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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: August 12, 2016

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MAT.APP.(F.C.) 85/2015

AARTI MANCHANDA

..... Appellant

Represented by: Mr.Sumit Kumar, Advocate

versus

CHANDER SHEKHAR MANCHANDA

..... Respondent

Represented by: Mr.Rajiv Bajaj, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

MAT.APP.(F.C.) 85/2015

1. The appellant/wife takes exception to the judgment and decree dated May 06, 2015 passed by the learned Judge, Family Court, North District, Rohini whereby the marriage solemnized between the parties on July 27, 1996 has been dissolved by a decree of divorce on account of desertion by passing a decree of divorce under Section 13(1)(ib) of Hindu Marriage Act.
2. The respondent/husband filed a petition in the Family Court on August 28, 2010 praying therein for a decree of divorce on the ground of cruelty and desertion i.e. under Section 13(1)(ia) and 13(1)(ib) of Hindu Marriage Act. However, while observing that the respondent/husband failed to prove cruelty, the prayer for dissolution of marriage on account of cruelty was declined but in view of the admitted position that the parties were living separately since February, 2008, and desertion by the appellant/wife being

proved the marriage was dissolved.

3. The brief admitted facts are that the marriage between the parties was solemnized on July 27, 1996 at Delhi as per Hindu Rites and Customs. The marriage was duly consummated and the parties were blessed with a son born on September 09, 2001 and a daughter born on February 06, 2005. Both the children are in the custody of their father after their mother left the matrimonial home on February 10, 2008.

4. The parties had a turbulent matrimonial life from the beginning and the appellant had been leaving the matrimonial home very frequently without the consent of her husband. While the appellant/wife filed a criminal complaint on October 16, 2000 with CAW Cell, Abohar, Punjab, her husband filed the petition being HMA No. 1020/2000 under Section 9 of Hindu Marriage Act. However, with the intervention of certain relatives and friends the settlement was arrived at and the appellant/wife joined the company of her husband at their matrimonial home in Delhi.

5. Since the petition on the ground of cruelty had been dismissed, the respondent/husband has not challenged the order of the Family Court declining his prayer to seek divorce on account of the cruelty, we shall be limiting ourselves to the issues of desertion by the appellant/wife.

6. The case of the respondent/husband is that on February 10, 2008 after giving beating to the children and quarrelling, the appellant left the matrimonial home. On that date, she had also called her parents and other relatives and left the matrimonial home with them. Before leaving for Abohar, Punjab she reported at PS Prashant Vihar that she was leaving the matrimonial home being fed up with the behaviour of the petitioner and that she was leaving the custody of the two children also with her husband.

7. On the same date apprehending some false implication, the

respondent/husband also reported to PS Prashant Vihar about his wife leaving the matrimonial home with her family members without his consent. He also reported that both the children had been left with him.

8. After the statutory period of two years from the date of desertion by the appellant/wife elapsed, in August, 2010, the respondent/husband filed a petition seeking dissolution of marriage on the ground of cruelty and desertion. As already noted he was granted divorce on the ground of desertion only.

9. It is not in dispute that the appellant/wife left the matrimonial home on February 10, 2008 of her own and left for her parental house at Abohar, Punjab with her family after reporting the same to the local Police Station at Prashant Vihar i.e. PS Prashant Vihar. There is no dispute that statutory period of two years had lapsed much prior to the filing of the divorce petition.

10. Learned counsel for the appellant/wife has submitted that due to harassment on account of the dowry demand and on being treated with cruelty for non-fulfilment of dowry demand, the appellant/wife was constrained to leave the matrimonial home. Learned counsel for the appellant/wife further submitted that it is not a case of desertion but compulsion to leave the matrimonial home on not being able to bear the harassment and the cruel treatment of the respondent/husband.

11. The learned Judge, Family Court, Rohini after noting that except the initial demand of ₹2,00,000/- and harassment on that count in the early part of the marriage, better sense prevailed over the parties and they reconciled their differences. They started living together and were blessed with two children without any other incident being reported thereafter. On issue No.2 the relevant observation which formed basis of decreeing the petition on the

ground of desertion, form part of the para Nos.39 to 41 of the impugned judgment and are noted as under:-

“39.....Irrefutably the respondent left the matrimonial home on 10.02.2008, after calling her family members from Abohar and Faridabad and left of her own accord leaving both the children in the care and custody of the petitioner, and also made a statement in PS Prashant Vihar on 10.02.2008 to this effect, though hinting that she was leaving because of misbehaviour of the petitioner. What kind of misbehaviour was the petitioner responsible for is again not accounted for. Therefore, the only inference that can be derived from the testimony of both the parties and the supporting testimony of PW2 and PW3, is that there were temperamental differences between the parties and both the petitioner and the respondent accused each other for the turbulence in their marriage. There was no love lost between the parties and there seems to be an irretrievable break down of their marriage.

40. The respondent has testified that she was given severe beatings by the petitioner, and especially after the birth of the daughter, the petitioner wanted to get rid of her, but neither any MLC nor any other medical document which would show that she was actually subjected to any beatings, has been brought forth by her, to support her version. The respondent did not leave the matrimonial home in a huff or in a rush, but rather she called her parental family from Abohar, Punjab and her sister and other relatives from Faridabad, and it was alongwith about 15 people that she left the matrimonial home, after making a statement to this effect in the PS Prashant Vihar on the even date. Admittedly she did not file any case, either criminal or seeking any other relief under civil remedies, against the petitioner ever thereafter. The respondent admittedly left both the

children in the care and custody of the petitioner and has never made any effort either to meet them or to seek visitation rights or seek the custody of the children through the court, rather wilfully she left both the minor children in the care and custody of the petitioner, when she left the matrimonial home. For the reasons unexplained, the respondent withdrew from the matrimonial home as well as from all her matrimonial duties and obligations as well as all her maternal duties towards her children, and since then she did not both to file any court proceeding for either restitution of conjugal rights, had she been compelled to leave the matrimonial home or under the Guardianship Act, seeking the custody of the children, and from this fact what blatantly comes to the fore, is that the respondent intended a permanent and wilful forsaking of the petitioner and all her obligations and duties qua him arising out of the matrimony. The respondent has, in the passing, mentioned that she was compelled to leave the matrimonial home, as she could not endure the abusive behaviour of the petitioner any longer, but since her assertions remained unsubstantiated, it is deemed that she left the matrimonial home without any reasonable cause and she is therefore found guilty of wilful neglect and forsaking of the petitioner, and thus guilty of “deserting the petitioner/husband”.

41. The respondent left the matrimonial home on 10.02.2008, as admitted by her. The respondent has vaguely asserted that she again returned back to the matrimonial home and finally left the matrimonial home in February, 2008 (sic. 2010), but she was unable to establish the said fact, therefore, for all purposes, as per the evidence available on record, it is accepted that she left the matrimonial home wilfully on 10.02.2008. The instant petition has been filed by the petitioner on 28.08.2010, and therefore the statutory period of

two years of physical separation has already elapsed prior to the filing of the instant petition.

Accordingly, issue No.2 is decided in favour of the petitioner and against the respondent.”

12. Perusal of the trial Court record shows that on February 10, 2008, the appellant/wife left the matrimonial home in the company of her family and relations. It shows that she left home on that date not in anger but in a pre-planned manner as her family had come from Abohar, Punjab. The contents of the report lodged at PS Prashant Vihar just refer to misbehaviour by her husband to be the reason for leaving the matrimonial home. Institution of marriage plays an important role in the society in general. Matrimonial relationship demands mutual trust, love and affection as well reasonable adjustments with the spouse. The matrimonial relationship has to be in conformity with the norms of the society. Alleged misbehaviour by the husband without any further detail about the nature of misbehaviour, cannot be a justifiable ground to leave the matrimonial home as well two minor children. The daughter was only three years old at that time and in dire need of love, care and affection of her mother. The Family Court has already noted that after leaving home on February 10, 2008 with her family, she had never looked back to even find out in what condition her children were and whether they were being properly looked after by their father. The complaint lodged at PS Prashant Vihar by the respondent/husband on February 10, 2008 itself records that his wife was conservative and irritated. Though they had some problems after the marriage but after the compromise they were living together till that date i.e. February 10, 2008 when she called her family members and left with them with two briefcase (attachies) despite his annoyance on she leaving home in that manner.

13. In the decision reported as AIR 2002 SCC 88 Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi the Supreme Court has dealt with the concept of desertion in the context of matrimonial law, it was held that the term 'desertion' is wide enough to include wilful neglect. In AIR 2002 SC 591 Savitri Pandey Vs. Prem Chandra Pandey the Apex Court held that desertion under Section 13(1)(ib) means intentional permanent forsaking and abandonment of one spouse by the other without the others consent and without reasonable cause. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined in the facts and circumstances of each case. The onus was on the appellant/wife to prove that she was not guilty of such conduct and that she was not taking advantage of her own wrong as contemplated under Section 23 of the said Act. Inference of desertion has to be made on balance of probabilities. It is held in the case of 1964 SC 40 Laxman Vs. Meena that in cases of desertion, the factum as well as the animus deserendi have to be proved. The burden has been discharged by the respondent/husband.

14. It had been more than 8½ years that the appellant/wife left the matrimonial home for alleged misbehaviour of her husband without even giving a second thought as to how her two children aged about 6 years and 3 years at that time would live without her. After the initial turbulence, the parties reconciled and were living together as husband and wife which fact is clear from the fact that two children were born during the period they lived together. The conduct of the wife of leaving matrimonial home after calling her relations from Abohar, Punjab, reporting to the police making no serious complaints against her husband or in-laws and thereafter never returning or even making a query to know about her children was enough to lead to irresistible conclusion that she left with the intention to bring

cohabitation permanently to an end.

15. We are convinced that for the appellant/wife the marriage was dead and by challenging the order of dissolution of marriage, it is not likely to rise like a Phoenix.

16. Consequently the appeal is dismissed without there being any order as to costs.

CM No.11626/2015

Dismissed as infructuous.

**PRATIBHA RANI
(JUDGE)**

**PRADEEP NANDRAJOG
(JUDGE)**

AUGUST 12, 2016
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