



2024:UHC:6408-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE THE CHIEF JUSTICE MS. RITU BAHRI
AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

5th September, 2024

A.O. NO. 9 Of 2023

Mukesh Kumar Appellant.

Versus

Anita Kashyap Respondent

Counsel for the appellant : Mr. T.A. Khan, learned Senior Counsel
assisted by Mr. Mohd. Shafy, learned
counsel.

Counsel for the respondent : Mr. Karan Anand, learned counsel

JUDGMENT : (per Ms. Ritu Bahri, C.J.)

The instant Appeal has been filed by the appellant-husband challenging the judgment and order dated 16.12.2022 passed by the Additional Judge, Family Court, Dehradun in Original Suit No. 386 of 2017, whereby the learned Additional Judge, Family Court, Dehradun has decreed the suit for restitution of conjugal rights filed by the respondent.

2. The marriage between the parties was solemnized on 18.11.2011 and they are living separately since 2014. There is also no issue from the marriage. The marriage between the parties is a dead marriage in view of the judgments of the Hon'ble Supreme Court.

3. The relevant details of the present appeal are as follows :-



Date of marriage	18.11.2011
Date of Separation	Since 2014
Details of the criminal proceedings between the parties.	1) Misc. Criminal Case No. 1175 of 2016 under Domestic Violence Act pending before the Judicial Magistrate, 2 nd Class, Dehradun. 2) First Appeal No. 112 of 2019 pending before the Allahabad High Court.
Issues from the marriage	None.
Decision of the Family Court	Suit No. 386 of 2017 filed by the respondent under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights was allowed by order dated 16.12.2022.
Maintenance decided by the Family Court	Rs. 15,000/- per month since 2022.
Reliance placed on the judgments of the Hon'ble Supreme Court on the	1. Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511. 2. Shilpa Sailesh v. Varun



issue of dead marriage.	Sreenivasan, 2023 SCC OnLine SC 544. 3. Prakashchandra Joshi v. Kuntal Prakashchandra Joshi @ Kuntal Visanji Shah, 2024 INSC 55.
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4. As per the judgment of the Family Court, vide order dated 16.12.2022, the suit of the respondent-wife filed under Section 9 of the Hindu Marriage Act, 1955 has been allowed.
5. Learned counsel for the appellant states that the appellant is ready to give Rs. 10 Lacs as permanent alimony to the respondent-wife, within a period of one month.
6. There is one criminal litigation pending between the parties and also one first appeal, which is pending before the Allahabad High Court.
7. The marriage of the parties was solemnized on 18.11.2011, and both the parties are living separately since 2014. There is almost 10 years' separation between the parties. There is no child from the marriage.
8. Keeping in view the facts of this marriage, it can be said that this marriage is nothing more than a dead



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marriage, and if both the parties are not granted divorce, it will amount to cruelty to both the parties.

There is no emotional bonding between the parties, and there is no scope of patch-up between them, keeping in view the long period of separation of almost 10 years.

9. Recently, the Hon'ble Supreme Court in the case of *Shri Rakesh Raman v. Smt. Kavita, 2023 LiveLaw (SC) 353* has examined the issue of dead marriage, and has held that in a case, where the marriage has broken down irretrievably, then it spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty, and hence it is a case of long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1) (ia) of the Hindu Marriage Act, 1955.

10. In view of the above-said discussion, the present Appeal is allowed, and the judgment and order dated 16.12.2022 passed by the learned Additional Judge, Family Court, Dehradun is set-aside. Divorce is granted to the parties, and the marriage is dissolved.

11. Permanent alimony of Rupees Ten Lakhs shall be paid by the appellant-husband to the respondent-wife within a period of one month.



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11. Pending application(s), if any, also stand disposed
of accordingly.

RITU BAHRI , C.J.

RAKESH THAPLIYAL, J.

Dt: 5th September, 2024
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