



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JANUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

MISCELLANEOUS FIRST APPEAL NO. 6792 OF 2019 (MC)

BETWEEN:

SRI. POORNACHANDRA,
S/O SACHIDANANDA RAO,
AGED ABOUT 46 YEARS,
R/AT "SUDHEMUGER HOUSE",
MATLA ROAD,
BELTHANGADY KASBA,
BELTHANGADY TALUK - 574 214.

...APPELLANT

(BY MS. PRACHI SHETTY, ADVOCATE
FOR SRI. PRASHANTH B.K., ADVOCATE)

AND:

SMT SHILPA @ SHEEBA,
D/O KRISHNAN K.V.,
AGED ABOUT 33 YEARS,
R/AT. KRISHNA NILAYAM,
PAZHICHYIL PILATHARA,
PAYYANNUR,
KERALA STATE - 570 501.

...RESPONDENT

(RESPONDENT SERVED AND UNREPRESENTED)

THIS MFA IS FILED U/S.28(1) OF THE HINDU MARRIAGE ACT, AGAINST THE JUDGMENT AND DECREE DATED.27.10.2018 PASSED ON MC NO.32/2016 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE, MACT, BELTHANGADY, DISMISSING THE PETITION FILED U/S.13(1)(Ib) OF THE HINDU MARRIAGE ACT.



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

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

This appeal is by the husband calling in question the judgment and decree dated 27.10.2018 in M.C.No.32/2016 passed by the Principal Senior Civil Judge and JMFC., Belthangady, D.K, dismissing the application filed by the husband under Section 13(1) (ib) (desertion ground) of the Hindu marriage Act, 1955.

2. The parties are referred to as per their rankings before the trial Court.

3. Brief outline of facts are as follows:

Per petitioner-husband:



4. The petitioner and respondent are husband and wife. Their marriage was solemnized on 22.11.2009 as per Hindu rites and customs at Kollur.

5. After the marriage, the respondent joined the petitioner to lead matrimonial life at Sudemuguru of Belthangady Taluk (matrimonial home). The mother of the petitioner is residing along with the petitioner. Since the marriage, the respondent has not discharged her matrimonial obligations towards the petitioner. There was no cordial relationship between the petitioner and the respondent due to hostile attitude of the respondent.

6. The petitioner is a photographer by profession and running a studio in the name and style 'Karthik Studio' at Santhekatte and leading life on the income from the photo shop. But the respondent pressing on shifting to Kerala.

7. The petitioner somehow managed the relationship looking at the dignity and decorum of the



family. However, there was no changes in the behavior of the respondent to lead a happy married life. Ultimately on 04.04.2010 when the petitioner was not in station, respondent left the matrimonial home and went to her parental home. The petitioner upon enquiry learnt that, she had moved to her parental home and reached therein. Despite several requests by the petitioner, respondent was reluctant to return to matrimonial home to lead married life and discharge the obligation as a dutiful wife.

8. The petitioner had made several attempts to bring the respondent back to matrimonial home, however the same went in vain. Ultimately on 08.07.2016 he has issued a legal notice, calling upon her to join his company at the matrimonial home within 15 days from the date of receipt of the notice, lest the same would be treated as a refusal to join the company and the petitioner would initiate suitable legal steps to put an end to the marital tie.



9. The respondent, despite receipt of notice, has not made any attempt to join petitioner, which made the petitioner to file the petition for divorce on the ground of desertion.

Per respondent:

10. Upon service of notice, the respondent appeared through her counsel and filed detailed statement of objections denying the entire petition averments.

11. The respondent has contended that the petitioner and respondent resided in the matrimonial home for a period of 8 months. It is stated that though the life was sweet at earlier point of time and she was looked after by the petitioner with all love and affection, but the petitioner gradually started showing his true colour and life started a sour era. The petitioner restricting the respondent even from the day to day activities and imposing the practices prevalent in his family. The petitioner's family are very superstitious believers and



compelled the respondent to observe those rituals being followed in his family.

12. The respondent as the time passed did not treated properly in the matrimonial home and she was humiliated and ill treated without there being any reason. Respondent was conceived within four months of marital cohabitation. The respondent request to the petitioner to take her to the hospital for pregnancy check-up, was turned down by the petitioner stating that none of their family members visited the hospital so far during the pregnancy and compelled the respondent to do hard works in the house. Due to the ill-treatment, the respondent being alone was in a helpless situation in the matrimonial house, which has led in deteriorating her health both mental and physical.

13. When the health condition of the respondent was exacerbated, neighbours of the matrimonial home informed her family members. The uncle and mother of the respondent came to the matrimony home on



04.04.2010 and took her to their residence (native at Kerala), since, she is residing along with her parents.

14. On 03.09.2010 respondent gave birth to a female child at Government Hospital, Payyanur. Though the same was informed to the petitioner, he never came and visited the respondent and the child so far. The petitioner has not made any attempt to discharge his obligations towards the respondent and the child and even not provided them with any basic maintenance which he is legally bound under law. The respondent with a reasonable cause feeling danger to her life started residing separately away from the petitioner, at her parental home and pleaded that there is intentional desertion as alleged and sought to dismiss the petition.

15. It is germane to note that the respondent filed a petition seeking for maintenance in O.P.No.767/2016 and M.C.No.367/2016 before the Family Court, Kannur District, Kerala against the petitioner and the same came to be allowed. The petitioner, in O.P.No.767/2016 was



directed to pay past maintenance to the respondent at the rate of ₹3,000/- and ₹2,000/- to the child from 20.08.2013 to 20.08.2016. Further, in M.C.No.367/2016 the Court has directed the petitioner, to pay the monthly maintenance of ₹3,000/- to the respondent and ₹2,000/- to the child with effect from 27.08.2016 i.e., the date of petition. The petitioner is not disputing the order passed by the Family Court granting maintenance. The said order having not been challenged has attained finality.

16. The trial Court, upon completion of pleadings, framed 3 points for consideration as under:

- "1. Whether the petitioner has proved that the respondent has deserted him within the meaning of Section 13(1)(i-b) of Hindu Marriage Act?*
- 2. Whether the petitioner is entitled for the relief sought for in the petition?*
- 3. What order or decree?"*

17. Petitioner in order to prove his case examined as PW-1, produced 5 documents and marked the same as



Exs.P1 to P5. The respondent examined as RW-1, produced one document and marked the same as Ex.R1.

18. The trial Court, upon considering the material before it and on the submissions of both the parties, comes to a conclusion that there is no wilful desertion on the part of the respondent in leaving the company of the petitioner. The trial Court has specifically stated in its order and rightly so that there is absence of animus in deserting the petitioner which is the main ingredient to be proved, to seek divorce on the ground of the desertion as provided under the Explanation to Section 13(1) of the Hindu Marriage Act, 1955. The trial Court in its judgment particularly in paragraph Nos.12 to 13, specifically stated regarding the conduct of both the parties, i.e., the reason for the wife to stay away from the husband and on the conduct of the petitioner, stating that *"A party cannot be allowed to take advantage of his own fault"*. With this, the trial Court was of the opinion that the petitioner has failed to prove the ingredients stated in the provision for seeking



a decree of divorce on the ground of desertion as contemplated under Section 13 (1) (ib) and its Explanation, accordingly dismissed the petition. It is this judgment and decree passed by the trial Court, called in question by the petitioner-husband in this appeal.

19. Heard Ms. Prachi Shetty, learned counsel for Sri.Prashanth B.K, learned counsel for appellant. The respondent though served remained absent and unrepresented. Perused the entire appeal papers as well as trial Court records.

20. Ms.Prachi Shetty with all vehemence has contented that the Tribunal has failed to consider the animus which has been proved on the admissions elicited in the cross-examination of the respondent. The respondent has admitted that she is not willing either to live in Karnataka State and to follow the customs prevailing the State. She is preferring to lead life at Kerala. Further the respondent has admitted that she has left the matrimonial home in the absence of the petitioner,



taking all the belongings except 2-3 sarees and left to her parent's home and residing since 04.04.2010, with them. The marriage tie between the parties is broken down and there is no possibility of regaining the marital tie between them. She has further submitted that the marital relationship is founded on the love and affection by one spouse to another and since the relationship is strained and drained both, cannot be put back springing again by artificial recharge. The wife leaving the husband in his absence, taking all the belongings of her, and even not informing the husband regarding the birth of the child and not taking any steps to reunite again clearly show that there is animus on the part of the respondent to desert the petitioner.

21. Further, Ms.Prachi Shetty has taken us through the cross-examination of the respondent to point out that it is the respondent who has left the matrimonial home without any reasonable cause and contented that the trial



Court has missed this important aspect while appreciating the evidence.

22. To buttress her arguments she has relied on the judgment of High Court of Orissa at Cuttack in the case of ***Usharani Pradhan Vs. Brajakishore Pradhan*** in MATA No.104/2011 dated 19.11.2015, to contend that when the reconciliation between the parties is not possible and the parties are living separately since several years and the marriage has remained only for the namesake, the divorce is the only option as there is nothing remained in the marriage to gain anything.

23. Having heard the learned counsel for the appellant, the only question that would arise for our consideration is:

"Whether the trial Court is justified in dismissing the petition under Section 13 (1) (ib) of the Hindu Marriage Act, 1955 seeking for the decree of divorce on the ground of desertion?"



24. Our answer to the above point for consideration is in Affirmative for the following:

REASONS

25. The marriage and the relationship between the parties are not in dispute. Though the petitioner-husband has denied that the child is born from the wedlock, however, his silence in not calling in question the order of maintenance, proves that the child is born from the wedlock between them.

26. Ms.Prachi Shetty has contended that the respondent left the matrimonial home without informing the petitioner in his absence, but in the cross-examination respondent has categorically stated that she had left the home with the consent of the petitioner nothing asked on the said statement in the cross-examination. The pleadings stated in the petition as well as evidence lead, lucidly shows that there is no ingredient of desertion forthcoming as contemplated under Section 13 (1) (ib)



and the Explanation provided to the same. For easy reference, it is very appropriate to extract the provision of Section 13 (1) (ib) for easy reference.

"13(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party

xxxx

(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or

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

xxxx

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

27. A perusal of the provision 13(1) (ib) and especially the explanation provided for the same clearly



shows that the expression desertion means the desertion of the petitioner by the other party to the marriage 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.

28. A perusal of pleading as well as the evidence especially in the cross-examination of the petitioner indicates that the petitioner's family perhaps follows certain superstitious customs which the respondent could not follow and this perhaps led the petitioner to ill treat the respondent and caused marital drift.

29. That apart the conduct of the petitioner in disowning the child by pleading his ignorance regarding the birth of the child from the marriage, which the trial Court held as amounting to cruelty towards the respondent and a reasonable cause for her to stay away



from the husband. The trial Court in its judgment especially in paragraph Nos.12 and 13 has subscribed its reasons for dismissing the petition for divorce on desertion.

30. It is trite, that mere living separately for considerable years never amounts to desertion in the absence of animus to that effect, attributable on the partly spouse leaving apart. We find no infirmities in the judgment and decree which requires interference at the hands of this Court.

31. So far as the judgment relied on by the appellant in ***Usharani Pradhan*** stated supra, the petition in the said case is filed under Section 13(1)(ia) and (ib) the same defers on facts when compared to the facts of the case on hand, as such, the same is not applicable. The petition filed in the case on hand is only under Section 13 (1) (ib) i.e., on the ground of desertion and in the absence of any ingredients as contemplated in the provision and



the explanation appended thereto, the desertion as contemplated has not been made out by cogent evidence to that effect by the petitioner. The trial Court having considered that there is absence of animus, which is the main ingredient for desertion having not been proved, dismissed the petition, and which we consider as validly reasoned for the conclusion, which does not require any interference at the hands of this Court.

The appeal sans merits and resultantly is ***dismissed***.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**