

**HIGH COURT OF TRIPURA
AGARTALA**

Mat.App.11 of 2023

Smt. Joyasree Dey Appellant

Versus

Shri Jayanta Ghosh Respondent

Mat.App.12 of 2023

Smt. Joyasree Dey Appellant

Versus

Shri Jayanta Ghosh Respondent

For the Appellant(s) : Mr. Samrat Kar Bhowmik, Sr. Advocate
Mr. E.L. Darlong, Advocate

For the Respondent(s) : Ms. R. Purkayastha, Advocate
Mr. R. Saha, Advocate

Date of hearing : 11.09.2024.

Date of pronouncement
of Judgment & Order : 13.09.2024.

Whether fit for reporting : No

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT
J U D G M E N T & O R D E R**

[T. Amarnath Goud, J]

Heard Mr. Samrat Kar Bhowmik, learned senior counsel assisted by Mr. E.L. Darlong learned counsel appearing for the appellant. Also heard Ms. R. Purkayastha, learned counsel and Mr. R. Saha, learned counsel appearing for the respondent.

[2] The present appeal being Mat.App.11 of 2023 has been preferred challenging the judgment dated 18.05.2023 and decree dated 29.05.2023 passed by the learned Addl. Judge, Family Court Agartala, West Tripura in Title Suit (Div.) No.384 of 2019. On the other hand, the appeal being Mat.App.12 of 2023 has been preferred challenging the judgment dated 18.05.2023 and decree 29.05.2023 passed by the learned Addl. Judge, Family Court, Agartala, West Tripura in Title Suit (RCR) No.05 of 2020. Since these appeals arise out of a common cause of action, the parties of both these appeals are same, issues involved in both the cases are similar in nature and moreso, learned counsel representing the parties are same, these are taken up together for consideration and disposal by a common judgment and order.

[3] The brief facts of these cases are that the marriage of the appellant wife and the respondent husband was solemnized on 27.04.1999 as per Hindu Rites and Customs and out of their wedlock one son and one daughter were born. The appellant-wife is a service-holder in the Government of Tripura whereas; the respondent-husband is an employee of Government of India. It is contended in the present appeals that the son is about 24 years old who completed his Agri. B. Sc degree and the daughter is about 21 years old pursuing master degree in MCA. The respondent-husband namely, Mr. Jayanta Ghosh preferred a petition being T.S.(Divorce)

384 of 2019 under Section 13(1)(ia) (ib) of the Hindu Marriage Act, 1955 before the learned Court below seeking dissolution of his marriage with Smt. Joyasree Dey (appellant herein) by a decree of divorce. It was mainly alleged in the said petition before the Court below that the wife and her parents used to torture her husband to discontinue all relations with his parents. The wife denied for dissolution of the marriage stating various grounds including torture upon her by her husband in her written statement. She admitted their marriage and denied all the allegations made by her husband in his plaint. The wife-petitioner did not dispute any fact of their parenthood of their children. Learned Court below after observing all the factual aspects and examining the witnesses, allowed the decree in favour of the husband on 18.05.2023 and thereafter, decree was passed on 29.05.2023 in his favour. The relevant contents of the said order dated 18.05.2023 passed in T.S.(Divorce) 384 of 2019 is extracted as under:

".....O R D E R

28. In the result, the suit is decreed in favour of the petitioner-husband as he has successfully established the facts of cruelty and desertion against the wife-respondent. Accordingly, it is ordered that the marriage between the petitioner, Sri Jayanta Ghosh and the respondent Smt Joyasree Dey is dissolved by a decree of divorce from today i.e. from 18.05.2023.

29. The case is disposed of on contest without cost.

30. Prepare a decree accordingly within due time.

31. Supply copy of the decree free of cost to both the parties.....”

[4] On the other hand, the wife-petitioner filed a petition being T.S. (RCR) 05 of 2020 before the Court of Addl. Judge, Family Court, Agartala, West Tripura under Section 9 of the Hindu Marriage Act, 1955 against her husband, Sri Jayanta Ghosh for a decree of restitution of conjugal rights. It was mainly alleged by the wife before the learned Court below that in the course of her marital life, she was subjected to mental and physical torture by her husband and in-laws. It was also alleged that the husband-respondent was in extra-marital affairs with one lady. It was contended before the learned Court below that she had condoned all the illegal activities of her husband and would be ready to continue her conjugal life with her husband. The petitioner appeared before the Court below and admitted his marriage with the petitioner but denied all the allegations and averments made by the wife in her petition for restitution of conjugal rights. Learned Court below after observing all the factual aspects and examining the witnesses, dismissed the petition of the wife by order dated 18.05.2023 and thereafter, decree was accordingly passed on 29.05.2023 against the wife. The relevant contents of the said order dated 18.05.2023 passed in T.S.(RCR) 05 of 2020 is extracted as under:

".....O R D E R

18. In the result, the petitioner-wife herein has miserably failed to prove her case for a decree of restitution of conjugal rights against the respondent-husband and the petitioner is not entitled to get the decree of restitution of conjugal rights as prayed for. In the divorce case filed by the respondent herein vide case No. TS(Div) 384/2019 this court also granted decree of divorce in favour of the husband-respondent as he was able to prove his case against the respondent-wife on the ground of cruelty and desertion on her part.

19. Accordingly, the suit stands dismissed without cost.

20. Prepare a decree accordingly within next 14 days.

21. Supply copy of the decree free of cost to both the parties....."

[5] Aggrieved by the above-mentioned impugned order dated 18.05.2023 and decree dated 29.05.2023 passed in T.S.(Divorce) 384 of 2019 and the impugned order dated 18.05.2023 and decree dated 29.05.2023 passed in T.S.(RCR) 05 of 2020, the appellant herein has preferred the instant appeals respectively for setting aside the same.

[6] Mr. Samrat Kar Bhowmik, learned senior counsel appearing for the appellant-wife contends that learned Court below did not appreciate that the respondent-husband was cruel towards the appellant-wife from the date of their marriage on 27.04.1999. It is stated that for more than 24 years, the wife has sacrificed most part of her life selflessly for the family and two children of the respondent-husband. He further submits that the appellant-wife in her deposition before the Court below contended that the husband-respondent was maintaining an illicit relationship with one lady of Behlianchip village at Jampui hills and quite frequently her husband

used to visit the village of the said lady. Whenever, the wife asked about the illicit relationship, her husband used to get violent and used to torture her along with the threat of giving divorce. In her deposition she further stated that she and her husband are not residing separately but, unfortunately, learned Court below did not consider the submission made by the wife and wrongly passed the judgment and decree of divorce.

[7] It is further contended on behalf of the appellant-wife that she vide her firisti dated 19.02.2021 submitted 10 items in 34 sheets and in her evidence in chief at para 20, she prayed before the Court below to exhibit her documents and photographs but the same were not exhibited by the Court below.

[8] Mr. Kar Bhowmik, learned senior counsel contends that the certificate of marriage of the parties was issued only on 05.05.2017 from which it can reasonably be assumed that till 05.05.2017, there was no cause of action for the respondent husband to file a divorce petition. Appellant-wife pardoning all the guilt of her husband with a desire to continue her conjugal life with her husband filed the petition for a decree of restitution of conjugal rights, but, learned Court below did not consider the same and committed an error in the eye of law. He submits that on the averments made by one of the parties, the marriage between them

cannot be dissolved. He, therefore, urges this Court to allow the present appeals setting aside the impugned judgments and decrees passed by the Court below.

[9] To support the case on behalf of the appellant, learned senior counsel has placed reliance on judgments of Hon'ble Supreme Court. For the purpose of reference, the contents of the said judgments as referred by the learned senior counsel are extracted herein-below:

Savitri Pandey vs. Prem Chandra Pandey reported in **(2002) 2**

SCC 73:

"6. Treating the petitioner with cruelty is a ground for divorce under Section 13(1)(i-a) of the Act. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other. In the instant case both the trial court as well as the High Court have found on facts that the wife had failed to prove the allegations of cruelty attributed to the respondent. Concurrent findings of fact arrived at by the courts cannot be disturbed by this Court in exercise of powers under Article 136 of the Constitution of India. Otherwise also the averments made in the petition and the evidence led in support thereof clearly show that the allegations, even if held to have been proved, would only show the sensitivity of the appellant with respect to the conduct of the respondent

which cannot be termed more than ordinary wear and tear of the family life.*****

15. To appreciate such a submission some facts have to be noticed and the interests of public and society to be borne in mind. It appears that the marriage between the parties was dissolved by a decree of divorce vide the judgment and decree of the Family Court dated 8-7-1996. The respondent-husband filed appeal against the judgment and decree on 19-1-1997. As no stay was granted, the appellant solemnised the second marriage on 29-5-1997, admittedly, during the pendency of the appeal before the High Court. There is no denial of the fact that right of at least one appeal is a recognised right under all systems of civilised legal jurisprudence. If despite the pendency of the appeal, the appellant chose to solemnise the second marriage, the adventure is deemed to have been undertaken at her own risk and the ultimate consequences arising of the judgment in the appeal pending in the High Court. No person can be permitted to flout the course of justice by his or her overt and covert acts. The facts of the cases relied upon by the learned counsel for the appellant are distinct having no proximity with the facts of the present case. In all the cases relied upon by the appellant and referred to hereinabove, the marriage between the parties was dissolved by a decree of divorce by mutual consent in terms of application under Section 13-B of the Act. This Court while allowing the applications filed under Section 13-B took into consideration the circumstances of each case and granted the relief on the basis of compromise. Almost in all cases the other side was duly compensated by the grant of lump sum amount and permanent provision regarding maintenance.*****

17. The marriage between the parties cannot be dissolved only on the averments made by one of the parties that as the marriage between them has broken down, no useful purpose would be served to keep it alive. The legislature, in its wisdom, despite observation of this Court has not thought it proper to provide for dissolution of the marriage on such averments. There may be cases where, on facts, it is found that as the marriage has become dead on account of contributory acts of commission and omission of the parties, no useful purpose would be served by keeping such marriage alive. The sanctity of marriage cannot be left at the whims of one of the annoying spouses. This Court in *V. Bhagat v. D. Bhagat* held that irretrievable breakdown of the marriage is not a ground by itself to dissolve it.

18. As already held, the appellant herself is trying to take advantage of her own wrong and in the circumstances of the case, the marriage between the parties cannot be held to have become dead for invoking the jurisdiction of this Court under Article 142 of the Constitution for dissolving the marriage.....”

Ramchander vs. Ananta reported in (2015) 11 SCC 539:

“.....10. The expression "cruelty" has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13(1)(1-a) is to be taken as a behaviour by one spouse towards the other,

which causes a 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. Cruelty can be physical or mental. In the present case there is no allegation of physical cruelty alleged by the plaintiff. What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. It is settled law that the instances of cruelty are not to be taken in Isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse. In the decision in Samar Ghosh cases this Court set out illustrative cases where inference of "mental cruelty" can be drawn and they are only illustrative and not exhaustive....."

[10] Furthermore, reliance has also been placed by the appellant side on the judgments of this Court dated 31.05.2016 passed in MAT Appeal 03 of 2012 and dated 22.03.2021 passed in FA No.06 of 2015. The relevant contents of the said judgments are quoted herein-below:

Order dated 31.05.2016 passed in MAT Appeal 03 of 2012:

".....9. Having referred to Savitri Pandey Vs Prem Chandra Pandey reported in (2002) 2 SCC 73. Mr. Majumder, learned counsel has submitted that desertion may constructively be inferred from the attendant circumstances for which living in the separate residence is not necessary. Mr. Majumder, learned counsel has further submitted that no evidence was led by the respondent to show that she was forced to leave the company of the appellant or that she was thrown away from the matrimonial home or she was forced to live separately. It has been asserted that the appellant has squarely proved animus deserendi. The respondent had brought the marriage to an end by refusing to have cohabitation or to have live with the appellant. It is manifest on the face of the record that the respondent had withdrawn from state of things, the matrimonial relation. What the respondent has stated in the trial to support her conduct has only reflected that she was banned to take advantage of her own wrong or disability. In this regard, Mr. Majumder has referred the following passage from Savitri Pandey Vs Prem Chandra Pandey:

"13. In any proceedings under the Act whether defended or not, the court would decline to grant relief to the petitioner, if it is found that the petitioner was taking advantage of his or her own wrong or disability for the purposes of the reliefs contemplated under Section 23(1) of the Act. No party can be permitted to carve out the ground for destroying the family which is the basic unit of the society. The foundation of the family rests on the institution of a legal and valid marriage. Approach of the court should be to preserve the matrimonial home and be reluctant to dissolve the marriage on the asking of one of the parties."*****

11. In reply, Mr. B. Majumder, learned counsel appearing for the respondent while defending the impugned judgment has submitted

that it has been established by the judicial records that for perpetration of violence on the respondent she had to live alone. Moreover, taken that advantage, the appellant started living with another woman despite disapproval strongly expressed by the respondent and such allegation has been proved by OPW- 2 and 3As such, the contention that such allegation was left at lurch without proving it, is entirely without foundation and contrary to the records. He has relied on a few judgment of the apex court to support his contention. In Bipinchandra Jaisingh Shah versus Prabhabati reported in AIR 1957 SC 176, as relied, the apex court has observed as under:

"10. What is desertion ? "Rayden on Divorce" which is a standard work on the subject at p. 128 (6th Edn.) has summarised 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 principal 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 differs 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".

Thus the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandoned 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 petitioner for divorce bears the burden of proving those elements in the two spouses respectively. Here a difference between the English law and the law as enacted by the Bombay Legislature may be pointed out. Whereas under the English law those essential conditions must continue throughout the course of the three years immediately preceding the institution

of the suit for divorce; under the Act, the period is four years without specifying that it should immediately precede the commencement of proceedings for divorce. Whether the omission of the last clause has any practical result need not detain us, as it does not call for decision in the present case. 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 that 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. The law in England has prescribed a three year period and the Bombay Act prescribes a period of four years as a continuous period during which the two elements must subsist. Hence, if a deserting spouse takes advantage of the locus poenitentiae thus provided by law and decides to come back to the deserted spouse by a bona fide 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 the 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. In this connection the following observations of Lord Goddard, C. J. in the case of *Lawson v. Lawson* [1955] 1 All E. R. 341 may be referred to :-

"These cases are not cases in which corroboration is required as a matter of law. It is required as a matter of precaution.....".

With these preliminary observations we now proceed to examine the evidence led on behalf of the parties to find out whether desertion has been proved in this case and, if so, whether there was a bona fide offer by the wife to return to her matrimonial home with a view to discharging marital duties and, if so, whether there was an unreasonable refusal on the part of the husband to take her back."

It has been further observed in the said report that :

"15. The defendant's further case that she had been turned out of the house by the husband under duress cannot be accepted because it is not corroborated either by circumstances or by direct testimony. Neither her father nor her cousin say a word about her speaking to them on her arrival at Jalgaon that she had been turned out of her husband's home. If her case that she had been forcibly turned out of her marital home by the husband had been made out, certainly the husband would have been guilty of "constructive desertion", because the test is not who left the matrimonial home first. (See *Lang v. Lang* [1955] A. C. 402, 417. If one spouse by his words and conduct compel the other spouse to leave the marital home, the former would be guilty of desertion, though it is the latter who has physically separated from the other

and has been made to leave the marital home. It should be noted that the wife did not cross-petition for divorce or for any other relief. Hence it is no more necessary for us to go into that question. It is enough to point out that we are not prepared to rely upon the uncorroborated testimony of the defendant that she had been compelled to leave her marital home by the threats of the plaintiff."

12. The ratio as laid down in Bipinchandra Jaisingh Shah versus Prabhabati, if culled out would be that 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 spouse who intends to take desertion as the ground for divorce he or she must prove the said offence beyond all reasonable doubt. The spouse who compels for separate living is guilty of desertion as he has made the other spouse to be physically separated from him. He cannot take such physical separation as the ground of divorce by branding the same as desertion....."

Order dated 22.03.2021 passed in FA No.06 of 2015:

[5] During trial, both the parties led oral evidence. The appellant husband adduced oral evidence of 4 (four) witnesses including himself. The other witnesses were his neighbours Sri Biswajit Roy [PW-2], Smt. Shanti Paul [PW-3] and his younger brother Sri Ajit Paul [PW-4]. His respondent wife on the other hand examined herself as DW-1, her elder brother Sri Mantu Ch. Rudrapaul as DW-2 and neighbour Sri Khokan Ch. Das as DW-3.

[6] The trial court examined the matter in detail in the background of evidence available on record and dismissed the petition filed by the appellant husband for divorce. It was held by the trial court that the appellant husband could not establish the ground of desertion. Rather, the respondent wife was found always willing to live with her husband. The Family Court having found possibility of their reunion, dismissed the petition for divorce by judgment and order dated 26.03.2011 passed in TS (Divorce) 332 of 2009.

[7] Aggrieved appellant challenged the said judgment of the Family Court in FA No. 10 of 2011 in this High Court. The matter was decided by this Court by the judgment and order dated 18.12.2014. It was then observed by this Court that opportunity was not given to the other side to cross examine the witnesses of the petitioner. Therefore, the matter was remanded back to the trial court with the following directions:

"8. Admittedly, the procedure as laid down by the High Court in the aforesaid judgment has not been followed. Therefore, without going into the merits of the case we set aside the judgment and decree of the Family Court and remand the matter to the Family Court to rehear the matter from the stage of framing of issues.

9. The parties shall be permitted to lead evidence and the opposite party shall be permitted to cross examine the witnesses in accordance with the aforesaid judgment. In view of the fact that the divorce petition was filed in the year 2009, we direct the learned Judge, Family Court, Agartala, West Tripura, to dispose of the case as early as possible and in any event not later than 31st July, 2015. The parties through their counsel are directed to appear before the learned Judge, Family Court, Agartala, West Tripura on 14.01.2015."

[8] In the course of fresh trial, new issues were framed by the Family Court which were as under: "1. Has the respondent petitioner been deserted by wife respondent and if so from what point of time?

2. Is the petitioner entitled to a decree as prayed for?"

[9] During fresh trial after remand, appellant husband examined himself as PW-1 and his neighbours Sri Biswajit Roy as PW-2 and Smt. Shanti Paul as PW-3. Similarly, the respondent wife examined herself as DW-1, her elder brother Sri Mantu Ch. Rudrapaul as DW-2 and neighbour Khokan Ch. Das as DW-3. All witnesses were cross examined by the other side. On appreciation of evidence the trial court arrived at the following conclusion:

"10. In view of the discussion made above, I find that the petitioner failed to establish any fact to show that he has been deserted by his wife, rather it appears that the respondent is still willing to live with her petitioner along with her daughter. No wrong or cruel activities on the part of the respondent could also be established. The allegations made by the PW-1 against his wife also appears to be general in nature and mere wear and tear of every marital life and cannot be treated as exceptional to constitute matrimonial offence to satisfy the requirement of the term "cruelty".

11. In case of desertion also, their lordship observed in Savitry Pandey Vs. Prem Chandra Pandey, (2002) 2 SCC 73 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 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.

Having held so, Family Court again rejected the petition for divorce by the impugned judgment and order dated 30.04.2015 which has been challenged by the appellant husband in the present appeal.

[10] The appellant husband in his deposition at the trial has replicated his plaint case. According to him, his wife always misbehaved with him and his family members right from the beginning of the marriage. She was unwilling to share mess with his parents and brothers. Ultimately on 04.08.2005 she left her matrimonial home along with her daughter and started living at her parental home at Udaipur. According to the PW, he met his wife in his in-laws house several times to bring her back but she wanted him to stay with her at Udaipur. With a view to restore the conjugal relationship he filed a suit for restitution of conjugal rights in which both of them were directed to meet each other at their respective places once in a week. Though he met his wife at her place in terms of the said order, his wife never came to his house which proves that she had withdrawn herself permanently from his company. Then he filed a petition for divorce in the Family Court.

In cross examination, the appellant husband admitted that he was convicted and sentenced in a case lodged by his wife under section 498A IPC. He denied to have committed any torture on his wife. In his cross examination he also denied the fact that after their separation in the year 2005, his wife returned back to him along with their daughter and thereafter again she had to leave her matrimonial home since she was threatened by the PW with dire consequence.

[11] Sri Biswajit Roy [PW-2], who is a neighbour of the appellant husband stated that the respondent wife of the appellant was living with her parents at Udaipur. When the PW met her at Udaipur she told him that she was not willing to continue her conjugal relationship with her appellant husband.

But in his cross examination, he said that he was not aware about the address of the parental house of the respondent wife of the appellant.*****

[16] In this factual background, learned counsel for the appellant has argued that the parties are living separately for more than 15 years. During this period the wife has never met her appellant husband at her place which indicates that their relationship has broken down irretrievably and there is no chance of restoration of such relationship. It is contended by learned counsel of the appellant that in similar situation divorce was granted in favour of the husband by this Court in the case of Bidyut Kumar Saha Vs. Tapa Saha reported in MANU/TR/0138/2020. Learned counsel, therefore, urges the court to put the marriage to end by granting divorce in favour of the appellant.*****

[20] Desertion for the purpose of divorce has not been defined anywhere in the Hindu Marriage Act. The expression "desertion" appearing in Section 13 of the Hindu Marriage Act has been interpreted in various judicial pronouncements. It is held that the essence of desertion is animus deserendi or the intention on the part of the offending spouse to bring cohabitation permanently to an end without reasonable cause against the consent or wish of the other spouse. About how to arrive at the conclusion as to whether one spouse has been deserted by the other within the meaning of Section 13(1)(ib) of the Act, the Apex Court in Sanat Kumar Agarwal Vs. Nandini Agarwal reported in (1990) 1 SCC 475 has viewed that the question of desertion is a matter of inference which has to be drawn from the facts and circumstances of each case and observed as under:

"5. It is well settled that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case and those facts have to be viewed as to the purpose which is revealed by those facts or by conduct and expression of intention, both interior and subsequent to the actual act of separation....."

[21] In the given context, ostensibly the respondent wife abandoned her husband on 04.08.2005 along with their daughter and according to the appellant husband she did not come back to her matrimonial home thereafter. Whether divorce can be granted for such conduct of the respondent wife has to be decided in the peculiar factual context of this case. Before we do so, it would be appropriate to refer to the decision of the Apex Court in Savitri Pandey Vs. Prem Chandra Pandey reported in (2002) 2 SCC 73 where the Apex Court dealt with the concept of desertion in the context of divorce and held as under:

"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 legalizes 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. After referring to a host of authorities and the views of various authors, this Court in Bipinchandra Jaisinghbai Shah v. Prabhavati [AIR 1957 SC 176] held that if a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion....." *****

[23] In the instant case, looking into the conduct of the parties subsequent to the filing of the divorce petition no inference can be

drawn that the respondent wife ever intended permanent abandonment of the company of her husband. In *A. Jayachandra Vs. Aneel Kaur* reported in (2005) 2 SCC 22, the Apex Court observed that acts of the spouses subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct.

[24] In the given case, the appellant husband in his testimony at the trial before the Family Court has categorically stated that his wife always wanted him to stay with her at Udaipur. Since, her proposal was not agreeable to him, he filed a suit for restitution of conjugal rights at the Family Court at Agartala. It is admitted by the husband that in terms of the direction of the Family Court he used to meet and stay with her at Udaipur. Admittedly, his respondent wife never objected his stay with her at Udaipur. In her evidence as DW-1, the respondent wife also stated that she used to visit her husband at Agartala along with her daughter after the order was passed by the Family Court in the suit for restitution of conjugal rights. According to her, since she was doing a Govt. job at Udaipur she used to come on every Saturday to the place of her husband and leave on Monday morning to resume her duties at Udaipur. All those meetings between the spouses took place after the respondent wife allegedly abandoned her husband on 04.08.2005.

[25] Such evidence, viewed in the light of law enunciated by the Apex Court in the judgments cited to supra, does not support the case of the permanent abandonment of his company by his respondent wife.*****

[27] The argument is not acceptable firstly because the decision in the case of *Bidyut Kumar Saha* (Supra) was rendered by this court in a completely different factual context and secondly because long separation between the couple is not a sure sign of irretrievable break down of marriage. It is seen in many cases that even after long separation, the spouses reunited, renewed their relationship and lived together till the end of their life. Moreover, in the given context, the spouses admittedly lived together even after the alleged separation between them.

[28] With regard to the ground of irretrievable break down of marriage, the Apex Court in *Shyam Sunder Kohli Vs. Sushma Kohli* Alias *Satya Devi* reported in (2004) 7 SCC 747, held that on the ground of irretrievable break down of marriage, the court must not lightly dissolve the marriage. It is only in extreme circumstances that the court may use this ground for dissolving the marriage.

[29] In a later decision in *Naveen Kohli Vs. Neelu Kohli* reported in (2006) 4 SCC 558 though the Apex Court granted divorce because in view of the fact that the marriage between the parties had broken down irretrievably, in paragraph 85 of the judgment it was held by the Apex Court that it is the obligation of the court and all concerned that marriage status should, as far as possible, as long as possible and whenever possible be maintained. In the said case, following observation was made by the Apex Court:

"85.Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. The course which has been adopted by the High Court would encourage continuous bickering, perpetual bitterness and may lead to immorality."

[30] For what has been discussed by us, the marital bond between the parties cannot be said to have gone beyond repair and as such the ground of irretrievable break down of marriage as expounded by learned counsel of the appellant is not acceptable to us.....”

[11] On the contrary, Ms. R. Purkayastha, learned counsel for the respondent opposes the submissions made by the learned senior counsel for the appellant. She contends that there is dispute between the parties for a long time and there were allegations and counter allegations against each other. She further contends that the wife had filed a case being CR(DV) 11 of 2020 before the JM First Class, Agartala, West Tripura against her husband which was dismissed for non-prosecution on 04.07.2024. It is contended that, in this situation, the parties cannot be allowed to live together because of their irretrievable breakdown of marriage. While arguing the case, learned counsel for the respondent has placed reliance on the judgment of Hon'ble Supreme Court in **Shri Rakesh Raman versus Smt. Kavita** reported in **2023 LiveLaw (SC) 353**.

[12] Heard the submissions made at the Bar. Perused the material evidence on record.

[13] Upon hearing the submissions made by both the parties, this Court is of the considered opinion that the marriage between the parties has not become irretrievably break down. It is not disputed that both the parties are staying in the same house one on the ground floor another on the upper floor. Both of them are middle-aged persons and their son and daughter are also grown up

since they are pursuing higher education and yet to get married. The recent photographs and also the recent marriage registration documents of the family indicates that on and off they are in maintaining relation and good terms and only at times, the relationship is triggered against each-other. This Court is not expressing any opinion about the conduct of both the parties in terms of their personal and private life keeping the interest of the entire family, this Court is not inclined to dissolve the marriage. There is every scope in future that they would again lead a conjugal life. Hence, the judgment referred by the learned counsel for the respondent is not relevant to the facts and circumstances of the case in hand.

In view of the above discussions, the impugned judgments and decrees in these respective appeals are set aside. Resultantly, the present appeals are allowed and the same are disposed of.

As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

B. PALIT, J

T. AMARNATH GOUD, J

Sabyasachi G.

RAJKUMAR SUHANJIT
SINGHA

Digitally signed by RAJKUMAR SUHANJIT
SINGHA
Date: 2024.09.13 13:04:05 +05'30'