

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH:

**Hon'ble Shri T.P. Sharma &
Hon'ble Shri C.B. Bajpai, JJ**

First Appeal (M) No.80/2012

APPELLANT Shruti Deshpande
Vs
RESPONDENT Shriram Deshpande
&

First Appeal (M) No.81/2012

APPELLANT Shriram Deshpande
Vs
RESPONDENT Shruti Deshpande

Present:

Mr. Malay Kumar Bhaduri, Advocate for appellant-wife in both the appeals.
Mr. Ali Asgar, Advocate for the respondent-husband in both the appeals.

O R D E R
(06.03.2014)

Per T.P. Sharma, J;

1. F.A. (M) Nos.80/12 & 81/12 filed under Section 19 (1) of the Family Courts Act, 1984 on behalf of the both the parties against the judgment and decree dated 11.05.2012 passed by the Judge, Family Court, Bilaspur in Civil Suit No.14-A/2011 are being disposed of by this common order. By the aforesaid judgment and decree dated 11.5.2012 the Judge, Family Court, Bilaspur has decreed the suit filed by respondent-Sriram Deshpande for dissolution of marriage by a decree of divorce and also directed to pay Rs.5,00,000/- lump sum permanent alimony to the wife i.e. Smt. Shruti Deshpande.
2. By filing F.A. (M) No.80/12 the appellant wife has challenged the legality and propriety of the dissolution of marriage by a decree of divorce and quantum of permanent alimony, *inter alia* by filing

F.A. (M) No.81/12 the husband-Sriram Deshpande has challenged the quantum of permanent alimony.

3. As per plaint allegations, the respondent was married to the appellant on 23.1.2007. The appellant gave birth to one female child on 25.12.2007. Prior to marriage of the appellant with the respondent, she was married to one Shashank Chicholkar in the year 1997 at Pune and after divorce by her previous husband, she solemnized marriage with the respondent. Within two days of her marriage, the appellant changed her behaviour. She is cruel in nature and was in the habit of quarrelling & giving threats that she would leave the house. She also used to misbehave with the respondent. On 25.1.2007 i.e. on the third day of marriage, she cut her vein of hand and also assaulted her husband. She continued her misbehave. On 6.4.2007 all of a sudden she left her matrimonial house and went to the railway track for committing suicide. Somehow she was brought back to the house of the respondent where she badly misbehaved with the respondent. The appellant is not mentally sound and on the ground of insanity, her pervious husband had obtained decree of divorce. On 07.09.2009, the appellant again left her matrimonial home. The respondent-husband tried his level best for restitution of relations but he could not succeed. Finally, on 07.11.2011 he filed the suit for dissolution of marriage by a decree of divorce i.e. within ten months of marriage.
4. By filing written statement, the appellant-wife has denied the adverse allegations and leveled charge of cruelty against him, his brother & other family members. She has also denied that she had cut her vein but admitted that while working with knife in

the kitchen she received trivial cut injury. She has denied the fact that she had gone to the railway track for committing suicide and she had left her matrimonial house.

5. After providing opportunity of hearing to the parties, learned Judge, Family Court, Bilaspur decreed the suit of the respondent-husband for divorce on the ground of cruelty committed by her and also directed him to pay lump sum permanent alimony of Rs.5,00,000/-.
6. We have heard learned counsel for the parties and perused the impugned judgment & decree and record of the Court below.
7. Mr. Bhaduri, learned counsel for the appellant-wife vehemently argued that this is the petition for divorce within one year of marriage on the ground of cruelty. As per evidence of the parties, husband has filed the suit for dissolution of marriage within one year of marriage on the ground of few instances but even after alleged aforesaid instances the husband has not deserted his wife which shows that the husband has condoned the act of wife and therefore in the light of clause (b) of sub-section (1) of Section 23 of the Hindu Marriage Act, 1955 (for short 'the Act of 1955'), dissolution of marriage by decree of divorce was not legally possible and by granting such decree, the Court below has completely ignored the mandatory provisions of the Act of 1955. He further submits that heavy burden was upon the respondent to prove that the appellant has committed cruelty that too within six months of the marriage. Both the parties have led evidence and leveled charge of cruelty against each other, therefore, evidence of any of the party cannot be considered as true. Except the aforesaid evidence the

respondent has not adduced any evidence to establish the fact that the appellant-wife has committed cruelty and her cruelty has not been condoned. He further submits that age of the appellant is only 37 years and only a meager/token amount has been awarded by the Court below, therefore, lump-sum amount of permanent alimony is also inadequate.

Reliance is placed in the matter of **Kamla Dev vs. Balbir Singh**¹ in which the High Court of Jammu & Kashmir has held that *in case of cruelty by wife of general nature without specifying date, time & incident and subsequent cohabitation by the husband amounts to condonation of cruelty, therefore, on the ground of cruelty, which has been condoned by the conduct of husband, divorce cannot be granted.*

Reliance is also placed in the matter of **Ramesh Kumar v. Smt. Kalpana**² in which the High Court of Madhya Pradesh has held that *petty quarrels and troubles are not the ground for dissolution of marriage by a decree of divorce. Visit to parents' house and use of force to save from assaults cannot be treated as cruelty.*

Reliance is also placed in the order dated 20.6.2012 passed in First Appeal (M) No.30/2012 (Dinesh Kumar Rathore v. Smt. Swarnalata Rathore) in which the Division Bench of this Court has held that *in order to determine the permanent alimony the parties are required to plead and prove the income of the spouse.* Reliance is further placed in the matter of **Smt. Mamta Namdeo v. Ghanshyam Bihari Namdeo**³ in which this Court has held that

¹ AIR 1979 (J&K) 4

² MPWN (4) 1993 (1)

³ 2013 (1) C.G.L.J. 236

condoned cruelty is not a ground for divorce. Reliance is also placed in the matter of **Dr. N.G. Dastane v. Mrs. S. Dastane**⁴ in which the Supreme Court has held that *condonation of cruelty is a defence, therefore, it must be pleaded and cohabitation after alleged incident of cruelty amounts to condonation of cruelty*. Reliance is also placed in the matter of **Prakash Rao vs. Jyoti**⁵ in which the Supreme Court has held that merely because at some occasions some disputes had taken place between the parties or in-laws relating to day-to-day work, which are not unusual in the joint families, no inference of cruelty can be drawn on that basis.

8. On the other hand, Mr. Ali Asgar, learned counsel for the respondent-husband submits that in the present case the appellant has failed to plead and prove that the respondent has condoned the cruelty. As per evidence and pleadings of the respondent, the appellant has started committing cruelty with him within two days of the marriage. The respondent has given specific instances, date & time of commission of cruelty, which has not been condoned. Even otherwise the appellant has failed to prove that after such cruelty there was cohabitation. Cruelty is not the simple cruelty. Act of repeated attempts to commit suicide by the appellant amounts to mental cruelty. He placed reliance in the matter of **Pankaj Mahajan v. Dimple alias Kajal**⁶ in which the Supreme Court has held that *giving repeated threats to commit suicide and even tried to commit suicide, causing insult & injury to husband is cruelty sufficient for grant*

⁴ (1975) 2 SCC 326

⁵ 2012 (2) MPLJ 522

⁶ (2011) 12 SCC 1

*of dissolution of marriage by a decree of divorce. He also placed reliance in the matter of **Smt. Sudha Suhas Nandanvankar v. Suhas Ramrao Nandanvankar**⁷ in which the Supreme Court has held that *the wife taking advantage of a wrong or fraud is not entitled for permanent alimony under Section 25 of the Act of 1955.**

9. As per pleadings of the parties, any of the party has not pleaded that cruelty has been condoned or not, but in case of grant of dissolution of marriage by decree of divorce under clause (ia) of sub-section (1) of Section 13 of the Act of 1955, the Court is required to examine the pleadings and evidence irrespective of the case defended by the opposite party or not that whether the party has condoned the act of opposite party in terms of Section 23 (1) (b) of the Act of 1955 or not?

10. Section 13 (1) (ia) of the Act of 1955 reads thus:-

"13. **Divorce.** (1) Any marriage solemnized, 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) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

11. Section 23 (1) (a) & (b) of the Act of 1955 reads thus:-

⁷ AIR 2005 Bombay 62

"23. **Decree in proceedings.**- (1) In any proceeding under this Act, whether defended or not, if the court is satisfied that-

(a) any of the grounds for granting relief exists and the petitioner [except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5 is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and"

12. Opening words of Section 23 (1) (b) is unambiguous and cast duty upon the Court to satisfy itself in case of petition for decree of divorce on the ground of cruelty, whether defended or not, that whether petitioner has succeeded in proving the fact that he has not condoned the act of cruelty. In the present case both the parties led evidence. Divorce of the appellant by her first husband is not in dispute. The respondent has specifically deposed two instances of attempting to commit suicide by the appellant i.e one by cutting the vein and second by roaming in the railway track. Virtually, the aforesaid facts have not been denied by the appellant *inter alia* she has suggested that there was small injury in her hand and she had gone to railway track for peace when she was badly disturbed by the behaviour of the respondent's mother. The respondent has filed another document i.e. medical record of the appellant as Ex.A-5 which shows that the appellant was admitted in the hospital, she had

consumed poison and that was the case of attempt to commit suicide on 21.1.2009. The appellant has examined herself and deposed that the respondent has committed cruelty upon her. She has deposed in detail that the respondent was in the habit of committing cruelty upon her and has committed cruelty. In Para-33 she has admitted the injury over her hand on 25.1.2007 i.e. just after two days of her marriage. She has further deposed that she did not know how she had received injury but as per her memory at the time of cutting vegetables she received injury by knife. She denied the suggestion that with intent to commit suicide she had cut her veins of hand. In Para-35 she has further admitted that on 6.4.2007 she was very perturbed and had gone to Tarbahar Railway Crossing and was sitting in the platform. She has further deposed that she used to go there along with her husband. In Para-38 she has further admitted that being asked, she has admitted that it was her mistake. She has further deposed that the respondent was in the habit of committing cruelty upon her. In Para-46 she has admitted that on 22.1.2009 she had gone to CIMS, Bilaspur for treatment and prior to that day, she was taken to the clinic of Dr. Y.S. Dubey. She has further admitted that she has written in her diary that after her death, her daughter be given to her husband i.e. respondent herein.

13. The appellant has also examined her father Shri S.N. Konher who has supported the evidence of the appellant. In Para-32 he has admitted that on 6.4.2007 when his daughter had gone towards the railway station, he sent his son. In para-36 he has admitted that on 21.1.2009 he has taken her daughter to the clinic of Dr.

Y.S. Dubey. He has denied that she had consumed poison but admitted that Dr. Dubey has referred her to CIMS, Bilaspur. He has further denied that on account of consuming pesticide, she was referred to CIMS. He has further deposed that he did not know that on examination by the doctors of CIMS, it is unearthed that his daughter had consumed poison. In Para-37 he has admitted that her daughter was hospitalized for two days. He has further admitted that her daughter was also referred to the Psychiatric.

14. As per pleadings and evidence of the parties, the appellant received cut injury in her vein on 25.1.2009 i.e. just after two days of marriage of the appellant. She left her matrimonial home on 6.4.2007, went to Tarbahar Railway Crossing and was roaming on the railway track. On 21.1.2009 during the pendency of divorce petition when she was in the house of her father, she was brought to the clinic of Dr. Y.S. Dubey, who referred her to CIMS, Bilaspur for further treatment and as per document Ex.P-5, she had attempted to commit suicide and it was a case of consumption of unknown poison. Factum of treatment and admission in the CIMS Hospital, Bilaspur have not been denied by the appellant. Specific suggestion has been made by the respondent that the appellant had consumed poison but it has not been specifically denied by the appellant or her father *inter alia* they tried to avoid the answer. Virtually, Ex.P-5 is a document of the appellant containing the fact that it was a case of attempt to commit suicide by consuming some unknown poison by the appellant.

15. The above three instances are sufficient to prove that on 25.1.2007 the appellant cut her vein of hand, on 6.4.2007 she left her matrimonial home, went more than 2-3 kms away from her house to railway track, which was not the railway station but Tarbahar Railway Crossing, and was roaming on the railway track, which shows that it was second attempt on her part to commit suicide, and lastly, on 25.1.2009 when she was in her parental home, she again attempted to commit suicide by consuming poison. She has left her matrimonial house on 7.9.2007 i.e. within eight months of her marriage. Regular cruelty committed by the appellant has been pleaded & proved by the respondent. The appellant has also pleaded and deposed that the respondent has committed cruelty and torture but specific instances have not been pleaded and proved by her *inter alia* the respondent has pleaded and proved atleast three instances of attempt to commit suicide, which have not been substantially denied by the appellant. Aforesaid act that too within three months of her marriage is substantial threat on the respondent and the same amounts to mental cruelty which further finds corroboration from the third attempt of suicide made by the appellant after two years of marriage and during the pendency of divorce petition that too in the house of her parents.
16. In Ramesh Kumar² it has been held that petty quarrels and troubles & use of force to save from assaults cannot be considered as cruelty, but in the present case instances pleaded and proved by the respondent are serious in nature, especially relating to attempts by the appellant to commit suicide.

17. In Pankaj Mahajan⁵ the Supreme Court has held that attempt to commit suicide is a mental cruelty and observed in Para-34, 35 & 36 as follows:-

"34. In addition to the evidence, the appellant husband had categorically pleaded in his petition for divorce about the cruelty meted out to him. He narrated the incidents when she used to give threats to commit suicide and had even tried to commit suicide by jumping from the terrace and also pushed him from the staircase resulting in fracture in his right forearm. Due to her mental disorder, on various occasions, she even slapped him. She was also most disrespectful to his parents and she even forced him to live separately from them. His evidence in the form of an affidavit filed before the trial court is available in the paper book wherein he narrated all the sufferings meted out by her. It is useful to refer to the relevant portion from the same:

"My wife Dimple used to become annoyed and angry on petty issues. She used to abuse and fight with me. She used to flaunt her father's status and influence. She used to comb her hair throughout the day. She used to cry like children. She used to apply brakes of a moving vehicle. She used to call strangers in the house and offer them tea. Once she even called a washerman in the house and gave him Rs 200 unnecessarily and when he said thanks she immediately snatched Rs 200 from his hands and slapped him for no rhyme or reason and thereafter she abused him and pushed him out of the house. In fact, such things had become her everyday chores. She used to tell me everything about sex lives and relationship of her maternal uncle and aunt. She was in the habit of not sleeping throughout night and also used to keep me awake throughout night and whenever I tried to sleep, she used to insist me to talk to her and whenever I told her to allow me to sleep, she used to press my neck. She used to wake up the child from deep slumber and start slapping her for no reason. She was in the habit of wrapping the child in wrapper throughout continuously and due to which the child used to weep continuously. She used to say that she is obsessed and hears outer world's voices and barking of dogs. She used to tell me that she is regularly seeing evil spirits.

She used to go out for roaming at 2-3 a.m. in the night.

Whenever I refused to listen or agree to her demands, she used to throw dirty clothes upon me. She was in the bad habit of keeping the door of toilet open throughout the day even while she was bathing or refreshing herself. She used to doubt everything whenever she started eating her food. She also used to doubt her mother and sister and used to say that both of them have immoral character. She was in the habit of opening and closing the central locking system of the car. She was in the habit of increasing the volume of TV to the maximum unnecessarily. Whenever I used to go to office, she used to stop me from going and when I told her that I have to go to office, she used to say that she will commit suicide. In fact, she was in the habit of pressing and coaxing me for all her needs and desires. She used to say that I want to live with Happy and also used to say that she has no interest in living with me. She stressed that she will leave me and starts living with Happy. (Happy is the son of my wife's elder paternal uncle.)

She was in the habit of unnecessarily arguing with my parents and used to abuse them and whenever I stopped her from doing so, she used to threaten me that she will commit suicide. However, I used to request my parents to look after her in my absence. But she used to misbehave and insult them. She used to say that she will buy her own house and will start living in that house because this house is very small for her needs and she feels suffocated in this house. Although my house is in a very posh colony and it is a very spacious, airy, open and large house. I noticed that the condition of Dimple was becoming worse everyday. I became sure that she was actually mad and she was concealing her madness from me. I noticed that she used to keep some medicine in her purse and used to take that medicine often. She was actually sex-hungry and was not interested in doing any household works. She never showed any interest in keeping her bedroom and drawing room clean and tidy. She was in the habit of wearing the clothes of 3-4 days regularly. She used to wake up very late in the morning. Whenever my mother and sister called her to join them, she was abusing and insulting them. She used to

call my mother stupid and my sister as wretched. However, I controlled myself and kept on tolerating her conduct, because all of us were in the fervent hope that one day God will cure her....

... One day, my friend Sumit came to my house. Earlier also he used to come to my house as he is also working with me in LIC. He wished Dimple and enquired about her and instead of welcoming him, Dimple insulted him by saying why are you coming to our house uncalled everyday. He felt very insulted and sat in the drawing room on the ground floor and when I was also coming down to join him, Dimple pushed me from the stairs and started laughing unnecessarily. As a result of the aforesaid pushing, I fell down and the bones of my right arm and wrist got fractured. Perchance, Ashok Kumar too had come to my house on that day and he was repeatedly asking for meals. But when he saw my condition, he immediately took me to the hospital of Dr. Hardas where plaster was applied on my arm and wrist. When we came back, to my utter shock and surprise, Dimple did not even notice any change in me and did not remotely feel that I have received fractures in my arm and wrist and plaster has been applied on my arm.

One day when we were sitting in the drawing room, I called Dimple and asked her to bring tea for me. At that time she was wearing very dirty clothes. So, I asked her to immediately go and change her dirty clothes and wear some good clothes. But instead of changing her clothes, she started abusing me and even slapped me on my face. Thereupon my mother asked her why she is behaving like this, upon which she rose her hands to slap my mother too, but my sister stopped her from doing so. We narrated all the above incidents of Dimple to her father. He expressed his shock and apologised on her behalf and advised us to start living separately and said that she will start behaving properly and nicely."

All the above details in the form of assertion in the affidavit clearly show that the appellant husband faced cruelty at the hands of the respondent on several occasions.

- 35.** It is well settled that giving repeated threats to commit suicide amounts to cruelty. When such a thing

is repeated in the form of sign or gesture, no spouse can live peacefully. In the case on hand, the appellant husband has placed adequate materials to show that the respondent wife used to give repeated threats to commit suicide and once even tried to commit suicide by jumping from the terrace. Cruelty postulates a treatment of a spouse with such cruelty as to create reasonable apprehension in his mind that it would be harmful or injurious for him to live with the other party. The acts of the respondent wife are of such quality or magnitude and consequence as to cause pain, agony and suffering to the appellant husband which amounted to cruelty in matrimonial law.

36. From the pleadings and evidence, the following instances of cruelty are specifically pleaded and stated. They are:
- (i) Giving repeated threats to commit suicide and even trying to commit suicide on one occasion by jumping from the terrace.
 - (ii) Pushing the appellant from the staircase resulting into fracture of his right forearm.
 - (iii) Slapping the appellant and assaulting him.
 - (iv) Misbehaving with the colleagues and relatives of the appellant causing humiliation and embarrassment to him.
 - (v) Not attending to household chores and not even making food for the appellant, leaving him to fend for himself.
 - (vi) Not taking care of the baby.
 - (vii) Insulting the parents of the appellant and misbehaving with them.
 - (viii) Forcing the appellant to live separately from his parents.
 - (ix) Causing nuisance to the landlord's family of the appellant, causing the said landlord to force the appellant to vacate the premises.
 - (x) Repeated fits of insanity, abnormal behaviour causing great mental tension to the appellant.
 - (xi) Always quarrelling with the appellant and abusing him.
 - (xii) Always behaving in an abnormal manner and doing weird acts causing great mental cruelty to the appellant."

18. In the present case the respondent has succeeded in proving three instances of attempt to commit suicide by the appellant, two attempts were made when she was residing with the respondent and one was made when she was residing with her parents. Pleadings and evidence of the respondent and also of the appellant reveal that the relations were strained between the parties, both the parties have leveled charge of cruelty upon each other which also shows that any of the parties has not condoned the act of other party. Even the appellant has not pleaded the factum of condonation.
19. As held in Dr. N.G. Dastane⁴, the Court is required to satisfy that whether the party has forgiven the previous cruelty of the opposite party and has restored matrimonial life. Cruelty does not consist of a single, isolated act but consists in most cases of a series of acts spread over a period of time. The Supreme Court has held in Para-55 & 56 as under:-

55.Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation there must be, therefore, two things: forgiveness and restoration. The evidence of condonation in this case is, in our opinion, as strong and satisfactory as the evidence of cruelty. But that evidence does not consist in the mere fact that the spouses continued to share a common home during or for some time after the spell of cruelty. Cruelty, generally, does not consist of a single, isolated act but consists in most cases of a series of acts spread over a period of time. Law does not require that at the first appearance of a cruel act, the other spouse must leave the matrimonial home lest the continued cohabitation be construed as condonation. Such a construction will hinder reconciliation and thereby frustrate the benign purpose of marriage laws.

56. The evidence of condonation consists here in the fact that the spouses led a normal sexual life despite the respondent's acts of cruelty. This is not a case where the spouses, after separation, indulged in a stray act of sexual intercourse, in which case the necessary intent to forgive and restore may be said to be lacking. Such stray acts may bear more than one explanation. But if during cohabitation the spouses, uninfluenced by the conduct of the offending spouse, lead a life of intimacy which characterises normal matrimonial relationship, the intent to forgive and restore the offending spouse to the original status may reasonably be inferred. There is then no scope for imagining that the conception of the child could be the result of a single act of sexual intercourse and that such an act could be a stark animal act unaccompanied by the nobler graces of marital life. One might then as well imagine that the sexual act was undertaken just in order to kill boredom or even in a spirit of revenge. Such speculation is impermissible. Sex plays an important role in marital life and cannot be separated from other factors which lend to matrimony a sense of fruition and fulfilment. Therefore, evidence showing that the spouses led a normal sexual life even after a series of acts of cruelty by one spouse is proof that the other spouse condoned that cruelty. Intercourse, of course, is not a necessary ingredient of condonation because there may be evidence otherwise to show that the offending spouse has been forgiven and has been received back into the position previously occupied in the home. But intercourse in circumstances as obtain here would raise a strong inference of condonation with its dual requirement, forgiveness and restoration. That inference stands uncontradicted, the appellant not having explained the circumstances in which he came to lead and live a normal sexual life with the respondent, even after a series of acts of cruelty on her part."

20. After the act of cruelty living together and cohabitation by itself is not sufficient to establish the fact that the party against whom cruelty has been committed has forgiven the act of opposite party and has restored the matrimonial relationship but if it is established that after the act of cruelty, the parties have cohabitated uninfluenced by the conduct of offending spouse and

lead a life of intimacy which characterizes normal matrimonial relationship, then it can be considered that the party has condoned the cruelty of the opposite party and has started living a marital life with intimacy. In the present case, as per evidence of both the parties they have lost the intimacy, therefore, if it is presumed that the respondent has cohabitated then even in absence of other elements it would be difficult to hold that he has forgiven the act of appellant and has restored the matrimonial relationship without influenced by previous conduct of cruelty committed by the appellant. Therefore, as has been held in the case of Dr. N.G. Dastane⁴, we do not find any case for condonation of act of cruelty committed by the appellant with the respondent.

21. After considering the proved case of cruelty committed by the appellant within short span of marriage, the Court below has decreed the suit for dissolution of marriage by decree of divorce and we do not find any illegality or irregularity in the said finding of the Court below requiring any interference.
22. As regards the quantum of alimony, the Court below while granting decree of divorce has awarded lump-sum amount of Rs.5,00,000/- as permanent alimony to the appellant and also Rs.3,500/- per month to the daughter of the appellant on the basis of application filed by the appellant under Section 26 of the Act of 1955 on 6.3.2012.
23. Undisputedly, in the present case the appellant has not filed any application for award of permanent monthly alimony or lump sum permanent alimony under Section 25 of the Act of 1955. Even the appellant has not pleaded the aforesaid fact in her pleadings.

Section 25 of the Act of 1955 provides that 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, the Court is required to pass the order of payment of permanent alimony i.e. gross sum or monthly or periodical sum, but in the present case the appellant has not filed any application under Section 25 of the Act of 1955, even she has not pleaded in her written statement, but has filed an application under Section 26 of the Act of 1955 for grant of maintenance to her daughter which was awarded by the Court below. In absence of any pleading or application under Section 25 of the Act of 1955, the Court below was not justified in granting lump-sum permanent alimony to the appellant-wife. Although while calculating the requirement, the Court below has acted in a just and fair manner, but in absence of any application on behalf of the appellant, the aforesaid part of the judgment impugned is not sustainable under the law.

24. For the foregoing reasons, we uphold the judgment and decree for dissolution of marriage by decree of divorce and also uphold the order granting maintenance of Rs.3,500/- per month to the child. However, the order passed under Section 25 of the Act of 1955 regarding lump-sum permanent alimony of Rs.5,00,000/-, without there being any application and pleading on behalf of the appellant, is liable to be quashed.

25. In the result;

- F.A. (M) No.80/2012 filed on behalf of the appellant-wife is hereby dismissed.

- F.A. (M) No.81/2012 filed on behalf of the husband is hereby allowed and decree of lump sum permanent alimony of Rs.5,00,000/- is hereby quashed, reserving liberty to the wife to take appropriate steps in terms of Section 25 of the Act of 1955.

26. Certified copy as per rules.

J U D G E

J U D G E

roshan/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH:

**Hon'ble Shri T.P. Sharma &
Hon'ble Shri C.B. Bajpai, JJ**

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HEAD NOTE

1. Only living together and cohabitation are not sufficient to prove condonation of cruelty under the Hindu Marriage Act, 1955.

हिन्दू विवाह अधिनियम, 1955 के तहत क्रूरता की माफी सिद्ध करने के लिए सिर्फ साथ रहना और सहवास पर्याप्त नहीं है।

2. Forgiveness and restoration of matrimonial relationship without being influenced by previous conduct of cruelty and leading a life of intimacy can be considered the condonation of cruelty.

माफी और वैवाहिक संबंधों का पुनःस्थापन, क्रूरता के पूर्व आचरण से प्रभावित हुए बिना, तथा आत्मीय जीवन का निर्वाह करना, क्रूरता की माफी माना जा सकता है।