



2024:UHC:7329-DB

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE MS. RITU BAHRI
AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

First Appeal No.179 of 2023

Tejpal Singh Saini

..Appellant

Versus

Smt. Surekha Saini

..Respondent

Counsel for the appellant : Mr. Mitra Bhaskar Shah, Mr.
Hiriyangam Shah, learned counsels.

Counsel for the respondent Mr. Bilal Ahmed, learned counsel.

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

For the reasons stated in the affidavit filed in support of the delay condonation application (IA No.01 of 2023), delay condonation application is allowed, and the delay of 52 days] is hereby condoned.

2. The appellant has come up in the appeal against the judgment dated 14.08.2023, whereby his divorce petition under section 13 (1) (ia) (ib) of the Hindu Marriage Act, has been dismissed.

3. The marriage of the parties was solemnized on 17.04.2000, and they are living separately since 2006 and there is no child from this marriage. As per the Family Court's judgment, after the marriage was solemnized in the year 2000, the respondent/wife deserted and living separately since 2006. Thereafter, in



the year 2010, a complaint was made before the Women Helpline and with the intervention of the family members, the settlement was arrived at between the parties, that they could not live together. As per the appellant, the entire *stridhan* was returned and also as permanent alimony Rupees Three Lakh, were paid to the wife/respondent. The compromise dated 22.09.2010, was duly notarized by Smt. Satyavati Verma, Advocate at Roorkee at Serial No.747/22.09.2010.

4. On the basis of the compromise, a divorce petition was filed by the respondent/wife on 24.09.2010 being O.S. No.184 of 2010, "Smt. Surekha Vs. Tejpal", the respondent did not appear in the case, and it was dismissed on 05.08.2011. Another divorce petition was filed by the respondent O.S. No.59 of 2014, and the judgment was passed on 13.06.2014, whereby the appellant paid the respondent Rupees Two Lakh, and this judgment was challenged before the High Court, and the said O.S. No.59 of 2014, and the matter was remanded back to the Family Court, Haridwar, and thereafter she withdrew the said divorce petition.



5. One petition under section 125 of CrPC, filed on 02.05.2018, in which the interim maintenance application of respondent was rejected on 09.08.2019, as she already accepted the compromise notarized on 22.09.2010, where she had received Rupees Three Lakh, as permanent alimony.

6. In the present case, keeping in view that the marriage was solemnized on 17.04.2000, and they had no child from this marriage, it was a dead marriage. On 05.09.2024, learned counsel for the appellant sought time to get instructions as to whether the appellant is ready to give Rupees Three Lakh, as permanent alimony to the respondent.

7. Today, when the case was taken up, learned counsel for the appellant has produced a demand draft no.070715, dated 19.07.2024, of Rupees Three Lakh, issued by the Central Bank of India, Gurukul, which he shall deposit in the Registry of this Court. At this stage, learned counsel for the respondent says that he has no instructions from the respondent/wife. However, keeping in view that even on the earlier occasion the respondent had accepted as per the compromise dated 22.09.2010,



she had accepted Rupees Three Lakh, as permanent alimony, and as per the notarized compromise dated 22.09.2010. As per the appellant, he had paid Rupees Two Lakh to the respondent/wife, after the judgment dated 13.06.2014, in O.S. No.59 of 2014.

8. Since the appellant has placed on record a copy of the draft of Rupees Three Lakh, and there is no child from this marriage, the marriage between the parties is a dead marriage in view of the judgment of the Hon'ble Supreme Court.

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

Date of marriage.	17.04.2000
Date of separation.	Since 2006
Details of the criminal proceedings between the parties.	-
Issues from the marriage.	None.
Decision of the Family Court.	divorce petition under section 13 (1) (ia) (ib) under the Hindu Marriage Act, has been dismissed
Permanent Alimony	Rs.3,00,000/-.
Reliance placed on the judgments of the Hon'ble Supreme Court that marriage is dead after a long period of seperation.	1. <i>Samar Ghosh v. Jaya Ghosh</i> , (2007) 4 SCC 511. 2. <i>Shilpa Sailesh v. Varun Sreenivasan</i> , 2023 SCC OnLine SC 544. 3. <i>Prakashchandra Joshi v. Kuntal Prakashchandra Joshi @ Kuntal Visanji Shah</i> , 2024 INSC 55.



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10. A divorce is granted to the appellant/husband on the ground of dead marriage, and mental cruelty. A demand draft of Rupees Three Lakh, shall be deposited with the Registry of this Court, which can be taken by the respondent/wife within 90 days' and if it is not taken by the respondent, it will be presumed that she does not want to take any permanent alimony.

11. In view of the above, the first appeal stands allowed.

RITU BAHRI, C.J.

RAKESH THAPLIYAL, J.

Dt: 03rd October, 2024
NR/

NITESH
RAWAT

Digitally signed by NITESH RAWAT
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