HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

HON'BLE SRI JUSTICE K. LAKSHMAN
AND
HON'BLE SMT. JUSTICE K. SUJANA

FAMILY COURT APPEAL No. 489 OF 2017
(CNR No. HBHC010990082017)

Reserved on: 29.09.2026 Pronounced on: 13.11.2026
Uploaded on: 13.11.2026

Between

XXXXXXX …Appellant

and

XXXXXXX …..Respondent

This Court delivered the following:-

JUDGMENT:

(Per Hon'ble Sri Justice K. Lakshman)

Heard Sri C.Raghu, learned senior counsel representing Sri R.Giri Kumar, learned counsel for the appellant and Sri K.V. Sudhakar, learned counsel for the respondent.

2. Appellant is the husband and Respondent is the wife. Feeling aggrieved and dissatisfied with the order and decree dated 19.07.2017 passed in OP No. 2 of 2015, by the Learned Judge, Family Court – cum – VI Additional District Judge, Nalgonda,

whereby the petition filed by the Appellant seeking dissolution of his marriage with the respondent under Section 13(1) (ia) and (ib) of the Hindu Marriage Act, 1955 (hereinafter, "the Act") was dismissed, the Appellant-husband has preferred the present appeal.

3. The Appellant filed the aforesaid petition seeking dissolution of marriage with the Respondent on the grounds of cruelty and desertion contending:

i. His marriage with the Respondent was performed on 16.02.2002.

ii. After marriage, they lived at Chennai for about four years, where the behavior of the respondent was not cordial. She was adamant and arrogant.

iii. She was habituated to high profile life and used to spend money lavishly. She used to say that her marriage was performed against her wish.

iv. She insulted him stating that their family was a middle class.

v. She forced him to leave his job and to reside with her parents as she is the only daughter to their parents.

vi. She left the house of the appellant frequently and stayed at her parents house.

vii. She also threatened him stating that she would commit suicide and make him responsible for it.

viii. She went to her parents home in October, 2004 as she was pregnant and thereafter she never returned to him.

ix. She gave birth to a male child in April, 2005 which was not even informed to him. Despite his request to come home and join him, she refused to come.

x. He got an opportunity to work in United States of America (USA) and he requested her to accompany him to USA, but she declined.

xi. Mediations held by the friends, relatives and his elder brother Srinivasa Chary, an Advocate at Miryalaguda, but she refused to join him at USA.

xii. She used to draw comparison between his family and her parents family stating that her parents are wealthier.

xiii. As there was no possibility of reunion, the appellant to obtain decree of divorce by mutual consent, sent a notice to

her on 11.05.2012 to come forward for divorce with mutual consent.

xiv. She replied to the said notice on 06.06.2012 with all false allegations.

xv. He is ready to look after his 8 years old son and to provide him proper education etc.

xvi. She said that she had a son through her lover even prior to the marriage. He never revealed the same to anybody to prevent a stigma to her.

xvii. He settled in USA. He got permanent citizenship of USA. He also filed divorce case in the District Court of 199 Judicial District in Collin County, Texas in Divorce Case Nos.199-53040-2009, wherein notices were served on the respondent as per the marriage laws of USA.

xviii. The respondent did not give any reply to the said notices.

xix. The said District Court in U.S.A. granted decree of divorce on 19.10.2009 and directed him to pay 100 dollars per month towards maintenance of the child from 01.11.2009 onwards and also directed him to pay the said amount till the child

reaches the age of 18 years or till his graduation. He was also advised to obtain decree of divorce from the competent Court in India as he got domicile of India. Therefore, he filed the present OP.

xx. The respondent is aware of the said proceedings before USA Court but kept silent.

xxi. There is irretrievable break down of the marriage between them in view of the cruelty meted out by him in her hands and there is no possibility of re-union.

4. With the said contentions, the Appellant-husband sought dissolution of his marriage with the Respondent on the ground of cruelty and desertion.

5. Opposing the said allegations, the Respondent-wife filed counter in the said petition contending:

i. At the time of marriage, her parents gave gold worth of Rs.5 Lakhs, silver and household articles and they gave entire marriage expenses to the appellant and his parents.

ii. After marriage, she joined the appellant in the month of May, 2002 at Chennai and stayed there upto June, 2004.

After that they moved to Bangalore as he got job in Infosys in July, 2004 and stayed there upto October, 2004. During her stay, she never behaved with high profile and never spent money lavishly.

iii. She married the appellant with her own accord knowing fully well that he lost his left eye. He is having glass eye. She never insisted him to leave the job and to reside with her parents.

iv. She always encouraged him to accept any kind of job either in India or in USA or anywhere in the world.

v. During his outside stay, she stayed with her parents. There were no differences between them, they lived happily.

vi. The appellant and his parents participated in Srimantham function performed at her parent's home, where there demanded her father to pay additional dowry of Rs.4 Lakhs and her father complied the same.

vii. She never attempted to commit suicide but she went to her parents home for delivery.

viii. The appellant and his parents attended the 21st day function/Cradle ceremony preformed at Kota Mysamma temple at Thummadam Village, she also filed photographs of the said function.

ix. In the month of August, 2005, he left U.S.A. and thereafter in the month of June, 2006, he came to India, and in third week of June, 2006, he left for U.S.A, without taking her and their son along with him.

x. After that the appellant did not make any attempt to send visa papers or passport to her and their child to take them to U.S.A.

xi. He did not send any money to her for the livelihood of her and her son from 2005 onwards.

xii. He willfully neglected her and her son. He, his relatives, friends and elder brother Srinivas Chary, who is an Advocate at Miryalaguda, Kotha Anjaneyulu, M.Srinivas Chary of Rangundla Village, never tried to send back her to matrimonial home. Instead they all tried to convince her to give divorce to him.

xiii. He and his family refused her to join with him. She is not interested to give divorce to him.

xiv. She and her parents held so many panchayats at Adavidevulapally Village with well wishers, family members and relatives to send her to him but he did not heed the words of the elders and always insisted her to give divorce in order to contact second marriage at America for more dowry.

xv. Having waited for years, she did not lodge any complaint against him or his family members with a fond hope that he would change his behaviour and take back their son.

xvi. His conduct shows that he is not interested in continuing the marital relationship with her.

xvii. On 16.5.2012, he sent a legal notice through his Advocate with all false allegations requesting her to come forward for divorce with mutual divorce.

xviii. On 06.06.2012, she sent a reply to the said notice.

xix. He made false promise before the elders to take her and their son to U.S.A by preparing visa papers in 2012 but he took her in the month of April, 2012 to his native place.

xx. On 29.04.2012, the appellant and his parents celebrated the birthday of their son at their native place and photos were taken. On 09.05.2012 i.e. within ten days from the birthday celebration, he issued legal notice which clearly shows his conduct.

xxi. There is no cruelty or desertion on her part.

xxii. He is not ready to take his son back and did not provide proper education.

xxiii. He made false allegations that she had a son prior to the marriage through her lover.

xxiv. He is working in U.S.A. from 2005 onwards and is well established, financially sound and got permanent citizenship of U.S.A. The petitioner is getting 15000 dollars i.e., nearly Rs.10 lakhs per month in Indian currency as salary.

xxv. He filed a petition seeking divorce in U.S.A. The notices were served on her, she never visited U.S.A. and no visa was sent to her.

6. With the said contentions, she sought to dismiss the aforesaid petition.

7. To prove his case, the Appellant examined himself as P.W.1, one M.Srinivasa Chary, cousin, the mediator for the alliance and to resolve matrimonial disputes as P.W.2 and got marked Exs.A.1 to A.4.

8. To disprove the case of the appellant, the Respondent examined herself as R.W.1, her father as R.W.2 and one Goli Vijay Kumar, one of the mediators as R.W.3 and got marked Ex.B.1.

9. On considering the said evidence, both oral and documentary, learned Family Court, dismissed the petition holding that the appellant herein failed to prove both cruelty and desertion.

10. As discussed supra, it is the appellant / husband who filed the aforesaid OP against the respondent – wife seeking dissolution of marriage on the grounds of cruelty and desertion. He

has to plead and prove the same by producing cogent and reliable evidence.

11. There is no dispute that the marriage of the parties was solemnized on 16.02.2002 and that they were blessed with a male child on 29.04.2005 out of their lawful wedlock.

12. It is the specific contention of the appellant herein that the behavior of the respondent is not cordial. She was adamant and arrogant. She used to spend money lavishly. She used to say that her marriage was performed against her wish. She has insulted him before elders, threatened him that she would commit suicide and make him responsible for it. She left for her parents home in October, 2004 as she was pregnant. Thereafter, she never returned to him to join his company. The birth of male child was not informed to him. Despite request, she did not join his company. She informed him that she had a son through her lover even prior to the marriage. Thus, according to him, the respondent subjected him to cruelty and deserted him.

13. It is apt to note that cruelty is not defined under any statute, but what amounts to cruelty has been explained through

various judicial precedents. This Court has to consider the allegations made by the Appellant-husband and assess as to whether the same amount to cruelty or not.

14. It is relevant to note that the Hon'ble Supreme Court in **Samar Ghosh v. Jaya Ghosh**[1] observed that what is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values, and their value system.

15. In **Naveen Kohli v. Neelu Kohli**[2], the Hon'ble Supreme Court held that cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions and their culture and human values which they attach importance. Each case has to be decided on its own merits.

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[1] (2007) 4 SCC 511.
[2] (2006) 4 SCC 558.

16. The Hon'ble Supreme Court, in various decisions, has held that while determining whether an act amounts to cruelty or not, it is the cumulative effect of the conduct that is to be considered, not each isolated fact in a vacuum. Cruel acts may include persistent quarrels, humiliating treatment, mental harassment, abusive language, disrespectful behaviour, unilateral desertion, false accusations, etc. However, petty quarrels or differences in opinion would not amount to cruelty.

17. Coming to desertion, the appellant has to plead and prove the factum of separation, animus deserendi, absence of her consent; absence of her conduct giving reasonable cause to leave the matrimonial home.

18. It is pertinent to examine the meaning of the expression 'desertion' and the essentials thereto. In **Savitri Pandey v. Prem Chandra Pandey**[3], the Hon'ble Supreme Court observed that "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

[3] (2002) 2 SCC 73.

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. 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.

19. A collation of the observations made by the Hon'ble Supreme Court in **Lachman Utamchand Kirpalani vs. Meena**[4] and **Bipinchandra Jaisinghbhai Shah v. Prabhavati**[5] clearly explains the settled legal position that the burden of proof lies upon the petitioner who seeks divorce on the ground of desertion to prove four essential conditions, namely, (1) the factum of separation; (2) animus deserendi; (3) absence of his or her consent; and (4) absence of his or her conduct giving reasonable cause to the deserting spouse to leave the matrimonial home.

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[4] AIR 1964 SC 40.

[5] (1956) 2 SCC 382.

20. It is a firmly entrenched principle of matrimonial jurisprudence that a decree of divorce on the ground of desertion can rest only upon the concurrent existence of two indispensable ingredients i.e. the *factum of separation* and the *animus deserendi*. Both elements must be affirmatively established by the party who seeks dissolution, and must survive the exacting test of proof beyond reasonable doubt.

21. In the case of **Suman v. Rajbir Mathur**[6], a Division Bench of the Delhi High Court observed that the Court must deal with the claims of desertion with extreme caution. The requisite *animus deserendi* may not be disclosed by a solitary act but by the cumulative tenor of conduct of the party over time. A failure to establish either of the twin elements, or any suggestion that the petitioner seeks to profit from his or her own wrongful conduct, will be fatal to the plea and will disentitle the claimant to the remedy of divorce on the ground of desertion.

22. In the present case, according to the appellant, respondent deserted him in October, 2004. However, he has filed

[6] 2025 SCC OnLine Del 10963

the aforesaid application vide O.P.No.2 of 2015 in December, 2013.

23. Perusal of record, more particularly, petition in O.P.No.2 of 2015 and depositions of the parties would reveal that the appellant left for USA. He settled in USA. He is permanent citizen of USA. He has filed a petition before District Court in USA seeking divorce and the said Court granted decree of divorce on 19.10.2009 and directed him to pay 100 dollars per month towards maintenance of the child from 01.11.2009 onwards and also directed him to pay the said amount till the child reaches the age of 18 years or till his graduation. He was also advised to obtain decree of divorce from the competent Court in India as he got domicile of India.

24. Thus, admittedly, the parties are staying separately since last 20 years. However, respondent in her counter contended that the appellants and his parents attended Sreemantham and also cradle ceremony preformed at Kota Mysamma temple at Thummadam Village. In proof of the same, she has filed Ex.B.1 – Photographs.

25. In her counter, she has specifically contended that on receipt of legal notice, dated 16.05.2012, she gave reply dated 06.06.2012. She has specifically contended that appellant promised her before the elders that he will take her and her son to USA in 2012 by preparing visa papers. As per the promise made by him before the elders he took her and her son to his native village in April, 2012.

26. The appellant and his family members along with the respondent and her parents have celebrated birthday of her child on 29.04.2012 at his native place Adavidevulapally. On completion of the said function, he has issued legal notice on 09.05.2012 with all false and baseless allegations. Therefore, she got issued reply dated 06.06.2012.

27. In the counter filed by the respondent, she has specifically alleged that despite making a promise that he will send visa papers to her and her son, he failed to do so. The appellant, his relatives including his cousin i.e. P.W.2 – M.Srinivasa Chary, an Advocate, practicing at Miryalaguda, Kotha Anjaneyulu of Adavidevulapally, G. Edukondalu etc. never tried to take her back

to the matrimonial society and tried to convince the respondent to give divorce.

28. However, she contended that her parents along with their relatives, friends i.e. Goli Vijay Kumar, Dr. M. Veera Vasantha Rao, Biragoni Shanker, conducted mediation with the appellant and his family members to take the respondent and her son to USA. Thus, respondent never subjected the appellant to cruelty and deserted him.

29. The aforesaid facts would reveal that despite conducting mediations/panchayats, the parties have not shown interest to join together. The same is evident from the depositions of the P.Ws.2 and R.W.3.

30. It is also apt to note that the respondent made serious allegation against the appellant herein that she married the appellant with her own accord knowing fully well that he lost his left eye. He is having glass eye. She insisted him to leave the job and to reside with her parents.

31. Even according to the respondent, the appellant left USA in the month of August, 2005, he came back to India in June, 2006

and again he left for USA in June, 2006 without taking the respondent and her son along with him. She has further contended that the appellant has been working in USA from 2005 onwards. He is a permanent citizen of USA. She has also stated about filing of a petition by the appellant before USA Court seeking divorce. She has received notices from the USA Court. She never visited USA and no visa papers sent to her.

32. The aforesaid facts would reveal that there is strained relation between the parties. The appellant is staying in USA since last 21 years.

33. It is apt to note that the appellant completed his M.Tech, IIT, Delhi and he is a software Engineer. He is a Greencard holder.

34. It is also apt to note that the respondent is also working in Union Bank of India as Manager. The appellant made serious allegation against the respondent that she has informed him that she had a son through her lover prior to the marriage and that son is also staying with her. However, the appellant failed to prove the same by producing any evidence except making a bald allegation.

35. Perusal of the record would also reveal that the respondent did not lodge any complaint against the appellant and his family members for the offence under Section 498-A of IPC or did not file any petition under Section 12 of the Domestic Violence Act. She did not even file a petition seeking maintenance to her or her minor son. She has admitted the said facts in the counter filed in the said FCOP.

36. As discussed supra, despite conducting mediation/panchayat by the elders, the same did not materialize. Ultimately the parties are staying separately since last 20 years.

37. During the course of hearing on 16.04.2026, Sri C.Raghu, learned senior counsel appearing for appellant, on instructions, submitted that the appellant is ready to settle the matter. On 17.04.2026, both the appellant and respondent, on instructions, submitted to this Court that there is possibility of settlement of disputes between the parties and they are negotiating. On their request, the matter was adjourned to 23.04.2026. On 03.09.2026 on hearing the parties, we were of the opinion that there is possibility of settlement between the parties. Therefore, we

directed the parties to appeal before us for interaction, permitted the appellant, who is residing in United States of America (USA), to appear virtually. The appellant had appeared virtually and the respondent physically. This Court interacted with them separately. The appellant informed this Court that he is not ready to take the respondent back and he sought divorce. He informed this Court that the respondent is working in Union Bank of India as a Manager.

38. It is also apt to note that he has not filed any petition seeking custody of the minor boy or visitation rights. On the other hand, he has filed a petition seeking divorce before USA Court. Vide order dated 19.10.2009, the District Court at USA, directed the appellant to pay 100 dollars per month towards maintenance of the child from 01.11.2009 onwards and also directed him to pay the said amount till the child reaches the age of 18 years or till his graduation.

39. Admittedly, the boy is 21 years old now. He is staying with the respondent – mother who only brought up the boy.

40. The aforesaid facts would reveal that there is no possibility of re-union of the parties. There is strained relation between the parties. They are staying separately since last 20 years. The appellant had filed the aforesaid petition in the year 2013 (re-numbered as OP No.2 of 2015). Respondent filed counter in the August, 2016. Vide impugned order dated 19.07.2017, learned Family court dismissed the aforesaid OP. The appellant preferred the appeal in the year 2017. Thus, they are staying separately since last 20 years. There is no possibility of re-union. However, neither Family Court nor this Court can grant decree of divorce on the ground of irretrievable break down of marriage. However, the said aspects can be considered along with other aspects while deciding the present appeal.

41. As discussed supra, though the appellant filed the aforesaid OP against the respondent seeking dissolution of marriage on the ground of cruelty and desertion, he failed to prove the same by producing cogent evidence. However, with regard to desertion, he examined P.W.1, his cousin, an Advocate, who participated in the mediation.

42. Even according to the respondent, he left for USA in 2005 and he has filed a petition in USA seeking dissolution of marriage.

43. It is apt to note that the appellant was 36 years in the year 2013 at the time of filing of the aforesaid OP and now he is 49 years. Respondent was 31 years then and at present she is 44 years.

44. In view of the aforesaid discussion, this Court is of the view that there is no possibility of reunion of the parties.

45. In the result, this appeal is allowed. The impugned order dated 19.07.2017 passed in OP No. 2 of 2015 by the Learned Judge, Family Court – cum – VI Additional District Judge, Nalgonda, is set aside. O.P.No.2 of 2015 is allowed. The marriage of the appellant with the respondent solemnized on 16.02.2002, is dissolved by way of decree of divorce on the condition of the appellant paying an amount of Rs.50,00,000/- (Rupees Fifty Lakhs only) to his son within three months from today, failing which, liberty is granted to the son of the appellant to take steps against the appellant. The appellant is directed to transfer the said amount to the account of his son on his furnishing the details of his

account. Appellant's son shall furnish details of the bank account within one week from the date of receipt of a copy of this order. However, both the learned counsel for the appellant and learned counsel appearing for the respondent shall cooperate with each other in transferring the amount to the account of the son of the appellant by the appellant. The said amount is towards full and final settlement of all the claims of the appellant's son including the maintenance awarded by the District Court in USA. On receipt of the same, appellant's son shall not make any claim of whatsoever against the appellant. However, there is no order as to costs.

Consequently, miscellaneous applications, if any, pending in the appeal shall stand closed.

JUSTICE K. LAKSHMAN

JUSTICE K.SUJANA

Date:13.11.2026
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