

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 09th DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE R DEVDAS

AND

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

MISCELLANEOUS FIRST APPEAL NO. 165 OF 2024 (FC)

BETWEEN:

HARSHAD SHARAD MADIKAR
S/O SRI SHARAD MADIKAR
AGED ABOUT 38 YEARS
RESIDING AT 294, SOMWAR PETH
OPPOSITE AGARKAR GIRLS HIGH SCHOOL
PUNE 411 011, MAHARASHTRA.

...APPELLANT

(BY SRI RAGHAVA P., ADVOCATE AND
SRI CHIDANANDA G.Y., ADVOCATE)

AND:

KRUPAWATIBAI NIKSHOW
W/O HARSHAD SHARAD MADIKAR
AGED ABOUT 33 YEARS
RESIDING AT NO. 2385/DM 30
KAILASHPURAM, MANDIMOHALLA
MYSORE – 570 021.

...RESPONDENT

(BY SRI MANIKANTA H.B., ADVOCATE AND
SRI MAHESH CHANDRA B.N., ADVOCATE)

THIS MFA IS FILED UNDER SECTION 19(1) OF FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DATED 29.09.2023 PASSED IN M.C.NO.235/2022 ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, MYSURU, DISMISSING THE PETITION FILED UNDER SECTION 13(i)(ia) OF THE HINDU MARRIAGE ACT.

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SHREERAKSHA
Location: HIGH
COURT OF
KARNATAKA

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 24.09.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE R DEVDAS
and
HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV JUDGMENT

(PER: HON'BLE DR. JUSTICE K.MANMADHA RAO)

This appeal is filed seeking to set aside the judgment and order dated 29.09.2023 passed in M.C.No.235/2022 on the file of the Prl. Judge, Family Court at Mysuru ('the Family Court' for short) and allow the appeal by nullifying the marriage.

2. The appellant herein-husband/respondent herein-wife is the petitioner/respondent before the Family Court.

The brief facts of the case are that:-

3. The appellant and respondent are Hindus and are domiciled in India. Their marriage was solemnized on 10.12.2017 at Mysuru in accordance with Hindu rites and customs. After the marriage, the parties resided together

at Somwar Peth, Pune. Out of the wedlock, a male child was born on 03.11.2018.

4. It is the case of the appellant that the marriage was arranged and, after the marriage was fixed, appellant-husband received a call and SMS from an unknown number warning him not to marry the respondent-wife. Despite the same, on the persuasion of his maternal uncle and aunt, the marriage was solemnized. According to husband, after the respondent became pregnant within three months of the marriage, did not take interest in household affairs and his mother and sister attended to the household work. He further alleges that the respondent initially refused physical relations and subsequently remained passive during such relations, resulting in mental agony and frustration to him.

5. The appellant further alleges that the respondent repeatedly stated that she had not wanted the marriage, that the appellant had ruined her life and that she wanted

to return to her parental home. According to him, she also threatened to commit suicide and made allegations of harassment against him and his family members. He states that, despite his attempts to maintain the matrimonial relationship and provide care during her pregnancy, differences continued between them.

6. According to the appellant, on 17.07.2018, between 3.00 p.m. and 5.00 p.m., the respondent left the matrimonial home abruptly without informing him. When he returned from work, she was not available and her belongings, ornaments, clothes and documents had been taken. He states that he contacted her brother, made efforts to ascertain her whereabouts and approached the police. The respondent thereafter travelled to Mysuru and the parties did not resume cohabitation.

7. The appellant further states that he was not informed about the birth of the child and that, in May 2019, a meeting was held at Hubballi in the presence of relatives, but the attempt at reconciliation failed. He

thereafter instituted P.A.No.769/2019 before the Family Court at Pune seeking dissolution of marriage. The matter was subsequently transferred to the Family Court at Mysuru pursuant to the order dated 24.01.2022 passed by the Apex Court in Transfer Petition (C) No.3004/2019.

8. The appellant also relies upon the proceedings initiated by the respondent under Section 125 of the Code of Criminal Procedure, 1973 and the proceedings for restitution of conjugal rights. According to him, the respondent initiated complaints and proceedings after the matrimonial relationship had already broken down and thereby caused him mental agony and harassment. The respondent denied the allegations of cruelty and contended that she had herself been subjected to harassment in the matrimonial home. She alleged that the appellant and his family members did not take proper care of her during pregnancy and that she was required to attend to household work despite her condition. She further alleged that she was not treated with affection and

that the appellant was negatively influenced by his mother and sister.

9. The respondent disputed the allegation regarding lack of physical intimacy and contended that the appellant had failed to discharge his matrimonial obligations and had neglected her and the child. She maintained that she had been compelled to leave the matrimonial home and thereafter instituted proceedings for restitution of conjugal rights and maintenance. She asserted that she was willing to resume matrimonial life.

10. In order to substantiate the case of the petitioner-husband, he got examined himself as PW1 and got marked documents at Ex.P1 to Ex.P14. On the other hand, the respondent got examined herself as RW1 and got marked documents at Ex.R1 to Ex.R31.

11. The learned Family Court, on appreciation of the pleadings, oral evidence of PW1 and RW1 and the documentary evidence produced by both sides, held that the appellant had failed to establish cruelty under Section

13(1)(ia) of the Hindu Marriage Act, 1955. It considered the allegations regarding lack of physical intimacy, the respondent's conduct during matrimonial life, her leaving the matrimonial home on 17.07.2018 and the subsequent complaints and proceedings, and concluded that the material established matrimonial discord and lack of intimacy, but not conduct of such nature and gravity as would amount to legal cruelty. Accordingly, the petition came to be dismissed.

12. Learned counsel for the appellant-husband would contend that the refusal and lack of participation in physical relations, her indifference towards him, repeated insistence on returning to her parental home, threats of suicide, allegations against him and his family members and the manner in which she left the matrimonial home constitute mental cruelty. The evidence of RW1 contains material contradictions regarding the circumstances in which she left Pune, her alleged apprehension about remaining in Pune and her subsequent travel to Mysuru. It is submitted that she did not lodge any complaint during

her stay at Pune and that the complaints were lodged only in June 2019, after the appellant had instituted the divorce proceedings. According to the appellant, the subsequent complaints and proceedings were intended to harass him and his family.

13. Learned counsel would further contend that the allegations made by the respondent regarding harassment, abortion and the alleged medical condition of the child were not supported by satisfactory material. It is also contended that the respondent did not execute the decree for restitution of conjugal rights and that the said proceeding was an afterthought. The appellant submits that the parties have been living separately since 17.07.2018 and that the matrimonial relationship has irretrievably broken down.

14. *Per contra*, learned counsel for the respondent would contend that the appellant has attempted to convert ordinary matrimonial differences into a case of cruelty. It is submitted that the respondent became pregnant within

a short period of the marriage and that the parties separated while she was pregnant. According to the respondent, the allegation regarding deliberate refusal of physical relations is contrary to the appellant's own evidence.

15. It is further contended that the appellant admitted that he did not issue a notice calling upon the respondent to return to the matrimonial home and did not institute proceedings for restitution of conjugal rights. On the contrary, the respondent instituted M.C.No.585/2019 seeking restitution of conjugal rights and obtained a decree. It is submitted that the maintenance proceedings and complaints cannot, merely because they were instituted after the divorce proceedings, be treated as acts of cruelty. Learned counsel for the respondent would further contend that the discrepancies pointed out in her evidence do not establish cruelty. The respondent supports the judgment of the Family Court and submits that the findings recorded therein are based upon the evidence available on record and do not warrant interference.

16. Heard learned counsel appearing on either side and perused the material on record.

17. Having considered the contentions advanced and on perusal of the pleadings, evidence, and material on record the marriage between the parties and its solemnization on 10.12.2017 are not in dispute. It is also not in dispute that the parties commenced their matrimonial life at Pune and that they have been living separately since July 2018. The question is whether the conduct attributed to the respondent has been established as cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955.

18. The expression cruelty has no exhaustive definition and has to be examined having regard to the facts and circumstances of each case. In ***Samar Ghosh v. Jaya Ghosh***, reported in **(2007) 4 SCC 511**, the Apex Court has explained that ordinary wear and tear of married life, trivial irritations, normal quarrels and occasional differences cannot, by themselves, amount to

mental cruelty, whereas sustained conduct causing deep mental pain and agony may, depending upon the facts proved, constitute cruelty. The principal allegation of the appellant concerns physical intimacy. According to PW1, the respondent initially refused physical relations and subsequently remained passive during such relations. However, his own evidence discloses that the respondent conceived within about three months of the marriage. The parties thereafter continued to reside together during the pregnancy until their separation on 17.07.2018. In the facts of the present case, the evidence does not establish a prolonged and unjustified unilateral refusal of sexual relations.

19. The appellant has also relied upon the allegation that the respondent used a separate blanket, remained occupied with her mobile phone after he had gone to sleep, stated that she had not wanted the marriage, wanted to return to her parental home and had threatened to commit suicide. However, except the oral assertions of PW1, no independent material has been placed on record

in support of these allegations. Mere suspicion regarding the respondent's use of a mobile phone or dissatisfaction expressed during the course of matrimonial life cannot, in the facts of the present case, be elevated to the level of mental cruelty. The evidence on record does not disclose a sustained course of conduct of such gravity and intensity as would render continuation of the matrimonial relationship impossible.

20. The appellant has laid reliance on the incident dated 17.07.2018, when the respondent left the matrimonial home and travelled to Mysuru. According to the appellant, she left without intimation and remained unreachable, causing anxiety and distress to him and his family members. The respondent, however, has asserted that she was compelled to leave the matrimonial home. Thus, the circumstances leading to the separation are seriously disputed. It is also not in dispute that the respondent was pregnant at the relevant point of time and that the matrimonial life between the parties had lasted only for a short duration. In such circumstances, the

incident of separation cannot be viewed in isolation divorced from the surrounding facts and circumstances.

21. The appellant has further relied upon the complaints and proceedings initiated by the respondent. It is true that the divorce proceedings were instituted on 01.06.2019 and that certain complaints relied upon by the appellant were lodged thereafter. However, the mere fact that such proceedings were initiated after institution of the divorce petition does not by itself establish that they were false, malicious or intended solely to harass the appellant. The institution of legal proceedings by a spouse, without anything more, cannot be treated as cruelty. Unless it is shown that the proceedings were founded on knowingly false allegations or were recklessly pursued with the object of causing mental agony, the same cannot constitute a ground for dissolution of marriage on the ground of cruelty. The material placed on record falls short of establishing such circumstances.

22. The appellant has also relied upon the alleged contradictions in the evidence of RW1 regarding household work, the circumstances under which she travelled from Pune to Mysuru, the alleged medical condition of the child and the allegations levelled against the appellant and his family members. Certain inconsistencies in the evidence of RW1 are no doubt noticeable. However, the existence of inconsistencies in the evidence of the respondent does not automatically establish cruelty. The Family Court has rightly examined whether the appellant had discharged the burden of proving the statutory ground pleaded by him. The evidence on record reveals that the matrimonial dispute had escalated into allegations and counter-allegations from both sides and that even the efforts made by relatives for reconciliation ultimately failed. Such deterioration of matrimonial relations, by itself, cannot be equated with legal cruelty.

23. Much emphasis was placed on the fact that the parties have been residing separately since July 2018 and that the marital bond has completely broken down.

However, separation by itself does not constitute cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act. The appellant has also sought to rely upon the respondent's departure from the matrimonial home as constituting desertion. Desertion is a distinct statutory ground under Section 13(1)(ib) of the Hindu Marriage Act, 1955 and carries separate legal requirements. In the present proceedings, the Family Court was called upon to examine the ground of cruelty. Therefore, the fact that the parties have remained apart for a considerable period or that the relationship has deteriorated cannot substitute proof of cruelty as contemplated under the statute.

24. The evidence of PW1 also assumes significance. Though PW1 alleged denial of cohabitation and indifference on the part of the respondent, he admitted that the respondent conceived within about three months of the marriage. He further admitted that he had not issued any notice calling upon the respondent to return to the matrimonial home and had not instituted proceedings for restitution of conjugal rights. The Family Court has also

noticed that certain assertions relied upon by PW1 were not supported by independent material. These circumstances were relevant while appreciating the overall probabilities emerging from the evidence.

25. On the other hand, the respondent instituted proceedings for restitution of conjugal rights and obtained a decree in her favour. Though the appellant contends that the respondent did not subsequently take steps to execute the said decree, the institution of such proceedings was nevertheless a relevant circumstance available for consideration while assessing her stand that she desired continuation of the matrimonial relationship. The Family Court has taken note of this aspect while appreciating the evidence on record.

26. On an overall consideration of the pleadings, oral evidence and documentary material, it is evident that the Family Court examined the allegations relating to physical intimacy, the circumstances of separation on 17.07.2018, the subsequent complaints and proceedings, the conduct

of the parties and the evidence adduced by both sides before recording its conclusion. The conclusion that the material on record established matrimonial discord, incompatibility and lack of intimacy, but did not establish cruelty of the nature contemplated under Section 13(1)(ia) of the Act, is a view reasonably supported by the evidence available on record.

27. Having regard to the material on record, this Court holds that the conduct attributed to the respondent does not constitute mental cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955. The finding recorded by the Family Court is neither perverse nor contrary to the evidence on record. The reasons assigned by the Family Court are cogent, supported by the material available on record and do not warrant appellate interference. Consequently, the appeal deserves to be dismissed.

28. In the result, we proceed to pass the following:-

ORDER

- (i) The appeal is ***dismissed***.
- (ii) The judgment and decree passed by the learned Family Court dismissing the petition filed by the appellant under Section 13(1)(ia) of the Hindu Marriage Act, 1955, is affirmed. The parties shall bear their own costs.
- (iii) Draw the decree accordingly.

**Sd/-
(R DEVDAS)
JUDGE**

**Sd/-
(DR.K.MANMADHA RAO)
JUDGE**

BNV