

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 26.10.2018

Date of decision: 29.10.2018

FAO 113/2002

SMT. SHASHI PRABHA

..... Petitioner

Through Mr. Prem Bhushan Dewan, Ms.
Gurjeet Kaur, Advocates.

Versus

ASHOK DHAWAN

..... Respondent

Through: Mr. P.P. Khurana, Sr. Adv. with
Mr. Anil Kumar Gupta,
Advocate.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The present appeal under Section 28 of the Hindu Marriage Act, 1955 (as amended) has been filed by Ms. Shashi Prabha against the impugned judgment dated 31.01.2002 in HMA No.481/01 of the then learned Additional District Judge, Delhi vide which in a petition under Section 13(1)(ia) and Section 13(1)(ib) of the Hindu Marriage Act, 1955 (as amended) filed by Mr. Ashok Dhawan i.e. the respondent to the present appeal as petitioner thereof, on the ground of alleged cruelty and desertion, though the petition seeking the grant of a decree of divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (as amended) was declined, nevertheless

the petition filed by the husband i.e. the respondent herein against the appellant herein his wife on the ground of desertion under Section 13(1)(ib) of the Hindu Marriage Act, 1955 (as amended) was allowed.

2. As the parties to the present appeal were married on 30.08.1982 in accordance with Hindu Rites and Ceremonies and lived together till 14.03.1995 as contended by the respondent and till 15.03.1995 as contended by the appellant herein, the parties to the present appeal have admittedly not lived together from 16.03.1995 in any event till date. There is no child born out of the wedlock between the parties. Though, it was contended through averments made in the petition HMA No.481/2001 by the respondent that a newly born male child was taken in adoption in the month of February, 1994 on the instance of the appellant herein, the said child was allegedly not cared for by the appellant who persisted in her cruelties both with the respondent-husband as well as on the minor child and ultimately left the matrimonial home deserting the respondent spouse on 14.03.1995 when she took away all her articles of jewellery and clothes with her.

3. The alleged factum of adoption of the minor child and cruelty to the minor child has not been accepted by the learned Trial Court with it having been held that in the absence of the name of the putative parents of the minor child, taking into account the factum that there was no adoption deed executed and also the factum that there was no voluntary consent of the wife i.e. the appellant herein, the adoption of the minor child as contended by the husband i.e. the respondent to the present appeal and the petitioner of the HMA petition seeking divorce was not valid. The impugned verdict also

observed to the effect that the respondent herein i.e. the petitioner of the HMA petition thereof seeking grant of divorce had not been able to prove that his wife has treated him with cruelty. No cross appeal was filed by the respondent to the present appeal i.e. the petitioner of the HMA petition no.481/01 which had been initially instituted on 14.01.2000 and thus as observed hereinabove, the allegations of cruelty meted out by the appellant to the respondent have not been established.

4. Taking into account the factum that the allegations of cruelty against the appellant have not been held to have been proved and there being no cross appeal filed by the respondent herein against the impugned judgment, it is only the allegations under Section 13(1)(ib) of the Hindu Marriage Act, 1955 (as amended) levelled through the petition and adjudicated upon by the learned Trial Court that are now being considered.

5. The averments made in the petition in relation to the aspect of alleged desertion are to the effect:-

“10. That on March 14, 1995, the respondent left the company of the petitioner on the pretext that she has to join same family get-together at her parents house. She also took all her jewellery and valuable clothes with her. When the respondent did not come back, the petitioner contacted the respondent at her parents’ house and also at her office and requested her to come back and join the company of the petitioner. To the utter surprise of the petitioner, the respondent not only completely ignored the reasonable request of the petitioner, but also used abusive language. The parents and relations of the petitioner also made efforts and requested the respondent to join the company of the petitioner. Despite all best efforts of the petitioner, his

parents and relatives, they could not succeed in getting her back to the matrimonial house. Thus, the respondent has left her matrimonial house without any rhyme and reason and, as such deserted the petitioner and the minor child and since then petitioner and his mother are bringing up the minor child.

11. That the petitioner was shocked because of the unwarranted attitude, conduct and behaviour of the respondent and was expecting that a day will come when good sense will prevail upon the respondent, when she will realize her mistake and will tender her unconditional apology for her misconduct and will join the petitioner's company. The respondent, however, did not pay any heed towards the petitioner.

12. That the petitioner, as such, had left with no other alternative remedy except to get the respondent served with a legal notice dated September 11, 1998. The petitioner was further shocked to see the reply to the said notice got sent by the respondent through her Advocate, Sh. Prem Bhushan Diwan, vide reply dated October 3rd, 1998 wherein the respondent, inter-alia claimed that respondent has no knowledge of the minor child. It is strange that the respondent has gone to the extent of disowning her own minor adopted son even. The said act of the respondent clearly reveals that she has treated the petitioner with cruelty and deserted his company willfully. The respondent is living separately since 14th March 1995 from the petitioner and since then she is residing with her parents and she deserted and left the company of the petitioner with her own wishes and thereby caused utmost cruelty upon the petitioner and she withdrawn herself from the society of the petitioner with her own wishes, without any lawful excuse or reason.

13. That the respondent always threatened the petitioner and his family members that she will implicate the petitioner and his family members in false dowry as well as

criminal cases, if the petitioner would insist her to come back.”

6. The respondent to the HMA petition i.e. the appellant herein responded to these averments to the effect:-

“10. That para no.10 of the petition is wrong and denied. It is denied that on 14th March, 1995, the respondent left the company of the petitioner on the pretext that she had to join some family get-together at her parents house or that she took all her jewellery and valuable clothes with her. It is in the knowledge of the petitioner that all items of istridhan including the jewellery are in custody of the petitioner and his family members. It is also in his knowledge that on or about 15 March, 1995, petitioner picked up a quarrel with respondent and started beating her mercilessly so much so that the blood started oozing from the mouth and nose of the respondent. Petitioner made it clear that he would not allow respondent to live in her matrimonial house and in furtherance of his above mentioned intention, he forced respondent to sit with him in his car and brought respondent in the house of her parents and threatened her of dire consequence if the respondent ever dared to come to her matrimonial house. The petitioner made it clear to the respondent that in case respondent came to matrimonial home he would do away with the life of the respondent. The respondent apprehends danger to her life and limb from the petitioner who is a police officer. It is denied that when the respondent did not come back the petitioner contacted the respondent at her parents house and also at her office and requested her to come back or that she ignored the request of the petitioner and used abusive language. It is denied that the parents and relations of the petitioner also made efforts but the respondent remained adamant and they could not succeed. It is denied that the respondent left her

matrimonial house without any rhyme and reasons or that she deserted the petitioner and the child. The allegations are wrong and denied.

11. That para no.11 of the petition is wrong and denied. All the allegations are wrong and the same are vehemently denied. It is the petitioner who has treated the respondent with contempt and cruelty and as such tendering the apology from the respondent never arose.

12. That with regard to para no.12, it is stated that nowhere in the notice dt. 11.9.1998 sent by the petitioner through his counsel the petitioner has mentioned and stated about the alleged adopted child. The petitioner in the said notice has mentioned only (minor child) without giving any specific details such as name of the child and other requisite particulars and as such as the respondent has rightly stated that she has no knowledge of the minor child. Thus the petitioner can not take advantage of his own wrongs. As mentioned above the said child was never adopted the question of disowning the child does not arise. The respondent has been forced to live with her parents and as such the question of withdrawing from the company of the petitioner does not arise. Moreover in her reply to the notice the respondent made it clear that she was/is always ready and willing to live with the petitioner provided the petitioner does not ill treat.

13. That para no.13 is wrong and denied. It is denied that the respondent always threatened the petitioner and his family members that she will implicate the petitioner and his family members in false dowry as well as criminal cases if the petitioner would insist her to come back.”

7. During the arguments addressed on behalf of the appellant,

reliance was placed on the legal notice dated 11.09.1998 issued on behalf of the respondent/ husband to the appellant herein with specific averments made in Para 8 thereof of the said notice which reads to the effect:-

“8. That ultimately you left the company of my client in March 1995 and deserted my client and the minor child without any cause and reasons and took along with you all the valuable articles and jewellery. That you willingly deserted and withdrawn from the company of my client without my cause and reason.”

8. It was further submitted on behalf of the appellant by the learned counsel for the appellant that paragraph 12 of the said legal notice which reads to the effect:-

“12. That you have totally failed to perform your marital obligations. Therefore, I hereby call upon you on behalf of my client to give the reply to this notice, within seven days failing which my client shall be constrained to initiate divorce proceedings against you in the competent court of law at your costs, risk and consequence.”

itself it is an indication that the respondent herein did not seek the return of his spouse back.

9. It is further contended on behalf of the appellant that the impugned judgment is conspicuously silent in relation to the contentions raised by the appellant herein through her written statement in which she whilst denying that she left the company of her husband i.e. the respondent herein on the pretext that she had joined some family get together and had gone to her parental home taking all

her articles of jewellery and clothes with her, which articles of jewellery and valuable clothes were claimed by the appellant herein as respondent to the said petition HMA 481/2001 filed by the husband on the grounds of cruelty and desertion that all articles of *Istridhan* including the jewellery were in the custody of her husband and his family members. She further contended that on or about 15.03.1995 her husband had picked up a quarrel with her and started beating her mercilessly so much so that blood started oozing from her mouth and nose and that the respondent herein i.e. the petitioner of the divorce petition had made it clear that he would not allow his wife to live in her matrimonial home and in furtherance of the same he had forced her to sit with him in his car and had brought her to the house of his parents and threatened her with dire consequences if she further dared to come to her matrimonial home and that he made it clear to her that in case she came back to her matrimonial home he would do away with her life and that she apprehended danger to her life and limb from her husband who was a police officer.

10. The appellant herein through her written statement had also denied that her husband i.e. the respondent to the present appeal had contacted her at her parental home or at her office and had requested her to come back which had been ignored by her and that she had used abusive language and also denied that the parents and relations of her husband had made any efforts for her to return.

11. It was also contended on behalf of the appellant herein that significantly the petitioner of the divorce petition i.e. the respondent to the present appeal had not cross examined her in relation to this aspect

when her testimony was recorded and thus her testimony to the effect:-

“On 15.03.1995 the petitioner started quarreling with me in the morning hour and he had beaten me and as a result of injuries I started bleeding from my nose. He took me to my parental house and forcibly left me outside the house. He threatened that in case I would join him at my matrimonial home again, then he will kill me.”

....had remained unchallenged and established that it was not she who deserted the matrimonial home.

12. The testimony of the appellant as RW-1 is also categorical to the effect:-

“It is wrong that I left my parental home on 14.03.1995 on the pretext that I have to join a function there with all my jewellery and costly clothes etc.

It is wrong that when petitioner confronted me that he was not invited for the function, then I started abusing him.”

13. Undoubtedly in his testimony as PW-1, the husband i.e. the petitioner of the divorce petition arrayed as respondent to the present appeal had stated :-

“It is wrong that the respondent resided at her matrimonial home till 15.03.1995 or that she had dealt me and my family members nicely. It is also wrong that she had taken care of the child well. It is wrong that on 15.03.1995 I quarreled with the respondent and had beaten her, or that I made it clear to her that I will not allow her to stay in her matrimonial home.

It is wrong that I made her to sit in my vehicle and drove her to her parents home. It is also wrong that I had left her at her parental home and directed her not to return to her matrimonial

home.”

14. However, as rightly contended on behalf of the appellant that the testimony of the appellant herself as RW-1 in relation to the aspect that she was virtually turned out from the matrimonial home and left by her husband i.e. the respondent to the present appeal at her matrimonial home after she had been assaulted mercilessly and that the respondent left her outside her parental home and had threatened her that he would kill her if she returned, has been conspicuously overlooked in the impugned judgment.

15. The response dated 03.10.1998 vide Ex.PW1/B of the appellant herein to the legal notice vide Ex.PW1/A dated 11.09.1998 issued on behalf of the husband vide Para 10 which is categorical to the effect:-

“10. That para no.10 of the notice is absolutely wrong and denied. Your client has no right to beat my client as a commodity. You client is under legal obligation to give her due respect and regard and has got no right to beat her. You client has turned out my client from her matrimonial house and as such he has got no right to take advantage of his own wrongs. My client was/ is always ready and willing to live with him in her matrimonial house provided he does not ill-treat her by giving her mental and physical cruelty through regular beatings. My client has got no idea about the child.”

16. The appellant thus therein had stated that she was ready and willing to live with her spouse in the matrimonial home provided he did not ill-treat her by giving her any beatings. Vide the impugned judgment in relation to the allegations of cruelty levelled against the appellant, it was observed to the effect that there were categorical

improvements that had been made by the respondent/ petitioner spouse against his wife in relation to which it was submitted on behalf of the appellant that the improvements in relation to allegations against the wife i.e. the appellant herein of her having deserted the husband have not been dealt with nor adjudicated upon vide the impugned judgment which is apparently borne out to be correct on a perusal of the impugned judgment.

17. Reliance was placed on behalf of the appellant on the verdict of the Hon'le Supreme Court in "**Savitri Pandey Vs. Prem Chandra Pandey**" I (2002) DMC 177 to contend that the legal notice Ex.PW1/A dated 11.09.1998 itself put forth by the husband and the averments in the petition HMA No. 54/2000 re-numbered as HMA NO.481/2001, is conspicuously silent in relation to the aspect that during all the period there has been a desertion, the deserted spouse must affirm the marriage and be ready and willing to resume married life with such conditions as may be reasonable, which it is submitted it is not so in the instant case and significantly, the testimony of the respondent/ husband as PW-1 dated 24.10.2000 in the last sentence reads to the effect:-

"I am not ready to accept the respondent in case she joined her matrimonial home today."

18. The observations thus in "**Bipin Chander Jaisinghbhai Shah vs. Prabhawati**" as laid down by the Hon'ble Supreme Court in AIR 1957 SC 176, which reads to the effect:-

7. *"Desertion", for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations, i.e., not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. After referring to host of authorities and the views of various authors, this Court in Bipinchandra Jaisinghbhai Shah v. Prabhavati [AIR 1957 SC 176] held that if a spouse abandons the other in a state of temporary passions, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion. It further held:*

"For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively. Here a difference between the English law and the law as enacted by the Bombay Legislature may be pointed out. Whereas under the English law those essential conditions must continue throughout the course of the three years immediately

preceding the institution of the suit for divorce, under the Act, the period is four years without specifying that it should immediately precede the commencement of proceedings for divorce. Whether the omission of the last clause has any practical result need not detain us, as it does not call for decision in the present case. Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an animus deserendi. The offence of desertion commences when the fact of separation and the animus deserendi co-exist. But it is not necessary that they should commence at the same time. The de facto separation may have commenced without the necessary animus or it may be that the separation and the animus deserendi coincide in point of time; for example, when the separating spouse abandons the marital home with the intention, express or implied, of bringing cohabitation permanently to a close. The law in England has prescribed a three years period and the Bombay Act prescribed a period of four years as a continuous period during which the two elements must subsist. Hence, if a deserting spouse takes advantage of the locus poenitentiae thus provided by law and decide to come back to the deserted spouse by a bona fide offer of resuming the matrimonial home with all the implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for divorce have been commenced, desertion comes to an end and if the deserted spouse unreasonably refuses to offer, the latter may be in desertion and not the former. Hence it is necessary that during all the period that there has been a desertion, the deserted spouse must affirm the marriage and be ready and willing to resume married life on such conditions as may be reasonable. It is

also well settled that in proceedings for divorce the plaintiff must prove the offence of desertion, like and other matrimonial offence, beyond all reasonable doubt. Hence, though corroboration is not required as an absolute rule of law the courts insist upon corroborative evidence, unless its absence is accounted for to the satisfaction of the court."

"Hence, if a deserting spouse takes advantage of the locus poenitentiae thus provided by law and decides to come back to the deserted spouse by a bonafide offer of resuming the matrimonial some with all the implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for divorce have been commenced, desertion comes to an end and if the deserted spouse unreasonably refuses the offer, the latter may be in desertion and not the former. Hence it is necessary that during all the period that there has been a desertion the deserted spouse must affirm the marriage and be ready and willing to resume married life on such conditions as may be reasonable. It is also well settled that in proceedings for divorce' the plaintiff must prove the offence of desertion, like any other matrimonial offence, beyond all reasonable doubt. Hence, though corroboration is not required as an absolute rule of law, the courts insist upon corroborative evidence, unless its absence is accounted for to the satisfaction of the court."

Emphasis supplied,

apply wholly in the facts and circumstances of the instant case in view of the response dated 03.10.1998 that was submitted by the appellant to the legal notice issued by the respondent to the present appeal. The response dated 03.10.1998 expressed vide Para 10 thereof that she was always ready and willing to live with her husband in her matrimonial home provided he did not ill-treat her by giving her mental and

physical cruelty through regular beatings.

19. In the circumstances, it cannot be held that the appellant had deserted the respondent in terms of Section 13(1)(ib) of the Hindu Marriage Act, 1955 (as amended) with an *animus deserandi* to end co-habitation for all time to come.

20. An observation was however made vide para 29 of the impugned judgment to the effect that the marriage between the parties had broken down irretrievably. As rightly contended on behalf of the appellant and not refuted on behalf of the respondent, as laid down in “**Mini Appa Kanda Swami @ Mani Vs. M. Indra**” vide a verdict dated 21.09.2016 of the Hon’ble Division Bench of this Court in MAT.APP.45/2011 in view of the verdict of the Hon’ble Supreme Court in “**Vishnu Dutt Sharma Vs. Manju Sharma**” (2009) 6 SCC 379 and as laid down by the Hon’ble Supreme Court in “**Anil Kumar Jain Vs. Maya Jain**” 2009 (12) Scale 115 as observed vide Para 17 thereof to the effect that:-

“17. This doctrine of irretrievable break-down of marriage is not available even to the High Courts which do not have powers similar to those exercised by the Supreme Court under Article 142 of the Constitution.”

and the ratio of the verdict in “**Mini Appa Kanda Swami**” (supra) vide para 23 of the said verdict to the effect:-

“23. This Court thus lacks jurisdiction to dissolve a marriage on the doctrine of “irretrievable breakdown.”,

the High Court lacks jurisdiction to dissolve the marriage on the doctrine of irretrievable break down and likewise the learned Trial

Court of the ADJ concerned too did not have the requisite jurisdiction to dissolve the marriage between the parties to the petition on the grounds of cruelty and desertion on the grounds of irretrievable break down of marriage.

21. Reliance was however placed on behalf of the respondent by the learned Senior counsel for the respondent through the course of the arguments addressed on the verdict of the Hon'ble Supreme Court in **“Rishikesh Sharma Vs. Saroj Sharma” (2007) 2 SCC 263** to contend that though the husband was ready and willing to pay a lump sum amount by way of permanent alimony to his wife and the wife was not willing to accept the lump sum amount and expressed her willingness to live with her husband which it was held by the Hon'ble Supreme Court was not a genuine desire to live with her husband in view of the distance of time and the appeal in that case was allowed with a decree of dissolution of marriage having been granted in favour of the husband in which case it had been observed that the marriage had irretrievably broken down with no possibility of the parties living together again with no useful purpose.

22. Reliance was also placed on behalf of the respondent during the course of the arguments addressed on the verdict of the Hon'ble Supreme Court in **“Naveen Kohli Vs. Neelu Kohli” 128 (2006) DLT 360 (SC)** to contend that it would not be justified for this Court to set aside the order of the learned Trial Court that parties had been living apart from 1995 i.e. virtually from 23 years now with the matrimonial bond between the parties having broken beyond repair and not granting the decree of divorce would be disastrous for the parties.

Reliance was however, also placed on behalf of the respondent on the verdict of the Hon'ble Division Bench of this Court in **“Sandhya Kumari Vs. Manish Kumar” 234 (2016) DLT 381** to contend that where the marriage was a total wreck and in that case where the parties were living apart from 2011 and various efforts made for conciliation have failed and there was a irretrievable break down of the marriage, though irretrievable break down of marriage is not a ground for divorce, it was observed that the concept of cruelty in the judgments in **“Madhvi Ramesh Dudani Vs. Ramesh K. Dudani 2007 (4) KHC 807, Shrikumar V. Unnithan V. Manju K. Nair, 1993 (SLT Soft) 358, V. Bhagat Vs. D. Bhagat 128 (2006) DLT 360, Navin Kohli Vs. Neelu Kohli”**, the concept of cruelty had been blended by the Courts that the irretrievable break down of marriage and the ratio of law which emerged from the said decisions was that whether there is evidence that the husband and wife were indulged in mutual bickering leading to remonstrations and therefrom to the stage where they target each other mentally, insistence by one to retain the matrimonial bond would be a relevant factor to decide on the issue of cruelty for the reason the obvious intention of the said spouse would be to continue with the marriage not to enjoy the bliss thereof but to torment and traumatize each other.

23. Reliance was also placed on behalf of the respondent by the learned Senior counsel on the observations of this Court in **“Smt. Vimal Kanta vs. J.M. Kohli”** in FAO 46/1995 decided on 13.01.2011, wherein it was observed to the effect that in that case where the appellant was of the age of 80 years and had challenged the

decree of divorce passed by the learned Trial Court dated 30.09.1994 on the ground of desertion under Section 13(1)(ib) of the Hindu Marriage Act, 1955 (as amended), in which case the respondent had successfully proved the ground of desertion, it had been observed that the learned Court had inquired as to why the appellant wanted to be the legally wedded wife till her last breath and whether it was for the pride of the red vermilion adorning her or was it because she had her eyes on the enrichments that would ensue if she still has the status of the wife of the respondent or was it because there was nothing but pure vengeance to settle the score with the respondent that propelled the appellant to fight this arduous legal battle when practically her marital life turned catastrophic long back and it was thus held in the circumstances of that case that this Court did not find any illegality or perversity in the findings arrived at by the learned Trial Court dissolving the marriage between the parties thereto on the ground of desertion.

24. It was submitted on behalf of the appellant by the learned counsel for the appellant that the verdicts relied upon on behalf of the respondent related to reasonable satisfactory lump sum amount being offered to the wife which had been declined by her with persistence to continue to live with her husband, whereas in the instant case there was no reasonable quantification of any amount being paid by the respondent to the appellant.

25. During the course of arguments in the appeal on 26.10.2018 in response to specific court queries put by this Court to both the appellant and the respondent herein it was apparent that they both

expressed difficulty in now resuming their relations which had virtually ceased in mid March, 1995. Be that as it may, as already observed hereinabove irretrievable break down of marriage is not a ground for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (as amended). Attempts at mediation in the instant case at least twice as per record available have not resulted into any settlement and the attempt at settlement made during the course of arguments addressed before this Court also on 26.10.2018 have not yielded any result.

26. Taking the totality of the circumstances of the case into account, with it having been observed hereinabove and held to the effect that the available record before the learned Trial Court did not establish the *animus deserendi* of the appellant herein to desert the respondent by non resumption of cohabitation, in the facts and circumstances of the instant case, the impugned decree of divorce against the appellant herein and in favour of the respondent on the ground of desertion under Section 13(1)(ib) of the Hindu Marriage Act, 1955 (as amended) in HMA 481/01 is thus set aside.

27. The present appeal FAO 113/2002 is accordingly allowed.

ANU MALHOTRA, J

OCTOBER 29, 2018
NC