



CNR: KAHC010038572022

NC: 2026:KHC:42681-DB
MFA No. 660 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

MISCELLANEOUS FIRST APPEAL NO. 660 OF 2022 (SMA)

BETWEEN:

SRI. JOHNSON MENON
AGED ABOUT 50 YEARS
S/O SHREEKRISHNA MENON
RESIDING AT 602, A8 KHOR TOWERS,
RASHIDIYAH, AJMAN, UAE.
PERMANENT RESIDENT OF NO.10, EAGLE STREET,
LANGFORD TOWN, BENGALURU-560 025.

...APPELLANT

(BY SMT.SUSHEELA S., SENIOR ADVOCATE FOR
SRI. SOMANATHA H.,ADVOCATE)

AND:

SMT. ANITHA GEORGE,
AGED ABOUT 53 YEARS,
W/O JOHNSON MENON,
RESIDING AT AI RAYES STREET,
BUILDING NO.17, FLAT 9,
NEW SALATA, DOHA, QATAR.
ALSO RESIDENT BELOW
R/AT NO.002, GROUND FLOOR,
NISHANT PRIME, PRIME STREET,
RICHMOND TOWN, BENGALURU – 560 025.

...RESPONDENT

(BY SMT. GEETA MENON.,ADVOCATE)

Digitally
signed by
MALA K N
Location:
High Court
of Karnataka



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THIS MFA FILED UNDER SECTION 39 SPECIAL MARRIAGE ACT READ WITH SECTION 19(1) OF FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DATED 25.10.2021 PASSED IN M.C.NO. 2773/2012 ON THE FILE OF THE III ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BENGALURU, DISMISSING THE PETITION FILED UNDER SECTION 27 (b) AND (d) OF THE SPECIAL MARRIAGE ACT, 1954.

THIS APPEAL, COMING ON FOR HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
AND
HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN)

The Appellant has approached this Court impugning the Order dated 25.10.2021 passed by the Principal Judge, Family Court, Bengaluru ('the Trial Court' for short) in M.C. No. 2773/2012, wherein the Trial Court has dismissed the Petition filed by him under Section 27(1)(b) and Section 27(1)(d) of the Special Marriage Act, 1954.

2. The Appellant is the husband and the Respondent is the wife, had married and their marriage was registered under Section 13 of the Act, 1954 (**Special Marriage Act**), on 16.07.2004.



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3. However, it is pertinent to note some facts between the parties prior to their present wedlock. The Appellant, who was previously married to another person, ended the previous marriage in a divorce. The Respondent was also previously married to another person and has a child born out of this previous marriage. The Appellant and the Respondent happen to meet each other sometime in the year 1994. The Respondent divorced her previous husband sometime in the year 2001. Thereafter, the Appellant and the Respondent, having divorced their respected former spouses, entered into the present wedlock on 16.07.2004, as aforesaid.

4. In the initial duration of the present marriage, the Appellant was working in Abu Dhabi, UAE, whereas the Respondent was working in Doha, Qatar. Admittedly, the spouses have no off spring born out of their present marriage. Due to the their place of work being situated in different countries, either spouse used to occasionally visit the other spouse in the country of their respective place of



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work. Both the spouses have made their respective submissions on the various issues faced by either of them, against the other, during the course of their marriage.

5. Ultimately, on 27.07.2012, the Appellant files a Petition in M.C. No. 2773/2012 for the dissolution of the present marriage under Section 10(ix) and Section 10(x) of the Divorce Act, 1869, which was later amended to being filed under Section 27(1)(b) and Section 27(1)(d) of the Special Marriage Act.

6. The Trial Court, on considering the pleading of both the parties, framed the following issues:

- (i) Whether the petitioner proves that the respondent deserted him for more than two years immediately before institution of the petition?*
- (ii) Whether the petitioner proves that the respondent treated him with cruelty?*
- (iii) Whether the respondent is entitled for Rs.2,00,00,000 from the petitioner?*
- (iv) Whether the petitioner is entitled for the relief sought for?*



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(v) *What order or decree?"*

7. The petitioner got himself examined as PW-1 and got marked documents Ex.P-1 to Ex.P-17. The Respondent got herself examined as RW-1 and got marked documents from Ex.R-1 to Ex.R-13.

8. Seeking a decree of divorce, the petitioner had deposed as follows:

- (i) That within a few months after their marriage, the Appellant and the Respondent had been living separately (i.e., the Appellant was living in Abu Dhabi, UAE, and the Respondent was living in Doha, Qatar);
- (ii) That the Respondent refused to cohabit with the Appellant at Abu Dhabi, UAE. Further, owing to the Respondent continuing to live in Doha, Qatar, under the sponsorship of her former-husband, the Appellant was precluded from cohabiting with the Respondent in Doha, Qatar, due to the prevailing



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local laws that made such cohabitation illegal. All of which, constitutes a ground for divorce under Section 27(1)(b) of the Special Marriage Act, under the count of desertion;

(iii) That the Appellant had suffered instances of physical and verbal abuse at the behest of the Respondent and that the marriage is irretrievably broken; and,

(iv) That the acts of the Respondent in refusing physical intimacy, refusing cohabitation, refusing to bear children with the Appellant in the present marriage and in making unsubstantiated allegations of adultery on the Appellant, constituted instances of cruelty within the contours of Section 27(1)(d) of the Special Marriage Act.

9. The Respondent while opposing the Petition and deposed that:



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- (i) That the Respondent had been living in Doha, Qatar, since 1989. In spite of her divorce with her former husband but with a view to continue the Respondent's stay and work and her child's stay and education in Qatar, the Respondent and her child continued to live in Doha, Qatar, under the sponsorship of her former husband;
- (ii) That occasionally, in the duration of the present marriage with the Appellant, the Respondent used to visit the Appellant in Abu Dhabi, UAE. Further, the Appellant would also occasionally visit the Respondent in Doha, Qatar, where the couple would stay together in either hotels or apartments. Further, the Appellant and the Respondent were staying under one roof in a shared apartment at Doha, Qatar, from March, 2011, to May, 2012. As such, there is no desertion of the Appellant at the behest of the



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Respondent, within the colour of Section 27(1)(b) of the Special Marriage Act;

(iii) The Appellant was living in adultery with another person during the subsistence of the present marriage; and,

(iv) That the Respondent has been on the receiving end of various instances of domestic violence perpetrated by the Appellant, in his drunken state. Further, the Respondent has been the victim of economic exploitation from the hands of the Appellant and on this count the Respondent would demand a sum of Rs. 2,00,00,000 towards the loss of her earnings and income.

10. On consideration of the rival contentions, the Trial Court answered issues no. (i) to (iv) in the negative. As such, the Trial Court, vide order dated 25.10.2021, dismissed M.C. No. 2773/2012; thereby, not granting the



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decree for divorce as prayed for by the Appellant. Being aggrieved by this order of the Trial Court, the Appellant has approached the portals of this Court, invoking its appellate jurisdiction.

11. We have perused the records of the Trial Court in the present case. In this Court, the Learned Counsel for the Appellant has reiterated the grounds as pressed by them before the Trial Court and has sought for a decree of divorce. Per contra, the Learned Counsel for the Respondent has reiterated the averments advanced by them before the Trial Court and has sought for the dismissal of the present appeal.

12. Having heard the learned Counsel for the Petitioner and the Learned Counsel for the Respondents, the only point that arises for our consideration is:

"Whether the Appellant has made out any grounds to interfere with the Order dated 25.10.2021 passed by the Family Court in M.C. No. 2773/2012?"



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13. At this juncture, it is pertinent to note the contours of Section 27(1)(b) and Section 27(1)(d) of the Special Marriage Act:

"27. Divorce.—*[(1)] Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent—*

*[(a) *****; or*

(b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

*(c) *****;*

(d) has since the solemnization of the marriage treated the petitioner with cruelty; or

*(e) *****; or*

*(f) *****; or*

*(g) *****; or*

*(h) *****;*

Explanation. —In this sub-section, the expression "desertion" means desertion of the petitioner by the other party to the marriage



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without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly."

14. Regarding the ground for desertion, since the Petition in M.C. No. 2773/2012 was filed on 27.07.2012; therefore, the statutory period would be for a duration not less than the time from 27.07.2010 to 27.07.2012 (**Statutory Period**). Therefore, it is incumbent upon the Appellant to prove that the couple were not cohabiting together on account of the Respondent having separated herself from the Appellant, without the consent of the Appellant and without any reasonable cause.

15. On analysing the factual matrix of the instant case, it becomes pertinent that the Appellant has established that the Respondent had deserted him during the Statutory Period, because:

- (i) The Appellant has produced his employment contract dated 11.04.2011 for having a job in



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Doha, Qatar. In her chief examination, the Respondent deposes that after the Appellant got a job in Qatar, the couple resided together in the Respondent's apartment at Doha, which was in the name of the Respondent's former husband. The Respondent further deposed that the Appellant and her last resided together in Sharjah, UAE, on 23.05.2012. However, in her cross examination, the Respondent has also deposed that she does not have any document to substantiate such claims and that the couple cannot stay together as husband and wife in Qatar, since the Respondent is still under the sponsorship of her former husband;

- (ii) The Appellant has denied all such claims and has deposed, in his chief examination, that, while in Doha, he used to stay in his company's accommodation and did not cohabit with the Respondent, since the Appellant was legally



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precluded from doing so under the local laws of Qatar on account of the Respondent continuing her sponsorship with her former husband. However, the Appellant has also deposed that he used to meet the Respondent in restaurants and other public spaces, while in Qatar; and,

(iii) Therefore, on a perusal of the material on record it becomes pertinent that although the Appellant was desirous to cohabit, the Respondent, by not changing her sponsorship from the name of her former husband to the name of the Appellant, has precluded the Appellant from cohabiting with her during the Statutory Period and has expressed her intention to bring cohabitation permanently to an end. There is no material on record that showcases the conduct of the Appellant which gave reasonable cause to the Respondent to refuse such cohabitation. All of which goes the



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show the conduct of the Respondent to not cohabit with the Appellant during the Statutory Period, without the consent of the Appellant and without any reasonable cause.

16. The Trial Court has wrongly dismissed the presence of desertion under Section 27(1)(b) of the Special Marriage Act on the ground that the Appellant has travelled to Doha, Qatar, at various instances during the Statutory Period and that during the Appellant's stay in Doha, the Respondent has made certain payments to the Appellant.

17. It is trite to note that the mere fact of the couple residing in the same city or that one of them was making payments to the other does not lead to the necessary conclusion that the couple were cohabiting. Further, although the Respondent has never stated, either in her chief examination or in her cross examination, that the couple used to stay together in hotels during the



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Statutory Period, the Trial Court has wrongly held that the couple were residing together as husband and wife at least until the end of 2011 (i.e., within the Statutory Period).

18. On a careful scrutiny of the entire record before us, there is no reliable documentary or oral evidence to show that the continuous period of non-cohabitation between the couple was broken at any point in time during the Statutory Period.

19. Regarding the ground of cruelty under Section 27(1)(d) of the Special Marriage Act, the Appellant has grounded his allegations on the acts of the Respondent in refusing physical intimacy, refusing cohabitation, refusing to bear children with the Appellant in their present marriage and in making unsubstantiated allegations of adultery on the Appellant.

20. While the Appellant, in his chief examination, has deposed that the Respondent has refused physical



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intimacy, the Respondent controverts this claim in her cross examination. Further, in his chief examination, the Appellant deposes that the Respondent refused to bear a child with the Appellant in their present marriage on one pretext or the other. This claim is not controverted by the Respondent either in her chief examination or in her cross examination, there being no suggestion made in that regard. However, there is no other material placed before us that would enable us to further analyse this ground.

21. In her chief examination and in her cross examination, the Respondent has alleged the Appellant to be in an adulterous relationship. However, the Appellant, in his deposition, has denied all such claims and has deposed that the Respondent has continuously questioned the Appellant, in addition to inquiring with his friends and family members, about the Appellant having an adulterous relationship; thereby, causing embarrassment to the Appellant.



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22. The Appellant has also deposed that he had come to know of the person with whom he is alleged to have an adulterous relationship with, only after he filed the present divorce petition in the year 2012. Further, that the said person used to take care of the Appellant's parents at their home in Bengaluru, consequent to which, the Appellant's parents offered her an accommodation in their house. Eventually, that the Appellant has also become business partners with the said person.

23. Further, the Appellant has also produced the Reconstitution of Partnership Deed dated 30.07.2012, wherein the Appellant has been inducted as a partner into a partnership firm with the said person, with effect from 11.08.2012. Be that as it may, the Respondent has failed to place any convincing material on record to prove that the Appellant was indeed in an adulterous relationship with the said person. In the absence of the same, making such reckless and unsubstantiated allegations of adultery constitutes mental cruelty of the gravest kind.



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24. The Trial Court, while focusing its entire analysis on the question of desertion has turned a Nelson's Eye to properly appreciate the Appellant's allegations of cruelty against the Respondent.

25. It is also pertinent to note that the Respondent has deposed in her chief examination that since the time of filing of the divorce Petition, she is living separately; the period of which is now around fourteen years.

26. Further, with regard to the Respondent's claim for an amount of ₹2,00,00,000 from the Appellant towards the Respondent's loss of earning and an amount of ₹50,00,000 towards monetary compensation on account of injuries, mental torture and emotional distress alleged to have been perpetrated by the Appellant upon the Respondent. On this score, the Respondent had filed an interlocutory application dated 19.08.2013, before the Trial Court, under Section 20, 22 and 26 of the Protection of Women from Domestic Violence Act, 2005.



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27. However, the Trial Court, on perusal of the records had refused to allow the said application of the Respondent. Since, the Learned Counsel for the Respondent has made no submission in this regard before this Court, we do not pass any order on this aspect.

28. Therefore, except this aspect of the Order of the Trial Court, we opine that the Trial Court is not justified in dismissing the Petition and not granting for a decree of divorce as prayed for by the Appellant. However, in view of the facts and circumstances of the instant case, we deem it appropriate to direct the Appellant to pay an amount of Rs. 30,00,000/- to the Respondent as a one-time payment, towards permanent alimony, to bring the litigation between the appellant and the respondent to a quietus.

29. Hence, the present appeal is ordered as follows:



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ORDER

(i) The appeal filed under Section 39 of the Special Marriage Act, 1954, is **allowed**.

(ii) Order dated 25.10.2021 passed by the Principal Judge, Trial Court, Bengaluru, in M.C.No.2773/2012 is **set aside**.

(iii) The appellant/husband shall pay a sum of Rs.30,00,000/- to the respondent/wife as permanent alimony under Section 37 of the Special Marriage Act, 1954, within eight weeks from the date of this judgment.

(v) There shall be no order as to costs.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(H.SHANTHI BHUSHAN)
JUDGE

KNM
List No.: 1 Sl No.: 22