

IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 17TH DAY OF DECEMBER, 2025
PRESENT
THE HON'BLE MR. JUSTICE S G PANDIT
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.
MISCELLANEOUS FIRST APPEAL NO.100905 OF 2023

BETWEEN:

BHUMIKA W/O. BABAJI KAWALEKAR
AGE: 28 YEARS, OCC: HOUSEWIFE,
R/O. NO.77, LAXMI GALLI,
GANDHI NAGAR, BELAGAVI-590 001.

...APPELLANT

(BY SRI GIRISH V. BHAT, ADVOCATE.)

AND:

BABAJI S/O. SHIVAJI KAWALEKAR
AGE: 31 YEARS, OCC: BUSINESS,
R/O. NO.18 GANDHI NAGAR,
MARUTI ROAD, ZAKERIYA GALLI,
BELAGAVI-590 016.

...RESPONDENT

(NOTICE SERVED TO RESPONDENT.)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 19(1) OF THE FAMILY COURTS ACT, 1984, PRAYING TO CALL FOR RECORDS AND SET ASIDE THE JUDGMENT AND DECREE DATED 09.11.2022, PASSED IN MATRIMONIAL CASE NO.102/2021, ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, BELAGAVI, AND DISSOLVE THE MARRIAGE OF THE APPELLANT WITH THE RESPONDENT, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 26.11.2025 AND COMING ON FOR

PRONOUNCEMENT OF JUDGMENT THIS DAY, DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR. JUSTICE S G PANDIT
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.

CAV JUDGMENT

(PER: THE HON'BLE MRS JUSTICE GEETHA K.B.)

This is the appeal filed under Section 19(1) of the Family Courts Act, by the appellant to set aside the judgment passed in M.C.No.102/2021, dated 09.11.2022, on the file of Principal Judge, Family Court, Belagavi and to grant decree of divorce against her husband/respondent.

2. Parties would be referred with their ranks as they were before the trial Court, for the sake of convenience and clarity.

3. The petitioner has filed petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 (for short, the Act, 1955) praying for dissolution of her marriage, which was solemnized on 27.05.2013 at Jalgar Maruti Mangal Karyalaya, Chavat Galli, Belagavi, with respondent.

4. The case of petitioner in a nutshell is that, after marriage, she lived happily for six months with respondent, his mother, grandfather, brother in joint family. Respondent was doing business having handsome income. Six months after the marriage, respondent got addicted to bad vices like drinking alcohol and coming to the house late at night and was quarrelling with petitioner without any reason. In this regard, panchayaths were convened several times and respondent assured that he would mend his ways, but he has not changed his attitude. Hence, it became difficult for petitioner to maintain good relationship with respondent. She had been to her parental house. After a few days, again Panchayath was convened. At that time respondent did not show any interest to take the petitioner back to matrimonial home. The parents of petitioner went to the house of respondent and requested to maintain cordial relationship with petitioner. But he told that he is not interested in leading life with petitioner. Totally the petitioner stayed for about 6-7 months in matrimonial house. The behaviour of respondent did not change. Hence, without any option, she

is residing in her parental house. Petitioner has no hope of rejoining the company of respondent for leading marital life with him. Hence, she has issued notice dated 09.02.2021 to the respondent and even though it was served, respondent has not come forward to give reply. Hence, filed the petition for appropriate relief.

5. Even after service of notice, respondent has not appeared and not contested the petition.

6. After recording evidence of the petitioner, apart from marking Exs.P.1 to P.3, the Family Court has dismissed the petition for decree of divorce on the ground that cruelty is not proved and desertion is also not proved.

7. Aggrieved by the said judgment, the petitioner/appellant has filed the present appeal.

8. Even after service of notice to respondent in this appeal, respondent has not appeared and he is unrepresented.

9. Heard the arguments of learned counsel for appellant Sri Girish V. Bhat.

10. Learned counsel for appellant would submit that there is no marital relationship between parties since more than 11 years. There is no chance of reunion between them. The marriage is broken irretrievably. It cannot be revived. He would further submit that in the cause of action column, there is a typographical mistake as December-2020 instead of December-2013. However, the complete reading of cause of action paragraph reveals that, it is only a typographical mistake. Hence, at least on the ground of desertion, the Family Court ought to have decreed the petition. He would further submit that, grounds of cruelty narrated in the petition are sufficient to grant decree of divorce. Hence, prayed for allowing the appeal and to grant decree of divorce by setting aside the judgment passed in M.C.No.102/2021.

11. Having heard the arguments of learned counsel for appellant, verifying the appeal papers and also the

certified copies of petition and legal notice produced, the points that would arise for our consideration are as follows:

i) Whether the appellant is entitled for a decree of divorce on the ground of desertion?

ii) Whether the appellant is entitled for a decree of divorce on the ground of cruelty?

12. Our finding on the above points is in 'affirmative' and 'negative', respectively, for the following:

REASONS

13. The petitioner/wife has filed M.C.No.102/2021 before the Family Court during 2021 making allegation that, since from December 2013, both petitioner and respondent are not residing together and respondent has neglected to maintain her and deserted her without any lawful excuse.

14. The wife or husband can claim divorce under Section 13(1)(ib) of the Act, 1955, if the petitioner establishes that the respondent deserted her for a

continuous period of not less than two years immediately preceding the presentation of petition. The explanation to this section defines that desertion means desertion by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes willful neglect of the petitioner by the other party to the marriage.

15. Thus, the petitioner has to establish that the respondent has willfully neglected the petitioner without reasonable cause and without her consent and against her wish, he deserted her. It is stated in the petition that, respondent is addicted to bad vices about six months after the marriage i.e., quarreling with her without any admissible cause, without any option, she has left the matrimonial home and had been to her parental house and residing in her parental house since December- 2013. After petitioner had been to her parental house, elders have arranged meeting and tried to convince respondent to take her back from her parental house. But, respondent has not

shown any interest to take the petitioner back to his home. Further petitioner's parents had been to the house of respondent and requested to take her back and to maintain good and cordial relationship with the petitioner. But everything has been gone in vain and he has not shown any interest to take the petitioner back or to rejoin with her.

16. In the cause of action column, it is mentioned as, in the month of December-2020 when respondent beat the petitioner mercilessly and thrown her out of matrimonial home, the cause of action arose and also on 05.12.2013 when panchayath was convened to convince the respondent to take the petitioner back and also on 09.02.2021 when the petitioner had sent legal notice.

17. Thus, the above pleadings in the cause of action column that during December 2013, the petitioner had been to her parental house without tolerating the assault by the respondent and then the panchayat was convened explains that since December-2013, the petitioner and respondent are not residing together.

18. In the legal notice, on behalf of petitioner it is stated that, since December-2013, both parties are not living together; petitioner lived with respondent only for 6-7 months and thereafter as respondent changed his attitude and got addicted to bad vices, she had to stay in her parental house; respondent has not come to her house and not shown any interest to take her back.

19. Even though the legal notice was issued to respondent and it is served upon him, he has not given reply to it. Even after service of notice of the petition, respondent has not contested the petition by filing his objection statement or by cross examining the petitioner. Even in this appeal, though notice was served upon the respondent, he is unrepresented and not come forward to put forth his grievance. The petition averments disclose that, since December-2013, both parties are residing separately i.e., since about 12 years.

20. All the above facts reveal that the marriage of petitioner and respondent is irretrievably broken down and there is no chance of re-union.

21. There is specific averment in the petition and also in the evidence of the petitioner that the elders Pandurang Dhamanekar, Maruthi Belagaonkar and Neeta Patil have convened panchayat and requested respondent to take back the petitioner to matrimonial home and to lead marital life. But he had not shown any interest and further the parents of the petitioner had been to the house of respondent and requested him to take back the petitioner or to have good and cordial relationship with her, but he has not heeded for the advice of them. These averments in the petition clearly establish that the respondent has deserted the petitioner since December-2013. However, the Family Court has only observed one word that 'December-2020', which is a typographical mistake and came to the conclusion that there is no desertion and dismissed the petition, which is erroneous and requires interference.

22. As far as the cruelty is concerned, except examining herself, the petitioner has not examined any independent witnesses to prove cruelty inflicted upon her by the respondent. Under those circumstances, we are of the considered opinion that petitioner failed to prove the ground of cruelty.

23. The Hon'ble Apex Court in the case of ***K.Srinivas Rao Vs. D.A.Deepa [(2013) 5 SCC 226]*** has observed as follows:

"31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing.

This is because marriage involves human sentiments and emotions and if they are dried up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree."

As observed by the Hon'ble Apex Court and in terms of the provisions of Hindu Marriage Act, 1995, irretrievable breakdown of marriage is not a ground for divorce. However, in the instant case, in the peculiar facts and circumstances of the case, we are of the opinion that the marriage between the appellant and respondent cannot be revived. More so, when the appellant and respondent are not living together for more than eleven years and as the respondent/husband has remained *ex-parte* before the trial Court and has remained absent before this Court.

24. In the result, we pass the following:

ORDER

i) Appeal filed under section 19(1) of the Family Courts Act, 1984, is allowed partly.

ii) The marriage of petitioner solemnized with respondent on 27.05.2013, at Jalgar Maruti Mangal Karyalaya, Chavat Galli, Belagavi, is hereby dissolved on the ground of desertion by granting decree of divorce under Section 13(1)(ib) of the Hindu Marriage Act, 1955.

**Sd/
(S G PANDIT)
JUDGE**

**Sd/-
(GEETHA K.B.)
JUDGE**

MRK
CT-CMU