



NC: 2026:KHC:42939-DB
MFA No. 10031 of 2018

CNR: KAHC010253162018

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. 10031/2018 (MC)

BETWEEN:

SRI. PRAKASH NAIK,
S/O SRI RAMACHANDRA NAIK,
AGED ABOUT 43 YEARS,
GRADUATE ASSISTANT,
BALEKODLU HOUSE, KULANJE VILLAGE,
POST:SHANKARANARAYANA
KUNDAPURA TALUK,
UDUPI DISTRICT - 576 283.

...APPELLANT

(BY SRI. CHANDRANATH ARIGA K.,ADVOCATE)

AND:

SMT. JAYASHREE NAIK,
D/O SRI GOPAL NAIK,
W/O SRI PRAKASH NAIK,
SUJATHA NILAYA, NELLIGUDDE HOUSE,
POST:NITTE, KARKALA TALUK,
UDUPI DISTRICT - 576 111.

...RESPONDENT

(BY SRI.S RAJASHEKAR.,ADVOCATE)

THIS MFA FILED U/S.19(1) OF THE FAMILY COURT ACT,
AGAINST THE JUDGMENT AND DECREE DT.20.10.2018 PASSED
ON MC NO.29/2012 ON THE FILE OF THE SENIOR CIVIL JUDGE,
KUNDAPURA, DISMISSING THE PETITION FILED
U/S.13(1)(IA)(IB)R/W SEC.19 TO 21 OF HINDU MARRIAGE
ACT.

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



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THIS APPEAL, COMING ON FOR FINAL 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 present appeal is filed under Section 19(1) of the Family Courts Act, 1984, calling in question the judgment and decree dated 20th October 2018 passed by the learned Senior Civil Judge, Kundapura ('the Trial Court' for short) in M.C. No.29/2012, whereby the petition filed by the appellant under Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955, came to be dismissed.

2. Briefly stated the facts are, the marriage between the appellant/husband and the respondent/wife was solemnized on 15th October 2007 at Mookambika Sabha Bhavan of Kolluru Mookambika Temple, Kollur, Kundapura Taluk, and a daughter was born on 30th October 2008. The appellant contended that from the inception of the marriage, the respondent was unwilling to



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adjust with him, did not show love and affection, and frequently insulted him on account of his financial status, expressing dissatisfaction with his income and expectations of a better-settled spouse. He further alleged that she insisted on residing at her parental home, harboured animosity towards his family, frequently quarrelled with him over his interactions with his elder brother, and created an atmosphere of fear and tension by threatening suicide, demanding his entire income, and failing to cooperate in maintaining normal marital relations or household responsibilities.

3. The appellant further alleged that the respondent refused to attend family functions, caused repeated disputes with landlords leading to frequent shifting of residence, and made false allegations against him to his colleagues and well-wishers, thereby damaging his reputation. He also contended that she misbehaved during her pregnancy, quarrelled with his relatives during family events, insulted him in public, and even attempted to



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practise witchcraft against his parents. It was further alleged that there had been no physical relationship for over two years, that she left the matrimonial home on 23rd May 2011 with the minor child without his consent, and thereafter continued to reside at her parental home while repeatedly confronting him at his workplace, causing him mental agony and constituting cruelty.

4. On these grounds, the appellant approached the Trial Court seeking dissolution of the marriage on the grounds of cruelty and desertion.

5. After service of notice, the respondent entered appearance and contested the petition. She admitted the factum of marriage between the parties, their relationship as husband and wife, and the birth of the child out of the wedlock. However, she denied all the allegations made by the appellant with regard to cruelty and desertion.

6. The respondent contended that, prior to the marriage, the appellant and his family members had



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demanded a dowry of Rs.4,00,000/- and that, during her stay in the matrimonial home, she had handed over all her gold ornaments to them. She maintained that she had discharged her duties and responsibilities as a wife and made every effort to lead a normal matrimonial life. According to her, within a few months of the marriage, the appellant and his family members subjected her to harassment, humiliation and ill-treatment. She denied having threatened the appellant with false criminal cases and contended that such allegations were made only to protect themselves from possible legal action. She further stated that the appellant had neglected to maintain her and the minor child, compelling her to approach the management of the college where he was employed and request them to advise him to discharge his responsibilities. Though the appellant assured the management that he would take care of them, he subsequently drove her and the child out of the matrimonial home. She stated that, upon the intervention



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of elders and well-wishers, they were taken back, and the appellant thereafter withdrew the allegations made against her.

7. According to her, the present proceedings were also an attempt to secure a divorce without any lawful or justifiable ground. She asserted that she was always ready and willing to continue the matrimonial relationship and had not committed any act amounting to cruelty or desertion. She therefore contended that the appellant had failed to establish any legally sustainable ground for dissolution of the marriage and that, if the petition were allowed, she and the minor child would be left without proper support and reduced to a state of destitution. On these grounds, she sought dismissal of the petition.

8. On the basis of the above pleadings and the material placed on record, the learned Trial Court framed the following points for consideration:

“1. Whether the petitioner proves that the respondent has treated him with cruelty and,



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consequently, whether the petitioner is entitled to a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955?

2. Whether the petitioner proves that the respondent has deserted him and, consequently, whether the petitioner is entitled to a decree of divorce under Section 13(1)(ib) of the Hindu Marriage Act, 1955?

3. What order or decree?"

9. In support of his case, the appellant was examined as PW-1 and produced and marked documents at Exhibits P-1 to P-26. The respondent, in support of her defence, entered the witness box and was examined as RW-1 and also produced documentary evidence.

10. Upon appreciation of the oral and documentary evidence on record, the learned Trial Court answered the material points for consideration against the appellant. In particular, the Trial Court held that the conduct attributed to the respondent, when considered in its entirety and in the light of the evidence on record, did not constitute



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cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955. The Trial Court also declined to accept the appellant's case that the respondent had deserted him so as to entitle him to a decree under Section 13(1)(ib) of the Act. Aggrieved by the said judgment and decree, the appellant has preferred the present appeal.

11. We have heard Sri.Chandranath Ariga K., learned counsel appearing for the appellant and Sri.S.Rajashekar, learned counsel appearing for the respondent and have carefully examined the material available on record.

12. An appeal under Section 19(1) of the Family Courts Act, 1984, enables this Court to examine both questions of fact and law. We are, therefore, required to independently re-appreciate the evidence on record and examine whether the conclusions reached by the learned Trial Court are supported by the material on record or



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suffer from perversity or material mis-appreciation of evidence.

13. The principal question that arises for consideration is:

"(i) Whether the appellant has established that the conduct of the respondent constituted cruelty or desertion within the meaning of Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 and consequently, whether the Trial Court was justified in dismissing the petition?"

14. The appellant, in his evidence, spoke about the alleged conduct of the respondent, including her alleged humiliation of him before his friends and colleagues, disrespect towards his family members, repeated threats to commit suicide, alleged practice of black magic, frequent leaving of the matrimonial home and the resulting difficulties in maintaining a normal matrimonial life. However, during cross-examination, the appellant admitted several circumstances which required his allegations to be examined with caution. Significantly, no documentary material was produced to establish that he



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had frequently changed his residence on account of the respondent. Likewise, none of the persons who allegedly witnessed the respondent humiliating or insulting him was examined. Though the appellant alleged that the authorities of the institution where he was employed had intervened and issued memos or notices on account of the respondent's conduct, no such memo, notice or communication was placed before the Court. His allegation regarding denial of conjugal relationship also does not receive complete support from the evidence, which indicates that the parties had lived together for considerable periods after the marriage.

15. The respondent, on the other hand, denied the allegations of cruelty and stated that she had always been willing to continue the matrimonial relationship. According to her, the appellant, influenced by his family members, drove her and the minor child out of the matrimonial home and thereafter instituted the proceedings with the intention of obtaining a divorce. She alleged that she had



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been assaulted and ill-treated by the appellant and his family members and that she had received medical treatment for the injuries sustained by her. She further stated that she had approached the police in that regard and was thereafter pressurised to withdraw the complaint. In her cross-examination, she admitted that there had been no marital relationship or physical contact between the parties for about five years and that they had been living separately. She nevertheless consistently maintained that she was willing to return to the matrimonial home and resume the matrimonial relationship. On a careful consideration of her evidence, we find no sufficient reason to discard her version as inherently improbable or unreliable.

16. The allegations of cruelty made by the appellant, when considered individually as well as cumulatively, have not been established by cogent and reliable evidence. Mere assertions, in the absence of supporting evidence from the persons who allegedly



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witnessed the incidents or documentary material which could reasonably be expected to exist, cannot form the basis for recording a finding of cruelty. At the same time, the evidence of the appellant himself indicates that the matrimonial discord was not entirely attributable to the respondent and that there were circumstances in the matrimonial home which contributed to the deterioration of the relationship. We are, therefore, unable to accept that the respondent's conduct, on the material placed before us, was such as to constitute cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act.

17. The ground of desertion also cannot be accepted. Desertion is not established merely by proof of physical separation. It requires both the factum of separation and the intention to permanently bring the matrimonial cohabitation to an end, namely, *animus deserendi*. In the present case, the evidence does not establish such an intention on the part of the respondent. On the contrary, she has consistently stated that she was



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willing to resume cohabitation and continue the matrimonial relationship. The circumstances emerging from the record also indicate that her separation was preceded by matrimonial discord and difficulties in the matrimonial home. The appellant has, therefore, failed to establish that the respondent had deserted him within the meaning of Section 13(1)(ib) of the Hindu Marriage Act.

18. The learned Trial Court has also taken into consideration the respective income and financial circumstances of the parties and the educational and medical requirements of the child while determining the question of permanent alimony. We find no justifiable ground to interfere with the said direction. The appellant has failed to establish the grounds of cruelty or desertion, and the findings of the learned Trial Court, therefore, call for no interference.

19. Upon an independent re-appreciation of the evidence on record, we are satisfied that the findings



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recorded by the learned Trial Court are based upon the material available on record and do not suffer from any perversity or illegality. The respondent has established, on a preponderance of probabilities, that the conduct of the appellant, when considered in its entirety, caused her such mental pain and emotional distress that she could not reasonably be expected to continue the matrimonial relationship.

20. The finding recorded by the learned Trial Court that the conduct of the appellant constituted cruelty within the meaning of Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955, is therefore sustainable. We find no perversity, illegality or material mis-appreciation of the evidence warranting interference with the judgment and decree passed by the learned Trial Court.

21. Having regard to the long-drawn litigation between the estranged husband and wife, and with a view to bring quietus to the disputes between the parties, we



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deem it appropriate to issue suitable directions so that the parties are not compelled to undergo further rounds of litigation.

22. Accordingly, the appellant is directed to pay a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) to the respondent and a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) to the daughter born out of the wedlock, within a period of two months from the date of receipt of copy of this order.

23. The aforesaid direction is intended to bring finality to the matrimonial dispute and to enable the parties to move forward in their respective lives without being drawn into further litigation. The parties have already spent considerable time, energy and resources in pursuing the disputes between them. It would serve no useful purpose if they were to continue litigating against each other by making allegations and counter-allegations.



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24. The aforesaid payment is, therefore, directed with a view to bring an end to the continuing disputes between the parties and securing the future and well-being of the respondent and the daughter, so that the parties may thereafter lead their respective lives with dignity and without being compelled to repeatedly approach the Court in relation to the matrimonial dispute. Accordingly, we pass the following:

ORDER

- (i) The appeal filed under Section 19(1) of the Family Courts Act, 1984, is **allowed**.
- (ii) The judgment and decree dated 20/10/2012 passed by the learned Principal Judge, Family Court, Kundapura, in M.C. No.29/2012, is hereby **set aside**.
- (iii) The decree dissolving the marriage between the appellant and the respondent under Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955, is **confirmed**.
- (iv) The appellant is directed to pay a sum of **Rs.20,00,000/- (Rupees Twenty Lakhs only)** to the



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respondent and a sum of **Rs.7,00,000/- (Rupees Seven Lakhs only)** to the daughter born out of the wedlock, within a period of **two months from the date of receipt of copy of this order.**

(v) It is made clear that the observations contained in this judgment are confined to the adjudication of the matrimonial dispute between the parties and shall not prejudice either party in any independent proceedings arising under law.

(vi) There shall be **no order as to costs.**

(v) Pending I.As., if any, stand **disposed of.**

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(H.SHANTHI BHUSHAN)
JUDGE**

KNM
List No.: 2 Sl No.: 11