



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 10249 OF 2014

BIJENDRA

...APPELLANT(S)

VERSUS

REKHA

...RESPONDENT(S)

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

A. FACTUAL ASPECTS

1. The case before us presents an unfortunate situation wherein the appellant-husband and respondent-wife having been in continuous separation since 2005, have not been able to resolve their marital dispute.

2. The marriage between the parties was solemnized on 23.06.2003. It is stated that right after marriage, the respondent drifted away from the appellant on account of his educational qualifications, which even led to the respondent insulting him by calling him “illiterate, “rustic”. The appellant further asserts that in the span of two years of marriage, respondent joined the company of the appellant just 4 or 5 times that too after much persuasion of the appellant. During this time, the appellant claims that the behavior of the respondent was cruel due to which even the marriage could not be consummated. On

30.11.2005, the respondent went back to her parental home. Thereafter, on 15.12.2005, the appellant went to the house of the respondent to bring her back; however, the respondent declined to resume cohabitation with him. Ever since then, the parties have been living separately without any resumption of their matrimonial relationship. Further, no children have been born out of the wedlock.

3. In the light of such events, the appellant on 20.06.2007 filed a petition under Section 13 of the Hindu Marriage Act, 1955¹ for divorce on the ground of desertion and mental cruelty.

4. The Trial Court on the issue of *cruelty* held that the allegations regarding the denial of sexual relations, insulting the appellant and his family and use of abusive language were not satisfactorily proved. However, on the issue of *desertion*, despite holding that the respondent-wife had been living separately since 15.12.2005, it nevertheless concluded that this circumstance alone cannot entitle the appellant for divorce. The divorce petition of the appellant was hence dismissed.

5. Being aggrieved with the judgment of the Trial Court, the appellant filed an appeal under Section 28 of the HMA before the High Court.

6. In the appeal proceedings initiated by the appellant, *vide* the impugned judgment High Court dismissed the appeal holding that appellant had failed to establish either cruelty or desertion so as to entitle him to a decree of divorce. With respect to the ground of *cruelty*, the High Court found the testimony of the

¹ Hereinafter, 'HMA'

witnesses and the appellant-husband shaky and unreliable. However, on the ground of *desertion* while acknowledging the finding of the Trial Court that the parties had been living separately since 15.12.2005, it held that mere physical separation by itself would not constitute desertion within the meaning of Section 13(1)(ib) of the HMA. Further in paragraph 26, the High Court made the following observations

“**26.** In view of the above statement of Rekha, it cannot be said that she has decided to end her marital obligations. **In our considered opinion, the appellant has failed to prove the essential ingredients of desertion i.e. *animus deserendi*,** therefore, the submission of learned counsel for the appellant that in view of the categorical finding of the learned trial Court in Para 6, the appellant is entitled for decree of divorce on the ground of desertion, has no substance.”

(emphasis added)

B. SUBMISSIONS OF PARTIES

7. Learned senior counsel appearing for the appellant would submit that in the present case, Trial Court's finding that the respondent deserted the appellant from 15.12.2005 was recorded in the appellant's favour. The respondent neither preferred an appeal nor filed any cross-objection assailing the finding, therefore, it became final and binding upon her.

8. It was submitted that the Trial Court was bound to grant a decree under Section 13(1)(ib) of the HMA on the ground of desertion for a continuous period of not less than two years is a complete statutory ground, and refusal of a decree was in the teeth of its own finding which is an error of law apparent on the record.

9. On the aspect of adverse inference drawn by the High Court in paragraph 25, it was argued that Section 13(1)(ib) of the HMA imposes no obligation on a deserted spouse to seek restitution as a precondition to divorce and that these two remedies are separate and independent.

10. The appellant submits that the factum of separation is admitted and *animus deserendi* is established by the refusal of the respondent-wife to return to her matrimonial home since 15.12.2005.

11. *Per contra*, the learned counsel for the respondent-wife submitted that the impugned judgment requires no interference by this Court as the High Court independently appreciated the entire evidence on record and correctly reversed the finding of the Trial Court on the issue of desertion by applying the settled principles laid down by this Court in ***Lachman Utamchand Kirpalani v. Meena alias Mota***². It was argued that the appellant-husband had failed to establish the essential ingredients of desertion as contemplated under Section 13(1)(ib) of the HMA.

12. The rival submissions now fall for our consideration.

C. CONSIDERATION OF SUBMISSIONS

13. At the outset, we note that during the pendency this Appeal, the dispute was referred to Supreme Court Mediation Centre, with a view to explore the possibility of an amicable settlement between the parties. However, on 28th April 2014, the learned Mediator submitted a failure report.

² (1964) 4 SCR 331

14. There is no dispute on the factual position that the parties have been residing separately since 15.12.2005. In this undisputed factual backdrop, the only question arises for our consideration is whether the High Court was justified in holding that the essential ingredients constituting desertion under Section 13(1)(ib) of the HMA had not been established, thereby disentitling the appellant to a decree of divorce.

15. The Trial Court while deliberating on the issue of whether the respondent-wife had deserted the appellant-husband made the following observations:

“6. This is an admitted fact that the Non-Applicant has been staying in the house of her father and mother. As per the statement of Vijender AW-1, the Non-applicant went to the house of her parents on 30.11.2005. On 15.12.2005 when he went to bring the Non-applicant, then the Non-applicant refused to come alongwith him. Though it is admitted by Non-Applicant Rekha that the Non-Applicant has come to take her along with him but she had not refused to accompany him, **but from the statement of Ram Prakash AW-4, who has appeared as a witness for the Applicant, it becomes apparent that they had gone to take Non-Applicant to the house of the Applicant but she has refused to go with them. There is no challenge to the statement made by this witness. This is not brought out from the statement of (sic) the Non Applicant that her statement is more weighty or that it is strong and deniable. From this it is proved that the Non applicant had disserted the company of the Applicant on 15.12.2005 and the decision on this issue is given accordingly.**”

(emphasis added)

16. The High Court on the other hand held that the element of *animus deserendi* was not proved by the appellant-husband and that the respondent-wife never denied to discharge her marital obligations. The High Court observed thus:

“**24.** In the instant case, Bijendra (P.W.-1) has stated that on 15.12.2005 when he went to bring back his wife, she refused to

accompany him and told that she cannot live with him and also asked to perform second marriage and free her. **Smt Rekha has stated that she never refused to discharge her marital obligations and refused to accompany her husband. In para 15 she denied that she does not like Bijendra as her husband. In para 22 she again denied the suggestion that she does not accept Bijendra as her husband, therefore, she is living at Mehgaon.**"

(emphasis supplied)

17. This Court in the *Naveen Kohli v. Neelu Kohli*³ underscored that though marriage preservation remains the primary objective of matrimonial law, however, where the parties remain separated for a long time, the law must acknowledge the reality of such a situation.

"72. Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

73. A law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the fault theory, guilt has to be proved; divorce courts are presented with concrete instances of human behaviour as they bring the institution of marriage into disrepute.

74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. **Where there has been a long period of continuous separation, it may fairly be surmised 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**

³ (2006) 4 SCC 558

marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

75. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, **but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.**"

(emphasis added)

18. Also, this Court in the case of *Savitri Pandey v. Prem Chandra Pandey*⁴, while referring to long line of decisions, explained the true import and essential ingredients of desertion in the following words:

"8. "Desertion", for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations i.e. not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. **Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case.....**

9. Following the decision in *Bipinchandra case* [AIR 1957 SC 176] this Court again reiterated the legal position in *Lachman Utamchand Kirpalani v. Meena* [AIR 1964 SC 40] by holding that in its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. **For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2)**

⁴ (2002) 2 SCC 73

absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.

10. To prove desertion in matrimonial matter it is not always necessary that one of the spouses should have left the company of the other as desertion could be proved while living under the same roof. Desertion cannot be equated with separate living by the parties to the marriage. **Desertion may also be constructive which can be inferred from the attending circumstances. It has always to be kept in mind that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case."**

(emphasis added)

19. In the present case before us, the fact remains that the parties are living separately and even though the respondent has asserted in her deposition that she was ready to discharge her marital obligations, however, mere assertion cannot be sufficient when the conduct reflects otherwise. Considering that it was proven before the Trial Court that the parties had not cohabited with each other since December 2005, in our view, the High Court was wrong in inferring that there was no intention on the part of the respondent to desert the appellant. The record reflects that the appellant along with Ram Prakash (AW-4) had gone to take the respondent to her matrimonial home, but she refused to go with them without any reasonable cause which clearly shows that the respondent has actively chosen to desert the company of the appellant.

20. There are no children born out of wedlock. All attempts at reconciliation have failed. In these circumstances, compelling the parties to continue in marriage would fail to serve the ends of justice.

21. We may also like to advert to the decision of this Court in the case of ***Shilpa Sailesh v. Varun Sreenivasan***⁵ wherein while deciding on the contours of jurisdiction of this Court under Article 142 of the Constitution of India to dissolve marriage on the ground of irretrievable breakdown of marriage observed that prolonged period of separation would constitute a significant factor in evaluating whether martial bond has become incapable of restoration.

22. Though this Appeal is not decided by invoking the extraordinary jurisdiction of this Court under Article 142 of the Constitution of India, these observations in ***Shilpa Sailesh (supra)*** are nevertheless instructive in elucidating whether matrimonial relationship has in substance ceased to exist.

23. Thus, we hold that the respondent-wife had abandoned the matrimonial relationship and that the appellant has successfully established the ground of desertion. But, after having carefully perused the evidence on record, we find that no case is made out to disturb the findings recorded by the Courts below on the issue of cruelty.

24. On the issue of permanent alimony, during the proceedings, this Court had asked the appellant as to the amount of permanent alimony which he would be willing to pay to the respondent in the event this Court allows the dissolution of marriage. In response, the appellant had agreed to pay a sum of Rs.5,00,000

⁵ (2023) 14 SCC 231

(Rupees Five Lakhs only). In the facts of the case, we propose to direct the appellant to pay a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) towards permanent alimony to the respondent within the period of three months from today.

D. CONCLUSION

25. Keeping in view the above discussion, we pass the following order:

- i.** The Appeal is, accordingly, partly allowed by setting aside that part of the impugned judgment by which the High Court interfered with the observation of the Trial Court on the ground of desertion and held that the element of desertion was not proved *qua* the respondent-wife. The finding of the Trial Court and the High Court on the ground of cruelty is not disturbed.
- ii.** Accordingly, the marriage between the appellant-Bijendra and the respondent-Rekha solemnized on 23.06.2003 is hereby dissolved by a decree of divorce under Section 13(1)(ib) of the HMA.
- iii.** The appellant-husband shall pay a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) towards permanent alimony to the respondent-wife by depositing the same before the Trial Court within a period of three months from today, failing which the respondent-wife can initiate execution for recovery of the said amount. If the amount is not paid within three months as directed above, it shall carry interest at the rate of 9% per annum.

- iv.** No order as to costs.
- v.** Registry to draw the decree accordingly.

.....**J.**
(PRASHANT KUMAR MISHRA)

.....**J.**
(SHREE CHANDRASHEKHAR)

NEW DELHI;
SEPTEMBER 02, 2026.