



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

D.B. Civil Miscellaneous Appeal No. 422/2026
CNR: RJHC010079562026 | URN: CMA / 743U / 2026

Laxmi W/o Dhul Ji Alias Dhuleshwar, Aged About 31 Years, R/o Anjana, Dist. Banswara Present Address- C/o Father Kachru Tirgar R/o Bhano Ka Parda, Tehsil- Arthuna, District- Banswara
-----Appellant

Versus

Dhulji Alias Dhuleshwar S/o Khemji, R/o Anjana, Tehsil Arthuna , District Banswara Raj.
-----Respondent

For Appellant(s) : Mr. Hemank Vaishnav
For Respondent(s) : Mr. Shambhoo Singh Rathore

**HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SUNIL BENIWAL**

Order(Oral)

Reportable

09/10/2026

Per: Arun Monga, J

1. The appellant-wife is before us assailing the judgment and decree dated 19.12.2025 passed by the learned Family Court, Banswara, whereby the divorce petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955, was allowed and the marriage between the parties was dissolved.
2. The marriage between the parties was solemnized on 11.05.2005, from which a son was born. The respondent-husband sought dissolution of marriage alleging that the appellant-wife subjected him to mental and physical cruelty, frequently quarreled with him and left the matrimonial home along with their son about six years prior to filing the



divorce petition, without justifiable reason. He contended that there was no possibility of resumption of marital relations.

2.1 The appellant-wife contested the petition, denying the allegations and asserting that the respondent-husband had subjected her to cruelty on account of dowry demands, withheld household expenses and made allegations against her character. She claimed that she was forcibly turned out of the matrimonial home on 12.11.2015, leading to registration of FIR No. 01/2016 under Sections 498-A and 323 IPC. She maintained that the respondent-husband's acquittal in the criminal case did not negate the alleged matrimonial cruelty. She also relied on the maintenance order passed by the Gram Nyayalaya, Garhi, directing payment of Rs. 3,000 per month and expressed her willingness to resume marital life.

2.2 The learned Family Court, upon considering the evidence led by the parties, allowed the divorce petition and dissolved the marriage by the impugned judgment and decree dated 19.12.2025. Aggrieved thereby, the appellant-wife has preferred the present appeal.

3. Learned counsel for the appellant-wife submits that the learned Family Court granted a decree of divorce under Section 13 of the Hindu Marriage Act, 1955, without the respondent-husband establishing cruelty or desertion as required under Sections 13(1)(i-a) and 13(1)(i-b) of the Act. He contends that the allegations, including those concerning the appellant-wife's alleged association with other persons, were vague and unsupported by cogent evidence. It is submitted that the impugned judgment does not record specific findings on the nature of the alleged cruelty, the factum of desertion, *animus deserendi* or completion of the requisite statutory period.



3.1 Learned counsel further argues that the finding of desertion is contrary to the evidence, which, according to him, shows that the respondent-husband abandoned the appellant-wife and their minor son and failed to discharge his marital and parental obligations. He submits that the appellant-wife was forced to leave the matrimonial home due to dowry demands and that the respondent-husband's acquittal in the criminal case does not, by itself, rule out cruelty in matrimonial proceedings. He emphasizes that the appellant-wife has consistently expressed her willingness to resume cohabitation and preserve the marriage.

3.2 Learned counsel lastly submits that the respondent-husband has neglected the appellant-wife and their minor son by failing to pay maintenance of Rs. 3,000 per month despite the order passed by the Gram Nyayalaya, Garhi. It is submitted that such non-payment reflects continued neglect and constitutes economic cruelty. He contends that the learned Family Court overlooked these circumstances and granted divorce on the basis of presumptions and conjectures rather than cogent evidence.

4. *Per contra*, learned counsel for the respondent-husband opposes the submissions advanced by the appellant-wife and submits that the learned Family Court has rightly allowed the divorce petition on the basis of the material available on record. He, therefore, seeks dismissal of the present appeal.

5. In the aforesaid backdrop, we have heard learned counsels for both the parties and perused the record.

6. Following issues (Translated in English) were framed by learned Family Court :-

"03. On the basis of the pleadings of both parties, the following issues were framed:



1. Whether, soon after the solemnization of the marriage between the petitioner and the respondent-wife on 11.05.2005, the conduct of the respondent-wife towards the petitioner has been cruel, and whether the respondent-wife has deprived the petitioner of matrimonial companionship for the last six years without any reasonable cause and deserted him, pursuant to which the petitioner and the respondent-wife have been residing separately, thereby entitling the petitioner to a decree of divorce?

Petitioner

2. Whether, in view of the objections raised by the respondent-wife in her written statement, the petitioner is not entitled to a decree of divorce?

Respondent-wife

3. Relief?"

7. Before proceeding further, it would be apposite to notice the impugned judgment dated 19.12.2025. The relevant portion thereof, translated into English, is reproduced hereinbelow:

(xxxx.....xxxx.....xxxx)

"Issue Nos. 01 and 02

Both the aforesaid issues are interrelated, and keeping in view the fact that repetition of evidence should be avoided, it appears just and proper to decide both these issues together. The burden of proving Issue No. 01 lies upon the petitioner, whereas the burden of proving Issue No. 02 lies upon the respondent-wife.

The petitioner has instituted the present petition for dissolution of marriage primarily on two grounds. In support thereof, the petitioner examined himself by submitting his affidavit as Witness A.W.1. The principal allegations made by him are that the respondent-wife did not discharge her marital duties and, in his absence, remained engaged in conversations over a mobile phone with several objectionable persons. When the petitioner objected to the same, she addressed him with abusive words and behaved harshly towards him.

The respondent-wife wanted to reside with him only on the condition that he purchase a plot and construct a room upon it. Since the petitioner was not financially capable of doing so, the respondent-wife left him approximately six years ago without informing him and lodged a First Information Report against him at Police Station Garhi under Sections 498A and 323 of the Indian Penal Code (IPC). In the said case, the petitioner was acquitted by the Gram Nyayalaya, Garhi, on 17.12.2020, on the basis of the evidence of the respondent-wife herself.

The petitioner produced documents marked as Exhibits 1 to 9.

During cross-examination, the petitioner admitted that one child was born out of the marriage between the parties on 13.11.2008 and that the child resided with both of them until the year 2014. Despite living separately, his wife had not married anyone else. He had initiated proceedings at the social level on 10.11.2015 with the intention of bringing his wife back. However, he had not mentioned this fact in his pleadings or affidavit.



He further stated that his wife used mobile number 9725936125, the SIM card for which was registered in the name of his landlord in Ahmedabad, because at that time SIM cards were not available in the names of tenants. She used the said number to converse with objectionable persons. No other material fact has been substantively refuted.

In contrast, the respondent-wife submitted her own affidavit in evidence. She primarily stated that a son, Ashish, was born from their union and that, as on the date of submission of her affidavit, i.e., 15.10.2025, he was 17 years old. She stated that the petitioner did not pay maintenance for the child's upbringing. The criminal court at Garhi had passed an order directing the petitioner to pay maintenance of ₹3,000 per month.

The respondent-wife further stated that, on 12.11.2015, she lodged Report No. 01/2016 at Police Station Arthuna because the petitioner had demanded money as dowry, levelled false allegations concerning her character and expelled her from the matrimonial home. The criminal court acquitted the petitioner merely on technical grounds, and such acquittal cannot be taken to mean that the petitioner had not committed cruelty.

The respondent-wife denied that she had ever expressed, at a social meeting or otherwise, her willingness to reside with the petitioner on the condition that he provide her with a plot and construct a room thereon. The respondent-wife did not produce any documentary evidence in support of her case.

During cross-examination, she admitted that she had resided with her husband in Ahmedabad from 2005 for approximately ten years, although during that period she also used to visit her parental home. A social meeting had taken place regarding their relationship.

In the criminal proceedings before the court at Garhi, the statements of her mother, Leela, marked as Exhibit 2; her father, Kachru, marked as Exhibit 3; and other independent witnesses, marked as Exhibits 4, 5 and 6, had been recorded. On the basis of the said evidence, the petitioner was acquitted by the judgment marked as Exhibit 01.

She has been living separately from her husband since the year 2016.

Thus, the petitioner has stated two principal grounds for seeking dissolution of marriage in his petition. The first ground is that the respondent-wife committed cruelty towards him and continuously engaged in objectionable conversations over a mobile phone with objectionable persons. When the petitioner objected to her speaking with those persons, she allegedly behaved harshly towards him and used abusive language.

The petitioner has also alleged that, because he did not fulfil her demand to purchase a plot and construct a room thereon, the respondent-wife lodged First Information Report No. 01/2016 at Police Station Arthuna against him, in which he was acquitted by the criminal court at Garhi vide judgment marked as Exhibit 01.

This Court must now examine whether the respondent-wife had a bona fide and justified reason for living separately from the petitioner.



On the basis of First Information Report No. 01/2016 lodged by the respondent-wife against the petitioner, the criminal court acquitted the petitioner vide Exhibit 01 dated 17.12.2020.

The principal basis of the said judgment was that the evidence of the informant, who is the respondent-wife in the present proceedings, and that of her parents substantially established that the respondent-wife's principal intention was that she would reside with the accused/petitioner only if he purchased a plot and constructed a room upon it for her.

The statements of the respondent-wife's parents, recorded before the criminal court and marked as Exhibits 2 and 3, also substantially indicated the same position. Their statements further revealed that the criminal proceedings against the petitioner had been instituted for the very reason that, if her husband either divorced the respondent-wife or purchased a plot and constructed a room thereon for her, they would not have instituted the criminal proceedings.

The statements of the independent witnesses, marked as Exhibits 4, 5 and 6, also indicated that, during the years 2015–2016, the principal issue between the complainant and the accused was the purchase of a plot and construction of a house upon it.

As regards the condition of purchasing a plot and constructing a room thereon, the respondent-wife has not produced any evidence to substantiate her pleadings and affidavit in this regard. On the other hand, the petitioner has stated that, even at the social meeting, the respondent-wife's decision to live separately from him was attributable to the demand for purchasing a plot and constructing a room upon it. This assertion could not be refuted during cross-examination.

The respondent-wife has admitted that a social meeting took place.

Therefore, it cannot be held to have been proved that, in the year 2015, the respondent-wife subjected the petitioner to cruelty on account of demands for dowry or other such demands, or that she was expelled from the matrimonial home. Rather, it stands proved that the respondent-wife deserted the petitioner in the year 2016.

The petitioner has also alleged that the respondent-wife engaged in objectionable conversations over a mobile phone with objectionable persons and that, when he objected to such conversations, she behaved harshly towards him.

In support of this allegation, the petitioner produced a pen drive marked as Exhibit 8, containing recordings purportedly relating to the conversations between the respondent-wife and the objectionable persons. However, since the requirements of Section 65 of the Indian Evidence Act concerning the certificate required for electronic evidence were not complied with, despite this Court's order dated 30.07.2025, the recordings contained in the said pen drive cannot legally be read in evidence by this Court. Consequently, to that extent, the petitioner cannot be held to have proved his case on the basis of the said evidence.

The second ground taken by the petitioner in his petition for dissolution of marriage is that the respondent-wife, along with their son, has remained



separate from him since the year 2016 and has not been discharging her marital obligations.

In this regard, a social meeting was also held, the occurrence of which has been admitted by the respondent-wife. The respondent-wife has herself admitted in her evidence that she has been living separately from the petitioner since the year 2016.

Although the respondent-wife has stated that the principal reason for living separately was that the petitioner subjected her to physical and mental cruelty on account of demands for dowry and other such demands, this fact cannot be held to have been proved in her favour.

This is because the petitioner was not acquitted by the criminal court at Garhi merely on technical grounds. Rather, the acquittal was based upon the evidence presented by the respondent-wife and her family members, which indicated that she would reside with the petitioner only if he purchased a plot and constructed a room thereon for her.

The respondent-wife did not produce even the slightest evidence before the criminal court to establish that she had been harassed on account of demands for dowry or other such demands, as a result of which she had been living separately from her husband since the year 2016.

Accordingly, no reasonable justification for the respondent-wife's living separately from the petitioner is apparent. Rather, it stands proved that she continuously remained separate from the petitioner for a period exceeding two years prior to the institution of the petition and did not discharge her marital obligations during that period.

Consequently, both grounds taken by the petitioner in the petition for dissolution of marriage—namely, that the respondent-wife behaved cruelly towards him and that she continuously deserted him for a period exceeding two years—are held to have been proved.

Therefore, on the basis of the entire foregoing discussion, Issue Nos. 01 and 02 are decided in favour of the petitioner and against the respondent-wife.”

8. We are unable to subscribe to the reasoning assigned in the impugned judgment and the submissions advanced by learned counsel for the respondent. Our reasons follow in the succeeding part of the order.

9. The learned Family Court held cruelty proved. But the impugned judgment does not say which act of the appellant wife amounted to cruelty. The respondent husband built his case of cruelty mainly on her alleged phone conversations with objectionable persons. The Family Court itself refused to read the pen drive, Exhibit 8, for want of the



certificate required for electronic evidence. No other evidence was led on this allegation. Once that evidence went out, the allegation stood bare. Yet cruelty was held proved. That finding has no footing. The acquittal of the respondent husband under Sections 498A and 323 IPC does not help him either. An acquittal only means that the prosecution failed to prove the charge beyond reasonable doubt. It does not show that the wife treated the husband with cruelty. Cruelty under Section 13(1)(ia) of the Act must be grave and weighty. It must be such that the aggrieved spouse cannot reasonably be expected to live with the other. The impugned judgment spells out no such conduct.

10. On desertion, the Family Court leaned almost wholly on the record of the criminal case. It read the statements of the wife's parents and three other witnesses, Exhibits 2 to 6, as proof of her motive for living apart. None of these persons entered the witness box before the Family Court. Their statements were never tested by cross examination in these proceedings. Evidence given in an earlier proceeding can be read in a later one only within the narrow limits of Section 33 of the Indian Evidence Act, 1872. The same rule now finds place in Section 27 of the Bharatiya Sakshya Adhiniyam, 2023. For ready reference, Section 27 of Bharatiya Sakshya Adhiniyam, 2023 is reproduced hereinbelow:

“27. Relevancy of certain evidence for proving, in subsequent proceeding, truth of facts therein stated.

Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided that the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine and the questions in issue were substantially the same in the first as in the second proceeding.

Explanation. - A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.”



Apropos Section 27, *ibid*, conditions envisaged therein were neither pleaded nor shown. The Family Court then went a step further. It held that the wife failed to prove a reasonable cause for living separately. That reverses the burden. Desertion requires the fact of separation and an intention to bring cohabitation permanently to an end. It also requires absence of consent and absence of reasonable cause. The burden to prove each of these rests on the spouse who alleges desertion.

11. Even if the wife wanted a separate dwelling, that wish alone does not show an intention to end the marriage forever. The respondent husband admitted that a social meeting was held on 10.11.2015 to bring her back. He did not plead this fact. The wife says she was turned out of the matrimonial home on 12.11.2015, just two days later. These facts called for close scrutiny. The learned Family Court did not undertake it. She has brought up their son on her own. She has stated that she is willing to resume married life. She also says the husband has not paid maintenance of Rs. 3,000/- per month ordered by the Gram Nyayalaya, Garhi. These circumstances do not sit well with a finding that she walked out without cause and with an intention to desert. The Family Court did not weigh them at all. Its conclusion rests on inference, not on proof.

12. Furthermore, apart from merits of the appeal which we have discussed and in view thereof we propose to allow the same, but before parting, we would also like to observe that, vide order dated 06.08.2026 passed by a Co-ordinate Bench of this Court, the parties were directed to remain personally present before the Court to explore the possibility of conciliation. For ready reference, the said order is reproduced as under:



“Mr. Shambhoo Singh Rathore, Advocate accepts notice for respondent and also submit that he will file the Vakalatnama today itself.

Record is received.

Let both the parties shall present before this Court on the next date of hearing to verify whether the matter can be referred to mediation or not.

List the matter for hearing on 09.10.2026 while reflecting the name of Mr. Shamboo Singh Rathore, Advocate in the cause list as counsel for the respondent.

Meanwhile, the respondent is restrained from remarrying on the strength of the impugned decree.”

13. In this regard, the appellant along with her minor son has travelled all the way from Banswara, a distance of approximately 400 kilometers, and is personally present before us. On the other hand, in response to a query from the Court, learned counsel for the respondent has given a very lackadaisical response, stating that the respondent is unable to remain present today. While we appreciate that there may be reasons for his inability to appear, what is unbecoming is his failure to show the courtesy of informing either the appellant or his counsel in advance, thereby causing the appellant to incur travel expenses unnecessarily. It further transpires, upon a query from the Court, that the respondent is paying a meagre sum of Rs. 3,000 per month towards maintenance for both the appellant-wife and their minor son.

14. Be that as it may, the impugned judgment and decree dated 19.12.2025 passed by the learned Family Court, Banswara, in Divorce Petition No. 79/2021, are set aside for the reasons recorded here in above.

15. Accordingly, the appeal is allowed. All pending applications also stand disposed of.

(SUNIL BENIWAL),J

(ARUN MONGA),J

8/Raksha Rakhecha