



CGHC010454642024

2026:CGHC:41478-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

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Judgment Reserved on: 17-09-2026

Judgment Pronounced on : 24-09-2026

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FA(MAT) No. 8 of 2025

(Arising out of judgment and decree dated 11.11.2024, passed in Ciil Suit No.290A/2021 (Devashish Vishwas v. Smt. Ekta Vishwas) by the Family Court, Ambikapur, District Sarguja (CG))

Smt. Ekta Vishwas W/o Devashish Vishwas Aged About 26 Years D/o Kishor Ghosh, R/o House No. 28, Bangali Para, Ward No. 3 Dairy Farm Road, Banaras Road, Near Shiv Mandir, Police Station Gandhinagar, Tehsil Ambikapur, District Sarguja Chhattisgarh.

**... Appellant/
Defendant**

Versus

Devashish Vishwas S/o Dulal Vishwas Aged About 38 Years R/o Santoshi Nagar, P.O. Bardar, Police Station And Tehsil Balrampur, District Balrampur Ramanujganj Chhattisgarh Current Address Through Commandant Chhattisgarh Armed Forces, 6th Battallion, Raigarh, Narayanpur, District Narayanpur Chhattisgarh.

**... Respondent/
Plaintiff**

[Cause-title taken from Case Information System (CIS)]

For Appellant : Mr. Praveen Soni, Advocate
For Respondent : Mr. Vidya Bhushan Soni, Advocate

Division Bench

**Hon'ble Mr. Justice Parth Prateem Sahu, and
Hon'ble Mrs. Justice Sushma Sawant**

CAV Judgment

Sushma Sawant, J.

1. Invoking the jurisdiction of this Court under Section 19(1) of the Family Courts Act, 1984 (for short the “Act of 1984”) the appellant herein/defendant wife has preferred this appeal challenging the judgment & decree dated 11.11.2024, passed by the Judge, Family Court, Ambikapur, District Surguja in **Civil Suit No.290A/2021 (Devashish Vishwas v. Smt. Ekta Vishwas)** by which though the application filed by the respondent herein/plaintiff husband under Section 13 of the Hindu Marriage Act, 1955 for grant of a decree of divorce against the appellant herein/defendant wife has been allowed but the learned Family Court also failed to provide permanent alimony to the appellant/defendant.

2. 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

-:Admitted facts between the parties:-

3. The marriage of respondent herein/plaintiff **Devashish Vishwas** was solemnized with appellant herein/defendant **Smt. Ekta Vishwas** in accordance with the Hindu rites and customs, on 17.02.2016 and, a child was born from the said marriage. After the marriage, both the parties lived together for only 6-7 days with each

other and as the respondent /plaintiff husband was a Government employee he went Dantewada for performing his duties and, at the same time, the appellant/defendant wife went to the Hostel for her nursing education.

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

4. Respondent herein/plaintiff **Devashish Vishwas** filed Original **Civil Suit No.290A/2021 (Devashish Vishwas v. Smt. Ekta Vishwas)** for a decree of divorce on the ground of 'cruelty' committed by appellant herein/defendant **Smt. Ekta Vishwas**. According to the plaint allegations, when the appellant/defendant wife completed her nursing education, she came back to her matrimonial house and, thereafter, she did not used to do any kind of house-hold work which were generally performed by a house-wife and the appellant/defendant wife used to quarrel with the parents of the respondent/plaintiff husband and, even used to go her parental house very frequently that too without informing anyone in the family of the respondent/plaintiff husband.

5. It is the further case of the respondent/ plaintiff husband that the appellant/wife used to deliberately quarrel with him and tried to harass him mentally. According to the plaintiff/husband, the defendant/wife used to have illicit relationship with some other and, in absence of the respondent/plaintiff husband, she used to make telephonic conversation with him and even she used to call him in the house in absence of the plaintiff/husband. Due to the appellant/defendant

establishing an illicit relationship with another man in the respondent/plaintiff's absence, the plaintiff suffered severe mental anguish. He began to feel that his future was becoming uncertain and feared that if the defendant continued to live with him, she might even kill him. Because of the resulting stress, he was unable to perform his duties properly.

6. It is also the case of the plaintiff/husband that the defendant/wife did not even take proper care of their two-year-old daughter. The defendant/wife repeatedly went to her maternal home. She did not want to live with the plaintiff under any circumstances or lead a married life with him. Rather, with the intention of harassing the plaintiff, she submitted completely false and fabricated applications against him to his department, alleging various matters and wanted to initiate proceedings. The plaintiff also came to know that the defendant had established an illicit relationship with another man from her parental village. Since the defendant has deliberately abandoned the matrimonial home and is living separately, the petitioner has no option left except to seek dissolution of the marriage. Therefore, on the aforesaid factual premise, it was prayed that the suit filed for divorce be decreed.

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

7. After service of the summons, the defendant/wife appeared and filed her written statement, denying the facts stated in the application and pleaded that when she was a first-year nursing student, the plaintiff's family members approached her family with a marriage

proposal. After consulting persons from the defendant's caste/community, her family accepted the plaintiff's proposal. At the time of finalizing the marriage, the plaintiff had promised the respondent/plaintiff husband's family that he would bear the entire fee for her nursing course. However, subsequently, the plaintiff did not fulfill his promise and paid only ₹50,000 towards the defendant's education/hostel expenses, while all the remaining expenses were borne by the defendant's parents.

8. It is also stated by the defendant that the family members of the plaintiff used to misbehave with her and physically harass her. However, in order to preserve her married life, she tolerated the said harassment. The mother of the plaintiff demanded ₹4,00,000 from her and pressurized her to have 10 decimals of her father's land transferred in the name of plaintiff. She was harassed day after day over these demands. When the plaintiff came to know about the said harassment being inflicted upon the defendant by her in-laws, he supported the same. Therefore, in January 2017, after informing the plaintiff about all the aforesaid facts and obtaining his permission, she returned to her parental home.

9. It is also stated by the defendant that from the very beginning, the plaintiff had relationships with other women. The plaintiff established illicit relationship with a woman named Ankita Minj. Because of this, the plaintiff would abuse her using filthy/obscene language and threaten to throw her out of the house. Nevertheless, she continued to tolerate the plaintiff's harassment in order to save her married life.

When, the defendant became pregnant and she informed the plaintiff about the pregnancy, he started pressuring her to terminate the pregnancy. Since the plaintiff did not want the child, he took the defendant to Mission Hospital, Raigarh, purportedly for a routine check-up, and, without informing her or obtaining her knowledge/consent, had her given an injection. As a result, after some time, the defendant suffered a miscarriage. After learning about the above act, the plaintiff also threatened her stating that if she told anyone about it, he would kill her. Because of the miscarriage, the defendant's condition became critical and her entire medical treatment was borne by her mother.

10. It has been further stated by the defendant that the plaintiff used to make allegation about the character of the defendant. Indeed, the plaintiff himself has been a person of licentious character from the very beginning. After the marriage, he carried on illicit relationships with Ankita Minj and Pinki Thakur. When the defendant/wife learned of this, the plaintiff, in order to conceal his conduct, would harass her and repeatedly send her back to her parental home. Even, while staying at her parental home, when she made inquiries about the plaintiff, she learned that the plaintiff, at his workplace, was keeping another woman with him and had established an immoral relationship with her. Because the plaintiff has established an illicit relationship with another woman, he does not wish to keep the defendant and their daughter with him. The defendant has not mistreated the plaintiff or his family in any way. She still wishes to live with the plaintiff today and continue their

married life and, as such, she filed a case against the plaintiff under Section 9 of the Hindu Marriage Act (restitution of conjugal rights) and since the plaintiff wants to obtain a decree of divorce on the basis of false facts, the same is liable to be dismissed.

11. 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.	Whether the defendant/wife after solemnization of her marriage with the plaintiff/husband, treated the plaintiff/husband with cruelty?	“Proved”
2.	Relief and costs of the suit	“As per para-30 of the impugned judgment”

12. Parties were given an opportunity to adduce evidence and after completion of trial, the suit of the respondent/herein/plaintiff/husband has been allowed vide **Judgment dated 11.11.2024**, whereby though a decree of divorce has been granted in favour of the plaintiff/husband but the learned trial Court failed to provide permanent alimony to the appellant/defendant, being aggrieved against which, this appeal has been filed on the following grounds:-

(i) That, the learned Family Court while passing the impugned judgment has failed to appreciate the pleadings, the evidence and the material brought on records by the parties in its correct

prospective which has resulted the erroneous findings and consequent judgment.

(ii) That the claim of the respondent/ plaintiff husband of cruelty is unsustainable and lacks corroboration. The allegations that the appellant misbehaved, refused to do housework or fought with his family are vague and devoid of concrete incidents or witnesses.

(iii) That the respondent/plaintiff husbands' extramarital relationships with women, namely, Ankita Minz and Pinky Thakur, amount to gross martial misconduct. Such behavior undermines the sanity of marriage and shifts the blame for marital discord onto the respondent/plaintiff husband .

(iv) That, the respondent/ plaintiff husband initiated the divorce case on baseless grounds to hide his extramarital relationships. The timing and progression of the divorce case reflects his intention to avoid marital responsibilities rather than genuine grievances.

(v) That the learned Court while granting the decree of divorce in favour of the respondent/ plaintiff husband has failed to provide permanent alimony to the appellant.

(vi) That, Section 25 of the Act of 1955 mandates the court to consider awarding permanent alimony to the spouse unable to maintain themselves after a divorce decree. The denial of alimony disregards the appellant's dependence on the respondent

/plaintiff husband and her need for financial security for herself and her child.

(vii) that, the appellant has sole responsibility for raising the minor child, who is entitled to financial support for the respondent/plaintiff husband . Denying alimony effectively shifts the entire burden onto the appellant, jeopardizing the child's welfare and violating the principle that both parents must contribute to their child's upbringing.

(viii) That, the judgment passed by the learned family Court is illegal, erroneous and contrary to law and is liable to be set aside.

13. Heard on the Appeal. In the context of the appeal and arguments, evidence and documents, available on record of the Family Court were examined.

14. In order to dispose of this First Appeal, the following questions are to be considered:-

(i) Whether the Family Court is justified in allowing the application filed by the Respondent /plaintiff husband for grant of decree of divorce on the ground of cruelty that too without providing permanent alimony?

(ii) Whether the Appellant-Wife is entitled for permanent alimony ?

:-Arguments of the Appellant/Plaintiff:-

15. The learned counsel for the appellant, while assailing the findings recorded by the learned Trial Court, has submitted, with reference to the

grounds raised in the appeal, that the finding regarding the alleged extra-marital relationship of the wife is wholly unsustainable. It is contended that the husband had levelled a serious allegation against the wife that she was having an illicit relationship with another person, but, despite making such a grave allegation, he failed to produce or place on record the alleged CD, which was stated to contain material in support of the said allegation. Thus, the very material relied upon by the husband has not been brought on record or proved in accordance with law.

16. It is further argued that the allegation against the wife is based merely upon an unsubstantiated assertion and is not supported by any cogent or reliable material. According to learned counsel, where a party makes a serious allegation affecting the character and reputation of the spouse, the same cannot be accepted merely on the basis of pleadings or bald oral assertions, particularly when the alleged supporting material has not been produced before the Court.

17. In the written arguments, learned counsel for the appellant has particularly emphasized the issue of alimony and submitted that no order with regard to alimony has been passed by the learned Trial Court. It is, therefore, prayed that this Court may consider and decide the claim for alimony, keeping in view the financial capacity and income of the husband, who is serving as a Constable, the needs of the wife and the minor daughter, and the status and standard of living of the parties.

:-Arguments of the Respondent/Plaintiff:-

18. Per contra, learned counsel for the respondent /plaintiff husband has supported the impugned judgment and submitted that the same is just, proper and based on due appreciation of the oral and documentary evidence available on record. It is contended that the learned Trial Court has considered the pleadings and evidence in their proper perspective and has recorded findings which are well-reasoned and supported by the material on record. No perversity, illegality or material irregularity has been pointed out warranting interference by this Court in appeal. It is, therefore, submitted that the appeal, being devoid of merit, deserves to be dismissed and the impugned judgment affirmed.

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

19. Before the Family Court, witnesses on behalf of the appellant/defendant wife have been examined as **Smt. Ekta Vishwas (DW-1)**, whereas on behalf of the respondent/plaintiff husband- **Devashish Vishwas (PW-1)**, and his mother **Smt. Laxmi Vishwas (PW-2)**.

-:Details of documents submitted by the Parties : -

20. It is particularly significant that, apart from the oral evidence, neither party has produced any documentary evidence in support of their respective case.

-:Analysis of the Appellate Court:-

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

21. Both the issues are interdependent on each other and therefore ,they all are being decided together.

22.The parties, in support of their respective pleadings, have led elaborate oral evidence and levelled allegations and counter-allegations against each other concerning their character. A perusal of the evidence makes it apparent that the matrimonial relationship between the parties was never normal after their marriage. Therefore, an elaborate reappraisal of the entire evidence by the appellate Court would serve no useful purpose.

23. The only question that remains to be examined is as to **which side has subjected the other to greater cruelty**. Since both parties have levelled allegations against each other regarding their character, the controversy involved in the present case lies within a narrow compass. The **respondent /plaintiff husband**, along with various other allegations, has alleged that the **appellant/defendant wife** had an illicit relationship with one Afsar Khan. Except for his own statement, the applicant has not produced any independent evidence, such the alleged CD containing recording of telephonic conversation or the statement of eyewitnesses, in support of the said allegation.

24. However, certain suggestions put by the **appellant/defendant wife** to the **respondent /plaintiff husband**, in his cross-examination are relevant in this regard. In particular, the suggestions made by her in paragraphs 19, 20 and 22 of the cross-examination are noteworthy, wherein she went to the extent of suggesting that she had apologized to the **respondent /plaintiff husband**, in connection

with the alleged Afsar Khan incident. If no such incident had ever occurred between the parties, there would ordinarily have been no occasion for such a suggestion regarding an apology. These circumstances, therefore, lend support to the applicant's case that an incident concerning Afsar Khan had in fact arisen between the parties.

25. Most importantly, on this aspect, although the mother (Savita Ghosh) of **appellant/defendant wife** filed an affidavit under Order VIII rule 4 of the Code of Civil Procedure in support /of the **appellant/defendant wife**, but did not enter the witness box to subject herself to cross-examination. In view of the suggestions put in cross-examination, coupled with the aforesaid circumstances, an adverse inference can legitimately be drawn against the **appellant/defendant wife**.

26. The fact that the **appellant/defendant wife** has also made allegations regarding the **respondent /plaintiff husband's** relationships with other women indicates that allegations concerning the conduct of the parties formed part of the matrimonial dispute between them. This circumstance is relevant while appreciating the respective versions of the parties. On an overall consideration of the evidence, the version of the **respondent /plaintiff husband** appears to merit greater acceptance on this aspect.

27. The present petition has been filed on the grounds of cruelty, desertion and adultery. However, a perusal of the pleadings as a whole indicates that the principal allegations relate to cruelty, and the Trial Court framed an issue only with regard to cruelty. The

appellant/defendant wife did not oppose the framing of the issue and raised only a formal objection with regard to the finding of cruelty. This conduct may also be taken into consideration while examining whether she was willing to resume cohabitation with her husband.

28. For the sake of argument, even if the aforesaid facts are not taken into account, the material available on the record of the Family Court indicates that the conduct of the **appellant/defendant wife** was more **attributable** to the circumstances of the present case. The wife's alleged closeness with another person would, in the circumstances, constitute mental cruelty towards the husband. Likewise, making allegations against the husband of having an illicit relationship with another woman, without sufficient basis, may also constitute mental cruelty.

29. As regards the concept of cruelty, the Hon'ble Supreme Court has explained in several decisions that no strait jacket formula can be laid down for determining what constitutes mental or physical cruelty; the issue has to be examined having regard to the peculiar facts and circumstances of each case.

30. In *Ravi Kumar v. Julmidevi, (2010) 4 SCC 476*, the Apex Court held that cruelty cannot be precisely defined and must be assessed on the facts and circumstances of each case. It may arise from acts, omissions, words, gestures or silence, and the cumulative effect of the conduct on the marital relationship is required to be considered. The categories of cruelty are not exhaustive. The relevant paragraphs of the said judgment are reproduced herein below:

“It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometimes cruelty in a matrimonial relationship may take the form of violence, sometimes it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty.”

31. Further, in *Roopa Soni v. Kamalnarayan Soni 2023 SCC*

OnLine SC 1127, the Hon'ble Supreme Court held that –

“The word –cruelty u/s 13(1)(ia) of the 1955 Act has got no fixed meaning, and therefore, gives a very wide discretion to the Court to apply it liberally and contextually. What is cruelty in one case may not be the same for another. As stated, it has to be applied from person to person while taking note of the attending circumstances.”

32. Having regard to the principles enunciated in the aforesaid judgments, and upon consideration of the facts and circumstances of the present case, the conduct of the wife towards the husband is found to constitute cruelty.

33. More importantly, the circumstances of the case, viewed as a whole, indicate that the wife had no intention of resuming cohabitation with the husband and was primarily concerned with her claim for alimony. Significantly, she has remained silent even with regard to the outcome of her claim for restitution of conjugal rights (Order sheet dated 16-10-2024 of Family Court is relevant). In these circumstances,

the Trial Court cannot be said to have committed any error in recording its finding in favour of the husband.

:-Section 25 of Hindu Marriage Act.1955 :-

34. Alongwith appeal, the respondent/defendant/wife filed an application under Section 25 of the Hindu Marriage Act, 1955 seeking grant of permanent alimony. Learned counsel for both the parties advanced their respective submissions on the said application as well.

35. As regards the grant of alimony under Section 25, both parties have filed the requisite affidavits in terms of the directions issued by the Hon'ble Supreme Court in case of ***Rajnesh Vs. Neha and another 2021 (2) SCC 324***. However, the wife neither made any specific claim for alimony before the Family Court nor led any evidence in support thereof.

36. Reference to Section 25 at this stage would be appropriate, which reads as under:—

“25. Permanent alimony and maintenance.-

(1)Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall *** pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant , the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2)If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either

party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.”

37. The provision itself makes it clear that, upon an application being made in this regard, the amount of permanent alimony is to be determined after due consideration of the relevant circumstances. The aforesaid principle has also been reiterated by the Hon’ble Supreme Court in ***Vinny Parmvir Parmar v. Parmvir Parmar, (2011) 13 SCC 112***, wherein it has been held that the income and property of both parties, their respective needs, the status of the parties, the capacity of the husband to pay and other relevant circumstances are required to be taken into consideration while determining permanent alimony. The same principle has subsequently been reiterated in ***U. Sree v. U. Srinivas, (2013) 2 SCC 114***.

38. The Supreme Court in **Rajnesh** (supra) dealt extensively with the **criteria for determining maintenance/permanent alimony** and specifically observed that, for permanent alimony, parties may lead oral and documentary evidence regarding **income, expenditure and standard of living** before the Court for fixing the amount.

39. It is significant that the wife did not make any application seeking alimony before the Family Court, nor did she place any evidence on record in support of such claim. In such circumstances, the claim for

alimony cannot appropriately be adjudicated by this Court for the first time in appellate jurisdiction, without the relevant facts and material having been considered by the Court of first instance.

40. In view of the aforesaid provision, the wife may initiate appropriate proceedings separately for determination of permanent alimony in accordance with law.

:-Conclusion:-

41. Accordingly, the **appeal is dismissed** and the judgment and decree dated 11.11.2024, passed by the learned Family Court in Civil Suit No.290A/2021 (Devashish Vishwas v. Smt. Ekta Vishwas) are affirmed.

42. As regards the claim for permanent alimony under Section 25 of the Hindu Marriage Act, 1955, no order is called for in the present proceedings, particularly when no such claim was made before the learned Family Court and no evidence was led in that regard. However, the wife shall be at liberty to file an appropriate application under Section 25 of the Act, if so advised, which shall be considered by the competent Court in accordance with law.

43. Decree be drawn-up accordingly.

Sd/-
(Parth Prateem Sahu)
Judge

sd/-
(Sushma Sawant)
Judge