

**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.101561 OF 2022**

BETWEEN:

SMT. LEELAVATHI W/O. VENKATESH G.M
AGE. 40 YEARS, OCC: HOUSEWIFE,
R/O. BHAIKUMBE, TALUK. SIRSI,
DISTRICT. UTTARA KANNADA-581401.

...APPELLANT

(BY SRI J.S.SHETTY, ADVOCATE.)

AND:

VENKATESH G.M. @ VENKATESH
S/O. MUNIYAPPA GOUDA
AGE. 41 YEARS, OCC. PRIVATE WORK,
R/O. SRINIVAS HOTEL, YERAGATTI,
TALUK. SAVADATTI,
DISTRICT. BELAGAVI-591126.

...RESPONDENT

(NOTICE SERVED TO RESPONDENT)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 28 OF THE HINDU MARRIAGE ACT, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 11.02.2022, PASSED IN MATRIMONIAL CASE NO.60/2021, ON THE FILE OF THE SENIOR CIVIL JUDGE, SIRSI, BY ALLOWING THIS APPEAL AS WELL THE MATRIMONIAL CASE NO.60/2021, FILED BY THE APPELLANT, WITH COST THROUGH OUT, IN THE ENDS OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 27.11.2025 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.)

The appellate/wife has filed this appeal under Section 28 of the Hindu Marriage Act, challenging the judgment dated 11.02.2022, passed in M.C.No.60/2021, on the file of Senior Civil Judge, Sirsi, wherein her petition for divorce under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 (for short, 'the Act') is dismissed.

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

3. Petitioner has filed the petition under Section 13(1)(ia) and (ib) of the Act, praying for dissolution of her marriage, which has taken place on 17.05.2010 at Kolluru Sri Mukambika Temple, in Kundapura taluk, in presence of

elders and well-wishers and family members. After the marriage, respondent took her to Bengaluru and from the wed-lock, she has given birth to a son by name Koushik on 20.09.2011. Initially their relationship was good. However, later the relationship has become strained and respondent is addicted to alcohol. He left the appellant and her child in her parental house at Bhairumbe in Sirsi taluka and left the place without giving his address. Initially respondent was working at Belagavi. Later, it appears that he is living in Bengaluru in different places away from petitioner and completely escaped from performing his marital obligation and not informed his whereabouts to the appellant. Panchayants were convened several times in presence of elders. But, respondent refused to lead marital life with her. The petitioner waited for long time that he would mend his ways. On 20.03.2018, respondent left the petitioner with child in her parental house and has not come back. Hence, he deserted the petitioner and hence prayed for decree of divorce.

4. After service of notice of petition, respondent has not appeared and hence, placed *ex-parte*.

5. On behalf of petitioner, the petitioner was examined as PW.1 apart from marking Exs.P.1 to P.4 and closed her side before the trial Court.

6. After recording evidence of the petitioner and hearing arguments of learned counsel for petitioner, the learned trial Judge has dismissed the petition on the ground that the petitioner has not established cruelty and desertion as pleaded in the petition.

7. Aggrieved by the said judgment of dismissal, the petitioner/appellant has filed this appeal.

8. Even after service of notice of this appeal, respondent has not appeared and not contested this appeal.

9. Learned counsel for appellant Sri J.S.Shetty, would submit that since from long period there is no cohabitation between the parties. The marriage of petitioner and respondent is irretrievably broken down and there is no

chance of reunion. Even though he has established the grounds of cruelty and desertion, the learned trial judge has not considered the evidence in a proper perspective. The evidence of petitioner is not disputed by the respondent. Hence, under those circumstances, the learned trial Judge ought to have decreed the petition. Hence, he prays for allowing the petition by allowing this appeal.

10. Having heard the arguments of learned counsel for appellant and verifying the appeal papers along with trial Court records, the point that would arise for consideration is as under:

“Whether the appellant is entitled for decree of divorce as sought in the petition?”

11. Our finding on the above point is in the ‘affirmative’ for the following:

REASONS

12. The contention of appellant is that her marriage with respondent had taken place on 17.05.2010 at

Sri Mukambika Temple, Kolluru, in Kundapur Taluk, in accordance with the customs prevailing in their community. To substantiate it, she has produced the marriage invitation card as per Ex.P.1.

13. Furthermore, the appellant has produced the Aadhar card of her and her son Koushik and also the birth certificate of her son as per Exs.P.2 to P.4. The contention of petitioner is that, after the marriage, she gave birth to a male child on 20.09.2011, who is named as Koushik. Initially the relationship between husband and wife was cordial. Afterwards, the respondent was addicted to alcohol and not providing maintenance to them. He has brought both of them i.e. petitioner and her son to her parental house on 20.03.2018 and left and never come back.

14. The above averments in the petition establishes that since more than 7-½ years, the petitioner and respondent are not residing together and even after service of notice of M.C. petition and also the notice of this appeal, respondent has not made any efforts to come forward to

contest the petition or to appear before mediation to settle the dispute. These facts clearly establish that he has intentionally deserted his wife and son for more than 2 years prior to filing of the petition.

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

16. 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.

17. When there is intentional desertion from the respondent, and there is no effort from his side to reunite with the petitioner and to lead marital life, we are of the opinion that the petitioner has established the ground of desertion. There is an intention from respondent to bring cohabitation permanently to an end, because after he left his wife in her parental house, he never made any attempt to contact her. According to the petitioner, respondent is changing his address often and thus, it became difficult for her to trace his address. However, she has made all efforts to trace his address and serve notice of divorce petition before trial Court and also the appeal of this Court.

18. There is no reason to disbelieve the averments made in the petition. Hence, we are of the considered opinion that the appellant and respondent are not living together since 7-½ years and respondent has willfully deserted the companionship of the petitioner. Hence, the petitioner has established the ground of desertion for grant of divorce.

19. As far as cruelty is concerned, except examining herself, the petitioner has not examined any independent witness 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.

20. 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 seven years and as the respondent/husband has remained *ex-parte* before the Family Court and has remained absent before this Court.

21. In the result, we pass the following:

ORDER

i) Appeal filed under section 28 of the Hindu Marriage Act, 1955, is allowed in part.

ii) The marriage of petitioner solemnized with respondent on 17.05.2010, at Kolluru Shri Mukambika Temple, Kundapur, 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