

Smt. Lakshmi Choudhary W/o Gajendra Choudhary, D/o Moola Ram ji Jat, Aged About 33 Years, R/o Fatehgarh, Dist. Jaisalmer, Rajasthan Presently Posted As Junior Accountant, Municipality Jaisalmer, Jaisalmer, Rajasthan.

----Appellant

Versus

Gajendra Choudhary S/o Kojaramji, R/o Balotra, Tehsil Pachpadra, Dist. Barmer, Rajasthan.

----Respondent

For Appellant(s) : Mr. Harshil Vyas
For Respondent(s) : Mr. Veer Bajrang Singh for Mr. JVS Deora

HON'BLE MR. JUSTICE MUNNURI LAXMAN
HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT

Order

Arguments Concluded & Order Reserved on 24/09/2026
Full order Pronounced

Date of Pronouncement 06/10/2026

Per: Yogendra Kumar Purohit, J.

01. These appeals have been preferred by the appellant, being aggrieved by the judgment dated 20-02-2024 passed by the learned Judge (Family Court), Jaisalmer. Appeal No. 1308/2024 is against the decree of divorce passed in favour of the respondent under Section 13 of the Hindu Marriage Act, whereas Appeal No. 1319/2024 is against dismissal of the application under Section 9 of the Hindu Marriage Act preferred by the appellant. Both the

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cases had been decided jointly by the learned court below by a single judgment; therefore, both the appeals were consolidated and heard together, and both the appeals are being decided together.

02. In brief, the facts of the case are that respondent Gajendra Choudhary filed an application under Section 13 of the Hindu Marriage Act before the court below, stating that the marriage between the applicant-respondent and non-applicant-appellant Lakshmi Choudhary was solemnized on 11-10-2018. The applicant and the non-applicant started their matrimonial life. The non-applicant lived with the applicant at Balotra for about 10 days. At the time of marriage, the non-applicant was posted as Junior Accountant, Municipal Council, Jaisalmer, and is still working on the same post. The applicant carries on the business of making kulfi at Balotra and his aged parents are dependent upon him. After living with the applicant at Balotra for 10 days, the non-applicant went to Jaisalmer for her job.

03. Thereafter, the applicant also went to Jaisalmer and stayed with her for about 15-20 days, whereupon he noticed a difference of night and day in the nature and behaviour of the non-applicant. The non-applicant used to get off from her office at 6:00 p.m., yet she would return only after 8:30 p.m. A superiority complex took hold of the mind of the non-applicant. She did not prepare and provide food on time. On being told repeatedly, she used to taunt the applicant-respondent by saying that she had been married to a kulfi seller. The non-applicant was not happy with this marriage

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with the applicant. She did not permit the applicant to establish physical relations and refused cohabitation, and the non-applicant threatened the applicant that she would consume poison and commit suicide and behaved badly with the applicant. She used to subject the applicant to mental and physical cruelty, on account of which the applicant returned to his home at Balotra.

04. There were no physical relations between the applicant and the non-applicant after 25-10-2018. Both have been living separately. The non-applicant does not permit the applicant to establish physical relations. The non-applicant has voluntarily deserted the applicant for the last more than two years. On this basis, a prayer was made for grant of a decree declaring dissolution of the marriage solemnized between the applicant and the non-applicant on 11-10-2018.

05. On behalf of the non-applicant-wife, a reply to the aforesaid application under Section 13 of the Hindu Marriage Act was submitted, stating that initially the non-applicant came to Jaisalmer after residing at Balotra for 10-15 days. Thereafter, for some days, the applicant came to Jaisalmer and started living with the non-applicant. During that period, the behaviour of the applicant towards the non-applicant became cruel and he started quarrelling every day over petty matters and, by emotionally pressurising the non-applicant according to his needs, started taking money from her salary and, upon her refusal to give money, he would quarrel and create a commotion.

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06. The non-applicant gave money from her salary several times, but the greed of the applicant increased day by day. After snatching money from the non-applicant and quarrelling, he would go often to his parents' house at Balotra and would always evade his matrimonial obligations. For several months at a time, the applicant did not take any care of the non-applicant. The applicant frequently threatened the non-applicant over the mobile phone that either she should leave her job and come to Balotra or give him half of her salary. The applicant has, for about the last two years, deserted the non-applicant without any reasonable cause.

07. He neither himself came and lived with the non-applicant nor did he allow the non-applicant to come to Balotra; rather, he also refused several times to allow her to come. Due to this conduct, the applicant withdrew her from his society from 15-05-2020. The non-applicant is ready to live with the applicant as his wife. In the end, a prayer was made for dismissal of the application.

08. The facts stated by both parties in respect of Section 13 were also stated by the appellant in the application filed under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. The appellant prayed for grant of a decree for restitution of conjugal rights, whereas the non-applicant-respondent prayed for dismissal of the said application. The learned trial court consolidated both the cases and tried them together.

09. On the basis of the pleadings of the parties, the following issues were framed:

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"**01.** आया याचिका संख्या 2/2023 में याचिकाकर्ता गजेन्द्र चौधरी याचिका में वर्णित तथ्यों के आधार पर याचिकाकर्ता गजेन्द्र चौधरी विपक्षीया श्रीमती लक्ष्मी चौधरी से हिन्दू विवाह अधिनियम की धारा 13 के अंतर्गत विवाह विच्छेद की डिक्री प्राप्त करने का अधिकारी है?

02. आया याचिका संख्या 31/2022 में याचिकाकर्ता लक्ष्मी चौधरी याचिका में वर्णित तथ्यों के आधार पर याचिकाकर्ता लक्ष्मी चौधरी विपक्षी गजेन्द्र चौधरी से हिन्दू विवाह अधिनियम की धारा 9 के अंतर्गत दाम्पत्य अधिकारों के पुर्नस्थापना की डिक्री प्राप्त करने की अधिकारी है?

03. अनुतोष।"

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10. The trial court recorded the evidence of both parties and heard the arguments, and by the impugned judgment dated 20-02-2024, while allowing the application under Section 13 of the Hindu Marriage Act, granted a decree dissolving, with effect from 20-02-2024, the marriage dated 11-10-2018 solemnized between the non-applicant-appellant and the applicant-respondent, and dismissed the petition of the appellant under Section 9 of the Hindu Marriage Act. Being aggrieved by the decision on both applications, two separate appeals were preferred, which, as stated above, have been consolidated and are being decided together.

11. In both appeals, the appellant submitted that the order of the learned court below was not based upon evidence and law, and prayed that the judgment of the court below be set aside, the application under Section 13 of the Hindu Marriage Act be dismissed, and the application under Section 9 of the Hindu Marriage Act be allowed and a decree for restitution of conjugal rights be granted.

12. The learned counsel for the parties were heard. Learned counsel for the appellant, while reiterating the facts presented

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before the court below and the facts stated in the appeal, submitted that the order of the learned court below is not based upon evidence led and law and prayed that it be set aside. Learned counsel appearing on behalf of the respondent submitted that the judgment of the learned court below was based upon evidence and law and prayed that the appeals be dismissed.

13. In accordance with the judgment of the learned court below, Issues Nos. 1 and 2 are being considered together.

14. We have considered the aforesaid facts and arguments. In the present case, the respondent had filed an application seeking a decree of divorce on the grounds mentioned in Section 13 of the Hindu Marriage Act, 1955, namely, under Section 13(1)(ia) on the ground of cruelty and under Section 13(1)(ib) on the ground of desertion, and the appellant had filed an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. The learned court below passed a decree of divorce on the ground of cruelty under Section 13(1)(ia) and dismissed the application under Section 9 of the Hindu Marriage Act.

15. First of all, the legal position with regard to grant of a decree of divorce on the ground of cruelty under Section 13(1)(ia) is being considered. Section 13(1)(ia) provides for grant of a decree of divorce on the ground of cruelty, although cruelty has not been defined therein. The Hon'ble Supreme Court, while considering cruelty in its judicial precedent ***Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511 : 2007 SCC OnLine SC 423 at page 546***,

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considered the matter in detail and, primarily while considering "mental cruelty", stated in paragraph 101 as follows:

> 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

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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.

16. In the Hon'ble Supreme Court's latest reportable judgment, ***Sonal Talpada Vs. Veerbhan Singh***, **2026 INSC 620**, **decided on 02-06-2026**, while considering the aforesaid *Samar Ghosh* case, paragraphs 16 and 19 state as follows:

16. Though with respect to 'cruelty' no uniform standard can ever be laid down for guidance, yet this Court in *Samar Ghosh* (supra) deemed it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty': "Para 101…… (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." (emphasis supplied)

19. As held in the case of *Samar Ghosh* (supra) and other catena of judgments by this Court, denial of conjugal rights including persistent refusal of sexual intercourse without a reasonable cause constitutes mental cruelty and is a valid ground for divorce under Section 13(1)(ia) of the HMA. The courts in India have repeatedly established that withholding sexual intimacy inflicts severe emotional distress and undermines the bedrock of marriage. Therefore, the conclusion of the High Court is sustained. The decree of

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divorce as granted by allowing the appeal of the Respondent-husband is upheld.

17. Keeping the aforesaid legal position in mind, the facts and evidence in the present case are being considered. In the present case, it is an admitted position that the appellant and respondent were married on 11-10-2018 and the appellant, prior to the marriage, was working as Junior Accountant, Municipal Council, Jaisalmer, and after the marriage also she continued to work as Junior Accountant, Municipal Council, Jaisalmer, while the respondent carries on the business of making kulfi at Balotra. The respondent-husband stated that after the marriage, the appellant-wife lived with the respondent at Balotra for 10 days and thereafter went to Jaisalmer for her job and stated that he himself lived with the appellant at Jaisalmer for about 15-20 days and that after 25-10-2018 there were no physical relations, both were living separately, and that the applicant-respondent had also pleaded that the appellant did not permit him to establish physical relations and that the non-applicant threatened the applicant that she would consume poison and commit suicide. On behalf of the non-applicant-appellant, in her reply, she stated that initially she came to Jaisalmer after residing at Balotra for 10-15 days and that for some days thereafter the respondent came to Jaisalmer and lived with the appellant. In her reply, she did not state that physical relations were established after 25-10-2018 or that she had permitted establishment of physical relations.

18. In the court below, respondent Gajendra Choudhary was examined as A.W. 01, in which he repeated the pleadings that had been presented and clearly stated that the non-applicant-appellant

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lived with him at Balotra for 10 days and thereafter went to Jaisalmer for her job and that for about 15-20 days the respondent lived with her, and it was clearly stated in the affidavit filed for examination-in-chief that after 25-10-2018 there were no physical relations and both were living separately. The non-applicant did not permit the applicant to establish physical relations, and the non-applicant also threatened the applicant that she would consume poison and commit suicide. The non-applicant Lakshmi also got her own suicide note, relating to ending her life, exhibited as Exhibit-1. In cross-examination also, the respondent admitted that he had mentioned in his claim that after 25-10-2018 there were no physical relations between the witness and Lakshmi; he also admitted that in the claim it was stated that he lived with Lakshmi only until 25-10-2018 and thereafter did not live with her. In cross-examination, it was suggested to him that he had lived with Lakshmi until 15-05-2020, which he denied. This witness was not given any suggestion that even after 25-10-2018 there were physical relations between the appellant and respondent and that the appellant had never refused physical relations.

19. In the evidence given by the appellant Smt. Lakshmi as D.W. 01, she admitted in cross-examination that after the marriage there was no quarrel between the witness and Gajendra regarding any major issue. She herself stated that quarrels had taken place over petty matters. She admitted that the witness had joined service in 2016, her first posting was at Jaisalmer, and she has been in service at Jaisalmer from 2016 till date. They have had no

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child for all these years. There was no physical incapacity between the witness and her husband and no tests etc. had been conducted between them. In cross-examination, she also stated that since joining service she had been living at Jaisalmer with her sister. In cross-examination, she also stated that she wanted to live with Gajendra but did not want to go to Balotra and live with him.

20. In cross-examination, it was stated that in the year 2020, when this letter was got written from the witness, the witness had knowledge of the same since then. The witness admitted that the witness had knowledge of Exhibit-1 letter prior to filing the divorce petition. Thereafter, the witness did not take any action regarding Exhibit-1 before the police or the Court or anywhere else.

21. According to the pleadings and evidence described in the judgment, it is proved from Exhibit 1 that the appellant-wife threatened the respondent-applicant husband with suicide, and this is also clear from the testimony of D.W.1. There is no physical incapacity between the appellant and the respondent, and in such a situation, without any valid reason, there have been no physical relations between the appellant and the respondent since 25-10-2018, and the fact that the appellant did not give her consent for the same is also clear from the pleadings and evidence.

22. In the present case, in accordance with paragraph 101(xii) of the aforesaid *Samar Ghosh* case of the Hon'ble Supreme Court, the appellant has refused to have physical relations unilaterally for a considerably long period without “physical incapacity” or a valid

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reason, which falls within the definition of "mental cruelty" and, in accordance with the aforesaid *Sonal Talpada* case of the Hon'ble Supreme Court also, the absence of physical relations from 25-10-2018 and the appellant's refusal to permit establishment of physical relations falls within the category of mental cruelty and giving threats of suicide also falls within the category of mental cruelty. Which is a valid ground for divorce under Section 13(1)(ia) of the Hindu Marriage Act.

23. From the discussion made above, it is clear that the decree of divorce granted by the learned trial court under Section 13(1)(ia) on the ground of cruelty is based upon evidence and law. Interference in this decree does not appear to be permissible in law.

24. In such circumstances, the appeal preferred against the decree under Section 13 of the Hindu Marriage Act is liable to be dismissed.

25. So far as the question of Section 9 is concerned, once it has been decided that the appeal preferred against the decree of divorce is liable to be dismissed, in such circumstances, consideration of restitution of conjugal rights under Section 9 of the Hindu Marriage Act is also not permissible in law. Therefore, the appeal preferred against the decree under Section 9 of the Hindu Marriage Act is also liable to be dismissed.

26. In this view of the matter, the findings of the learned trial court on Issues Nos. 1 and 2, being based upon evidence and law, are affirmed.

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27. Accordingly, both the appeals are dismissed. If any stay application is pending, the same is also disposed of in both the appeals.

(YOGENDRA KUMAR PUROHIT),J (MUNNURI LAXMAN),J

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