IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 11th DAY OF DECEMBER, 2019

PRESENT

THE HON'BLE MR. JUSTICE P.B.BAJANTHRI
AND
THE HON'BLE MR. JUSTICE NATARAJ RANGASWAMY

MFA NO.100233/2014 (MC)

BETWEEN:

SMT. RENUKA W/O. SANGAPPA HUNCHIKATTI,
AGED ABOUT 33 YEARS,
R/AT AND C/O. KALLAPPA GOVINDAPPA SARAGANVI,
BUDNI, TQ. JAMKHANDI, DIST. BAGALKOTE.

... APPELLANT

(BY SRI. S.S.YALIGAR, ADV.
FOR SRI. MRUTYUNJAY TATA BANGI, ADVOCATE)

AND:

SRI. SANGAPPA S/O. SOMAPPA HUNCHIKATTI,
AGED ABOUT 36 YEARS,
R/AT RABAKAVI, TQ. BILAGI,
DIST. BAGALKOTE.

... RESPONDENT

(BY SRI. B.M.ANGADI, ADVOCATE)

THIS MFA IS FILED UNDER SECTION 28(1) OF THE HINDU MARRIAGE ACT, AGAINST THE JUDGMENT AND DECREE DATED 30.1.2013, PASSED IN MATRIMONIAL CASE NO.4/2010 ON THE FILE OF THE SENIOR CIVIL JUDGE, BILAGI, PARTLY ALLOWING THE PETTIION FILED UNDER SECTION 13 OF THE HINDU MARRIAGE ACT.

THIS MFA COMING ON FOR *FINAL HEARING* THIS DAY, P.B.BAJANTHRI, J. DELIVERED THE FOLLOWING:

JUDGMENT

The appellant-wife has assailed the order dated 30.11.2013 passed in M.C.No.4/2010 on the file of the Senior Civil Judge, Bilagi by which respondent-husband's petition under Section 13 of Hindu Marriage Act for dissolution of his marriage which was solemnized with the appellant in the month of December, 2009 allowed in-part.

2. The appellant-respondent stated to have got married about 27 years back at Rabakavi village in terms of Hindu customs and they have lead a happy married life for about six years. They have begotten a male child by name Vithal. The allegation of the respondent is that, the appellant is from rich family and she wanted to lead her life according to her wish. She was in the habit of visiting her parental house oftenly and some times without informing the respondent. On all these issues, the

appellant was advised through the elders, however there is no reform in her attitude. Without rhyme and reasons, the appellant settled in her parental house and refused to lead marital life with the respondent which compelled him to file petition under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights. During pendency of such petition, Appellant had promised to join the respondent. On such assurance, the respondent withdrew the petition filed under Section 9 of the Hindu Marriage Act. Thereafter, the appellant did not rectify herself and also not re-joined the respondent, and continued to stay in her parental house due to which marital relationship among the parties had come to halt. The appellant filed a Criminal Miscellaneous No.95/2007 before the JMFC Court, Bilagi for award of maintenance and it was allowed. Further she has filed O.S.No.73/2005 before the Senior Civil Judge, Bilagi for partition and the suit was decreed. In this backdrop, the respondent filed a petition under Section 13 of the Hindu Marriage Act, for dissolution of

his marriage, which was solemnized in the month of December, 2009. The Trial Court framed the following points for consideration:

i. *Whether the petitioner proves that respondent has meted out cruelty?*

ii. *Whether the petitioner proves that the respondent has deserted him for more than two years immediately preceding to the filing of the petition?*

iii. *What order?*

3. The respondent examined himself and two other witnesses as PWs-1 to 3, whereas, the appellant examined herself as RW-1. The respondent produced certified copy of the preliminary decree passed in O.S.No.73/2005 as Ex.P1. On the other hand, the appellant furnished Exs.R1 to R8 i.e. Certified copy of Judgment & Decree in O.S.No.73/2005, House assessment extract of property bearing No.45/A, House

assessment extract of property bearing No.45/B, House assessment extract of property bearing No.45/C, Certified copy of record of rights of R.S.No.32/1, Certified copy of record of rights of R.S.No.73/2A and Certified copy of record of rights of R.S.No.10/1A, respectively.

4. The Trial Court proceeded to allow the petition in-part, while holding that, the marriage of the respondent which was solemnized with the appellant 18 years back at Rabakavi village is dissolved by a decree of divorce. Feeling aggrieved and dissatisfied with the Trial Court Judgment & Decree dated 30.11.2013, passed in M.C.No.4/2010, the appellant has presented this appeal.

5. The learned counsel for the appellant vehemently contended that, the Trial Court has committed an error in not appreciating the conduct of the respondent, whereas the respondent's case is that he was meted out the cruelty at the hands of the appellant and he has not pleaded desertion. In this regard, sufficient

material has not been taken note of so as to come to the conclusion that there is a cruelty and desertion at the behest of the appellant. Cruelty contention is urged by the respondent only with reference to various litigation filed by the appellant against the respondent. Further, the respondent had suffered the Orders. The appellant was ever ready and willing to join her husband in order to perform her matrimonial obligations, whereas the respondent is avoiding to lead marital life. Hence, the Trial Court order dated 30.11.2013 passed in M.C.No.4/2010 is liable to be set aside.

6. Per contra, the learned counsel for the respondent resisted the contention of the appellant and supported the Order of the Trial Court. The learned counsel for the respondent vehemently contended that, the marriage is broken irretrievably for the reasons that, the marriage had taken place somewhere in the year 2002. Even though the married life of the appellant and the

respondent was happy till respondent gave birth to the male child-Vithal. The appellant was in the habit of visiting her parental home oftenly with or without the consent of the respondent. She has not returned to her matrimonial home for years together and she was not interested in staying with the respondent, in other words living in parental house which has resulted in domestic issues among the parties. In not joining the respondent by the appellant, the respondent was compelled to file petition under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights. During the pendency of such petition, the appellant apprised the respondent that she would join him. On such assurance, the respondent had withdrawn the petition. Further, the appellant filed a Criminal Miscellaneous No.95/2007 for maintenance and it was allowed and so also partition suit in O.S.No.73/2005 which was decreed. In this backdrop, the respondent had filed a petition under Section 13 of Hindu Marriage Act. The appellant has not adduced any oral or

documentary evidence so as to show her intention of joining the respondent at her matrimonial home and to lead happy married life, despite elders and well wishers advise. The contention of the appellant that she was ever ready to join the respondent was only an afterthought, since no material has been produced and also not adduced evidence in support of the same as she is away for more than one and half decade and stayed at her parental house. The attitude of the appellant residing separately for more than one and half decade amounts to cruelty. In other words, there is no marital relationship among the appellant and the respondent for these many years. Hence, one can draw inference that such an attitude of the appellant amounts to cruelty and desertion, which has rightly held by the Trial Court. Thus, the appellant has not made out a case so as to interfere with the Trial Court Judgment & Decree dated 30.11.2013.

7. Heard the learned counsels for the parties.

8. The question that arose for consideration in the present appeal is, *Whether the Trial Court has erred in allowing the petition filed by the respondent under Section 13 of the Hindu Marriage Act, or not ?* The Trial Court has framed the following issues:

i. Whether the petitioner proves that respondent has meted out cruelty?

ii. Whether the petitioner proves that the respondent has deserted him for more than two years immediately preceding to the filing of the petition?

9. The Trial Court examined PWs-1 to 3 and RW-1 and perused Ex.P1 and Exs.R1 to R8. The appellant's attitude towards the respondent and staying away from him for years together and so also filing a petition for maintenance in Criminal miscellaneous No.95/2007 and partition suit in O.S.No.73/2005, she has not made any efforts to join her husband. On the other hand, the

respondent had filed petition under Section 9 of the Hindu Marriage Act and petition was not continued on account of appellant's readiness and willingness to join the respondent due to which the respondent had withdrawn the petition filed under Section 9 of the Hindu Marriage Act. Even thereafter the appellant had not joined the respondent. The appellant has not apprised the Trial Court as well as before this Court by producing any material evidence and so also what efforts she has made all these years to join the respondent. The contention of the appellant that she is ready to join her husband is only an afterthought for the reasons that she had ample opportunity of joining the respondent during the pendency of M.C.No.4/2010. Now we are in the year 2019. Even during the period from 30.11.2013, the date on which M.C.No.4/2010 was disposed off, till date she has not shown her willingness to join her husband. If her intention was really to join her husband, both Trial and this Court would have made necessary efforts to refer the matter to

the Mediation & Conciliation Centre. Therefore, the attitude of the appellant towards respondent for these many years resulted in failure of marriage among the appellant and the respondent. Once the appellant failed to return to her marital home and remained in her parental house for more than one and half decade amounts to both desertion and cruelty.

10. The law as to matrimonial offences by cruelty by one or the other spouse has been elucidated by the Supreme Court in number of rulings. The same are extracted as follows:

11. The Supreme Court in the case of ***V.Bhagat Vs. D. Bhagat,*** reported in ***AIR 1994 SC 710***, has held that, *mental cruelty in Section 13(1) (i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot*

reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

12. Yet again the Supreme Court in ***Parveen Mehta Vs. Inderjit Mehta,*** reported in ***AIR 2002 SC 2582***, has held thus : *"21. Cruelty for the purpose of*

Section 13(1)(i-a) is to be taken as a behavior by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause

mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other".

13. In the case of ***A. Jayachandra Vs. Aneel Kaur,*** reported in ***AIR 2005 SC 534***, the Supreme Court has held that, *the expression 'cruelty' has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a*

matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence, the courts are required to probe into the

mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

14. In the case of ***Naveen Kohli Vs. Neelu Kolhi,*** reported in ***AIR 2006 SC 1675***, the Supreme Court has held that, *the word "Cruelty" has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case. There may be instances of cruelty by unintentional but inexcusable conduct of any party. The cruel treatment may also result from the cultural conflict between the parties. Mental cruelty can be caused by a party when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health, that he is suffering from paranoid disorder*

and mental hallucinations, and to crown it all, to allege that he and all the members of his family are a bund of lunatics. The allegation that members of the petitioner's family are lunatics and that a streak of insanity runs through his entire family is also an act of mental cruelty.

15. In the case of ***Ramchander Vs. Ananta,*** reported in ***(2015) 11 SCC 539***, the Supreme Court has again held that *instances of cruelty are not to be taken in isolation but cumulative effect of facts and circumstances emerging from evidence on record and then drawing a fair inference whether plaintiff has been subjected to mental cruelty due to conduct of other spouse has to be culled out.*

16. The principle is, thus, settled that whether in the facts and circumstances of a given case, the plaintiff has been able to make out a case of grant of divorce on the ground of cruelty would depend upon the nature of pleadings and evidence in that case and there can be no straitjacket formula nor an exhaustive list of instances

can be prepared, where cruelty is said to have been committed by one or other party to the marriage. Cruelty can also not be inferred by applying any formula because the said question is to be determined keeping in view the social status of the parties, their financial and other conditions, the atmosphere and the kind of employment or vocation which they carry out would all be important to interfere whether on the given set of allegations it has become difficult for the plaintiff to live with the other side and the behaviour of such degree which amounts to the cruelty.

17. In the present case, the appellant after the marriage in the year 2002, stayed with the respondent for about six years and thereafter continuously she remained in her parents' house. She blatantly refused to join her husband. She has not made any efforts to join her husband even though such contention has been raised, however for these many years she has not made any

efforts as is evident from the records. She has also not denied the contentions of the respondent in the plaint. She never returned to her husband's house on her own and there is no communication either oral or written to show her intention to join her husband. The allegations leveled against the respondent were not supported by any documentary or oral evidence.

What is desertion has been considered by the Supreme Court in the case of ***Bipinchandra Jaisinghbhai Shah Vs. Prabhavati*** reported ***AIR 1957 SC 176***. In the said case, it is held that, *history and development of a concept of "desertion" as a cause of action for grant of decree of divorce has been spelt out. Quoting English authors and Halsbury's Law of England, the Supreme Court observed thus in paragraph No.10 : "(10) What is desertion? "Rayden on Divorce" which is astandard work on the subject at p.128 (6th Edn.) has summarized the case-law on the subject in these terms:- "Desertion is the*

separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse; but the physical act of departure by one spouse does not necessarily make that spouse the deserting party". The legal position has been admirably summarized in paras 453 and 454 at pp. 241 to 243 of Halsbury's Laws of England (3rd Edn.), Vol. 12, in the following words:- 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. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases.

Desertion is not the withdrawal from a place but from a state of things, for what the law seeks to enforce is the

recognition and discharge of the common obligations of the married state; the state of things may usually be termed, for short, 'the home'. There can be desertion without previous cohabitation by the parties, or without the marriage having been consummated.

The person who actually withdraws from cohabitation is not necessarily the deserting party. The fact that a husband makes an allowance to a wife whom he has abandoned is no answer to a charge of desertion.

The offence of desertion is a course of conduct which exists independently of its duration, but as a ground for divorce it must exist for a period of at least three years immediately preceding the presentation of the petition or where the offence appears as a cross-charge, of the answer. Desertion as a ground of divorce differ from the statutory grounds of adultery and cruelty in that the offence founding the cause of action of desertion is not complete,

but is inchoate, until the suit is constituted. Desertion is a continuing offence".

The Supreme Court thereafter in the same paragraph held that the quality of permanence is one of the essential elements which differentiates desertion from willful separation. If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (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) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention

aforesaid. The petition for divorce bears the burden of proving those elements in the two spouses respectively.

It was further observed that the desertion is a matter of inference to be drawn from the facts and circumstances of each case. 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. If, in fact, there has been a separation, the essential question always is whether the act could be attributable to an animus deserendi. The offence of desertion commences when the fact of separation and the animus deserendi co-exist. But it is not necessary that they should commence at the same time. The de facto separation may have commenced without the necessary animus or it may be that the separation and the animus deserendi coincide in point of time; for example,

when the separating spouse abandons the marital home with the intention, express or implied. of bringing cohabitation permanently to a close. If a deserting spouse takes advantage of the locus poenitentiae thus provide by law and decides to come back to the deserted spouse by a bonafide offer of resuming the matrimonial home with all the implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for divorce have been commenced, desertion comes to an end and if the deserted spouse unreasonably refuses to offer, the latter may be in desertion and not the former. Hence, it is necessary that during all the period that there has been a desertion, the deserted spouse must affirm the marriage and be ready and willing to resume married life on such conditions as may be reasonable. It is also well settled that in proceedings for divorce the plaintiff must prove the offence of desertion, like any other matrimonial offence, beyond all reasonable doubt. Hence, though corroboration is not required as an absolute rule of

law, the courts insist upon corroborative evidence, unless its absence is accounted for to the satisfaction of the court.

At this stage, it is to be noted that while dealing with the issue concerning, divorce and marital offence, Lord Goddard, CJ, in the case of Lawson v. Lawson, 1955-1, All ER 341 observed that "These cases are not cases in which corroboration is required as a matter of law. It is required as matter of precaution ...."

In Lachman Utamchand Kirpalani v. Meena alias Mota (AIR 1964 SC 40), the Supreme Court has held that desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause.

In Smt. Rohini Kumari v. Narendra Singh (AIR 1972 SC 459), the Supreme Court yet again held that desertion does not imply only a separate residence and separate living. It is also necessary that there must be a

determination to put an end to marital relation and cohabitation.

In Geeta Jagdish Mangtant v. Jagdish Mangtant (AIR 2005 SC 3508), the Supreme Court, after narrating the evidence available in the case, held that the conclusion is inevitable, that there was never any attempt on the part of the wife to go to husband's house, therefore, from this fact alone animus deserendi on the part of the wife is clearly established. She has chosen to adopt a course of conduct which proves desertion on her part and that it was without a reasonable cause. Such a course of conduct over a long period indicates total abandonment of marriage. It also amounts to willful neglect of the husband by the wife.

In a more recent judgment in the matter of Malathi Ravi, M.D. v. B.V.Ravi, M.D. (2014) 7 SCC 640) : (AIR 2014 SC 2881), the Supreme Court has approved its earlier judgment on the point in the matter of Savitri Pandey v. Prem Chandra Pandey (2002) 2 SCC 73: (AIR 2002 SC 591)

and has reiterated the same view regarding desertion and the nature of proof required in law to establish the marital offence.

18. Having regard to the fact that, the parties were married in the year 2002 and their marriage life was happy for about six years. Thereafter, the appellant remained in her parents' house for years together, due to which she had filed petition under Section 125 of Cr.P.C. for maintenance and a suit for partition. On the other hand, respondent had filed petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, which was withdrawn at the behest of appellant. Further she has not shown her intention to join her husband before filing of the petition under Section 13 of the Hindu Marriage Act and so also after disposal of M.C.No.4/2010. From 2014-2019 she has not shown any interest to join her husband. The conduct of the appellant-wife is crystal clear that, she has no desire to live with the respondent-

husband till date of filing of the petition which is a period more than the statutory period of two years. Further also she has not shown any interest. The spouse does not care about the deserted one and ceases to live together renouncing his/her marital obligation and duties.

19. In our considered view, the respondent has fully proved the ground of desertion and cruelty in terms of Section 13(1) (i-a) & (i-b) of the Act, 1955. Consequently, no interference is called for in respect of order dated 30.11.2013 passed in M.C.No.4/2010 by the Senior Civil Judge Court, Bilagi.

Accordingly, the appeal stands dismissed.

Sd/-
JUDGE

Sd/-
JUDGE

*Svh/-