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

% ***Date of decision: 13th September, 2023***

+ **MAT.APP.(F.C.) 309/2018**

SANDHYA MALIK Appellant

Through: Ms. Anu Narula, Advocate with
appellant in person.

versus

COL SATENDER MALIK Respondent

Through: Mr. Arvind Chaudhary, Advocate for
LR No.1(a)/Late Smt. Rajwanti
Malik.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. An Appeal under Section 19 of the Family Courts Act, 1984 has been filed on behalf of the appellant/wife against the judgment and decree dated 04.09.2018 granting divorce under Section 13 (1)(ia) and (ib) of Hindu Marriage Act, 1955 (*hereinafter referred to as "the Act, 1955"*) on the grounds of cruelty and desertion.

2. The parties got married according to Hindu customs and rites on 06.05.1996 at Arya Samaj Mandir, Sheikh Sarai, New Delhi and a daughter Sejal was born from the said wedlock on 21.12.1998. The respondent-husband (*petitioner in the divorce petition*) was in Indian Army and got posted at different locations. Therefore, the appellant-wife (*respondent in the divorce petition*) along with the minor, stayed at the parental home of the



respondent i.e. the matrimonial home in Noida. She took up a job when the child, was one year old. Later, towards the end of 2000, she along with the child joined the respondent/husband at Manipur, but she came back within six months. In 2002, respondent/ husband was posted in U.P, where again the appellant along with the minor joined him. He then got posted in Delhi in 2003. The appellant again took up a job in Delhi. In the year 2006, the respondent was posted in J & K and in March, 2007 he went on a UN Mission to Congo. During this period appellant and the minor stayed in the matrimonial home at Noida. Since the appellant was working, the minor child was taken care of by the respondent's parents to the best of their capacity. However, the appellant for the reasons best known to her was not happy with the parents and was disrespectful and rude towards them.

3. The respondent/ husband on return from Congo Mission in March, 2008 took up a house on rent in Saket, close to the parental home of the appellant/ wife. He also provided the facilities of Sahayaks from the Army to take care of the household chores, but the respondent's attitude was nagging and fault finding which created adverse impact on the mind of the respondent.

4. In June, 2008 the respondent got posted at Kasauli and requested the appellant to join him at his place of posting. However, she expressed her inability to spare time even for the daughter. The respondent claimed that the appellant abandoned his company and never cohabited with him. On the insistence of the appellant, the daughter Sejal was admitted to a Boarding School in Kasauli, while the appellant as per her own wishes concentrated on her professional life. The daughter Sejal studied in Pinegrove School, Kasauli, for two years, since April, 2009. Thereafter, on the insistence of



the appellant, she was shifted to Chinmaya Vidyalya, Vasant Vihar, New Delhi.

5. The respondent had claimed that since he returned from Congo Mission in March, 2008, the relations between him and his wife were estranged on account of indifferent attitude of the appellant. She hardly talked to the respondent which caused deep frustration and depression in his mind. In order to shift the blame on the respondent, the appellant wrote various complaints to the Commanding Officer, Family Welfare Organization and the Army Head Quarters making baseless, frivolous and false allegations, blaming the respondent for deserting her and the daughter. She claimed the maintenance for the child, even though the respondent was already paying for her education and taking care of her interest. In response to the queries by Army Authorities, he volunteered to pay the maintenance for the minor. The appellant during proceedings for maintenance before the Army Authorities, filed affidavits levelling false allegations against him.

6. The respondent had further asserted that in order to avoid any amicable resolution of the disputes, the appellant shifted to Pune and withdrew the child from the school in Delhi and got her admitted in a school at Pune so as to snap any contact between the respondent and his daughter. The respondent thus, asserted that he had been deserted by the appellant.

7. On the aspect of cruelty, the respondent claimed unilaterally cessation of cohabitation since June, 2008, making of false complaints before Army authorities and also levelling scandalous allegations against him of being involved with a lady who was his childhood classmate and thereby assassinated the respondent's character. Not only this, she filed frivolous suit for injunction in District Courts, Gurgaon claiming that she had been



thrown out from the matrimonial home. She did not allow the respondent to interact with the daughter. Her sole motive was to claim privileges and benefits of being a wife of an Army Officer, but denied and refused to perform her obligations as wife to the respondent/ husband.

8. The respondent thus, claimed divorce on the grounds of cruelty and desertion under Section 13 (1)(ia) and (ib) of the Act, 1955.

9. The divorce petition was contested by the appellant/ wife who in her **Written statement** asserted that all the allegations pertained to the year 2008 while the divorce petition was filed in the year 2013. She claimed that the petition had been filed after a period of five years and suffered from delay and laches as there was no explanation for filing the petition after five years.

10. It was asserted that the respondent continued with his extra marital relationship with one lady and was trying to take advantage of his own wrong by getting rid of the appellant/ wife *via* divorce proceedings. On merits, she denied all the allegations made against her by the respondent. It was claimed that the respondent used to visit her briefly during his annual holidays and leaves but during this period he inflicted physical and mental cruelty upon her. She denied that the respondent's mother used to undertake all household chores or did not burden the appellant with the same. The appellant asserted that initially parents of both the parties were against their marriage, however, after the marriage her parents-in-laws started taunting her for not bringing enough dowry. She lived in the house of her parents-in-law at Noida for about 10-12 days immediately after the marriage, but thereafter the respondent went to his place of posting and she shifted to her parental home.



11. The appellant had further asserted that the respondent failed to take care of her. During her pregnancy, she was hospitalized in Army Research and Referral Hospital on account of severe Jaundice, but neither her husband nor his parents ever offered any care or visited the hospital. The respondent failed to give her any emotional support. After the birth of the daughter, the respondent and her parents were unhappy with the birth of a girl child. The respondent asked her to start working much prior to 1997 as he needed money to buy a house. She, therefore, took up a job from September, 1997 to May, 1999 and thereafter from December, 1999 till January, 2001. Though the respondent visited her during his annual leave which was after a gap of 8-9 months, but he did not behave like a husband for many days and would then force himself upon her according to his whims and fancies.

12. The appellant further asserted that the respondent used to consume alcohol regularly. She wanted to join the respondent at his place of posting, but he always discouraged her. She at one point of time, even expressed a desire to have the second child, but he reacted abusively and violently. He hit her many a times for interacting with the neighbours. He behaved cruelly towards her physically as well as emotionally.

13. In the year 2003, on the advice of the family members, she sent the minor daughter to the house of her in-laws for one year so that the appellant and the respondent would have some time alone, but the situation did not improve. After one year, the daughter was brought back to R.K. Puram, Delhi where the parties had been living together. She admitted that while the respondent was on U.N. Mission in Congo, she remained with her in-laws but it is claimed that they poisoned the ears of the respondent against her and directed him to harass the appellant. They continued to



force her to leave her job and to work in the house as a servant. They would not let her engage a maid for doing the household work. Since she was earning, she did not take any money from the respondent and bore all the expenses of herself and the daughter. Parents of the respondent demanded money and she transferred Rs.8,000/- per month in the account of the mother-in-law. Four months later, they asked her to pay the money in cash as they did not want any documentary proof. In May, 2008 she had to leave her in-laws place as the respondent himself asked her to shift to her parental home. They took the first floor of the house of the parent's of the appellant on rent from them. Admittedly, the respondent arranged for Army Jawans from the unit to help her, but it is denied that the respondent provided all the facilities including Sahayaks from the Army.

14. The appellant had denied that she was ever asked to join the respondent at Kasauli. It is claimed that he never applied for family accommodation despite her repeated requests. On the other hand, whenever she along with the daughter visited Kasauli to meet him, he would go out for long walks alone leaving the appellant and the child behind.

15. It was further claimed by the appellant that the respondent maintained an active social life with his classmates, both male and female, while the appellant was never taken out. She caught the respondent exchanging obscene and intimate messages with his female friends. When she confronted him, he claimed that there was nothing between them. Whenever he visited Delhi on vacations, he kept messaging on phone and went on long walks alone. He came to her in the evenings only to sleep and at times forced himself upon the appellant.

16. The appellant has further asserted that the respondent was having an



illicit relationship with one 'R' (*name not disclosed*). He spent a night with 'R' in Chandigarh on 17.09.2010. They travelled together from Chandigarh to Delhi by train. On 06.09.2010 he told the appellant that he was going to Army Headquarters, when in fact he had gone to pick up 'R' from Gurgaon and they together watched the movie. He spent time with 'R' 7-8.09.2010. On 23.09.2010 he came by flight and spent a night with 'R' at Subhash Nagar where R's mother stays alone. On 28-29.09.2010 he went to Kathmandu with 'R'. It was claimed that their daughter Sejal had asked the respondent to plan a trip to Goa, but he refused and instead in the night of 27.09.2010 he was planning to go river rafting with his friends. On 29.09.2010, he informed the appellant's mother that he was going to Amritsar with his friends when in fact he went to Subhash Nagar to pick 'R's mother and they all went to Amritsar in Shatabadi Express, where 'R' also joined them. On 04.11.2010, she caught the respondent red handed in the presence of their daughter Sejal, at Subhash Nagar. The incident was video recorded by the daughter Sejal, which clearly establishes the extramarital relationship of the respondent with 'R'. It is further claimed that since 24.11.2010 the respondent had been pestering her for divorce.

17. The appellant denied that she did not allow the respondent to meet the daughter during his visits to Delhi or found excuses not to let her speak to the respondent on telephone. It was also denied that she had obtained Transfer Certificate of Sejal unilaterally for shifting her to a school in Pune. She further denied that the respondent was not aware of her shifting to Pune. It was claimed that she had to shift to Pune in June, 2012 in order to get a better job since the respondent had withdrawn the financial support completely. The appellant thus, denied that she had treated the respondent/



husband with cruelty or that she had ever deserted him. It was claimed that divorce petition was liable to be dismissed.

18. The reframed **issues** vide Order dated 21.08.2018 are as under: -

“(1) Whether the respondent after solemnization of the marriage has treated the petitioner with cruelty within the meaning of sec.13(1)(i-a) of the Hindu Marriage Act? (OPP)

(2) Whether the respondent has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition within the meaning of Sec.13 (1) (i-b) of the Hindu Marriage Act? (OPP)

(3) Whether the petitioner is entitled to decree of divorce, as prayed for? OPP

(4) Relief.”

19. The respondent examined six witnesses while the appellant examined two witnesses in support of their respective cases.

20. The learned Principal Judge, Family Court considered the entire evidence in detail and held that the appellant had treated the appellant with cruelty and had withdrawn from the company of the respondent and deserted him. Consequently, divorce was granted under Section 13 (1)(ia) and (ib) of the Act, 1955 on the grounds of cruelty and desertion.

21. Being aggrieved, the present appeal has been preferred.

22. **Submissions heard.**

23. Essentially the case of the respondent/ husband was that he being an Army Officer, used to get posted at different places, but the appellant never displayed any inclination to join him at his place of work. It is not disputed or denied that the appellant from time to time was working and on account of her job, such disinclination can neither be termed as an act of cruelty or an act of desertion. From the comprehensive evidence of the parties and the



witnesses examined by them it is evident that while the respondent was on his place of posting, either he used to join the appellant at her place of residence or at times the appellant used to visit him as and when convenient. It is admitted that immediately after the marriage, the appellant had gone to the matrimonial home and stayed with the parents of the respondent, though subsequently she went to live with her parents. It is also not disputed that after the respondent returned from Congo Mission in 2007, they had taken the first floor of the house of the parents of the appellant in Saket on rent and had stayed there together. What can be concluded from their respective evidence, is that because of job compulsions of the appellant, and the postings of the respondent to different places being in Army, the parties had worked out an arrangement of spending whatever time they could together, but it cannot be said that there was any such incident which could be termed either as cruelty or as desertion.

24. The appellant had claimed that the respondent had no intention of being in a matrimonial relationship with her for which reason he purposely chose not to apply for a family accommodation while he was posted in Kasauli. However, it is admitted that the daughter, during the said period, was put in a hostel in Kasauli, where she remained for about two years. During this period the appellant often visited the respondent and the daughter. This is reflected from the testimony of the appellant herself that whenever she visited Kasauli, the respondent was withdrawn and would go alone for long walks. The very fact that the daughter was admitted in a Boarding School clearly shows that the family accommodation was not taken as the appellant was not able to join him in Kasauli seemingly because of her job and jointly a decision was taken to put the child in the Boarding



School or else there was nothing which prevented the respondent from taking a family accommodation where the child could have stayed with the parents together. It is evident that the appellant herself preferred to stay back and not join the respondent at his place of posting in Kasauli. Learned Principal Judge as thus, rightly concluded that non-taking of family accommodation at Kasauli was not attributable to the respondent with ulterior motive of deserting the appellant, as was claimed by her.

25. The appellant had asserted that the respondent was in a habit of consuming alcohol daily. Merely because a person consumes alcohol daily, does not make him an alcoholic nor does it add up to a bad character especially when there is no other incident asserted to have happened on account of consumption of alcohol by the respondent.

26. The appellant had further asserted that he used to be withdrawn whenever she visited him and would always remain busy on phone with his friends, both male and female. A person who is essentially living alone, may find solace by having friends and merely because he used to talk to his friends, it can neither be held to be an act of ignoring the appellant nor a cruel act. It has to be appreciated that both the parties having been essentially living separately because of their work exigencies, were bound to make friends at their place of work and otherwise; and such friendships without anything more, cannot be termed as cruelty.

27. It has been asserted by the appellant that respondent developed special affection and illicit relationship with one 'R' with whom he spent night in Chandigarh on 17.09.2010 and he also travelled with her from Chandigarh by train. It was deposed that on 06.09.2010 the respondent told her that he was going to the Army Headquarters, but he went to Gurgaon and watched a



movie with 'R'. Likewise, on 7-8.09.2010 he spent time with 'R'. On 23.09.2010 he came by flight and again spent a night at Subhash Nagar where 'R's' mother stays alone. He had denied the request of the daughter on the night of 27.09.2010 to take her to Goa as he had plan to go for river rafting with his friends. On 28-29/09/2010 the respondent went with her to Kathmandu. On 29.09.2010 respondent informed the appellant's mother that he was going to Amritsar with friends, when in fact he travelled to Amritsar with the mother of 'R' and 'R' also joined him there. The appellant has thus, asserted that there was illicit relationship between the respondent and 'R'.

28. To corroborate this further, she had deposed that she had caught the respondent red handed with 'R' at the Subhash Nagar house on 04.11.2010 and had video graphed the entire incident with the help of her daughter Sejal. The respondent had explained that 'R' was his school time friend and during the relevant period was working in Gurgaon and that she was married and had two children. Though, during the trial the request of the appellant to place on record the Facebook chats of the respondent with 'R' was declined, but these Facebook chats were submitted during the inquiry before the Army Authorities which were marked as "*Mark B*". The respondent admitted these chats during the inquiry before the Army Authorities and admitted that he had briefly maintained intimate relations with 'R' from September to November, 2010. The CD, which is Ex.RW1/2, was recorded by the daughter of the parties on her mobile phone on 04.11.2010 when the respondent was present at the Subhash Nagar house of 'R's' mother. In the said video recording, the respondent admitted his involvement with 'R'. This entire evidence was considered by the Army Authorities and it was



surprisingly concluded that this evidence did not establish any adulterous relationship, but was merely a brief encounter between the respondent and his ex-school mate.

29. The learned Principal Judge, Family Court from this evidence concluded that *“this brief liaison between the petitioner and ‘R’ cannot qualify to brand the petitioner with philandering character. It definitely is an act which challenges the relationship between the petitioner and the respondent as a couple; however, it being a one off episode, may not be very significant or very important, so as to change the contours of the present case”*. Furthermore, the appellant during her cross-examination had stated that despite such conduct of the respondent of being of alleged drunkard, chain smoker and having been involved with ‘R’, she was prepared to live with him. She, thus, acquiesced to this brief escapade of respondent and the appellant cannot claim advantage under Section 23 (1) (a) of the Act, 1955 as it cannot be held that the respondent is taking advantage of his own wrong.

30. Though the evidence on record establishes that the respondent had an intimate relationship with ‘R’ for a short period between September to November, 2010, but it has been rightly concluded by learned Principal Judge, Family Courts that it was an act which was condoned by the appellant who despite this episode, had expressed her willingness to continue to reside with the respondent. Once an act which lasted for a short while had been condoned, it cannot be taken as an act of cruelty while deciding the petition for divorce. The things could have been different had it been a turning point in the relations between the parties which otherwise also were not too platonic.



31. That the brief intimate relationship did create some turbulence in the lives of the respondent and the appellant, but they both were able to sail over it, which is also evident from various letters written by the appellant herself to the Army Authorities. In her letter dated 24.10.2011 Ex.PW6/A she had stated that *“on account of certain marital issues, Satender and I had a difference of opinion which has consequently led to Satender displaying an indifferent attitude towards our daughter and me. I have made numerous attempts to restore the situation, however, his indifference has also increased in the intervening period. So much so that recently I came to know that the Canteen Smart Card that Satender had given to me had been deactivated for seemingly inexplicable and unknown reasons.”* She further requested the Authorities to intervene and get her husband to see reason in terms of resolving the not so intractable issues. Similar was the tone and tenure of her letter dated 01.11.2011 Ex.PW6/B written to the Family Welfare Organization of the Army wherein again, she asserted that on account of certain differences that have cropped up between them in regard to the matrimonial life, he did not care to make any suitable arrangement for her and she has been compelled to stay with her parents. She also stated that she had made numerous efforts to restore the situation, but he has not been forthcoming and all her endeavours to get in touch with him have failed. She has written to Commandant, CDS Bhalra, where Col. Satender (respondent) was posted, to apprise him of the situation and requested him to facilitate restoration of the dependent facilities for herself and the daughter.

32. It is also significant to refer to the affidavit dated 21.01.2012 Ex. PW6/E submitted by the appellant along with her letter dated 15.01.2012 Ex. PW6/D seeking maintenance under the Army Act for the daughter,



wherein she stated that her husband has been neglecting her and the child and has not been staying with her since July, 2011 and is refusing to maintain the daughter. The respondent had also given a statement dated 25.04.2012 Ex.PW6/G to Commandant Bhalra, wherein he also affirmed that there has been a difference of opinion between him and his wife on the ground that his wife was not keen to join him at family stations. She was a working woman and was not inclined to join him claiming professional commitments. He further stated that he had even given her an option to stay in Udhampur, where he was willing to take SF accommodation, but she was insisting to stay in Delhi on her own terms and that she voluntarily decided to stay with her parents and not with her in-laws or in separate accommodations. Her decision to stay independently was not taken mutually.

33. From these various letters, which followed the incident of November, 2010 also reflect that the appellant, despite the brief incident of intimacy between the respondent and 'R', had marched forward and was still willing to reconcile and continue with the matrimonial relationship with the respondent. Once she herself had cottoned and walked past the incident, it clearly shows that it was not considered by her an act significant enough to snap her relationship with her husband.

34. Be as it may, another significant fact to which learned Principal Judge, Family Court has alluded to, is that according to the appellant herself, she had taken her daughter along with her to the Subhash Nagar house of the mother of 'R' on 04.11.2010, where she had found the respondent present in the house and her daughter Sejal, who was about 12 years old at that time, prepared the video recording of the incident which was relied upon by the



appellant for proving her case and is Ex. RW1/2 . Learned Principal Judge also observed that the appellant filed a petition under Protection of Women against Domestic Violence Act in the year 2014, in which she had impleaded her daughter as co-petitioner. However, the child was not even aware about these proceedings. In addition, the appellant instituted a suit at Gurgaon in the name of her daughter against the respondent in May, 2018. Not only this, the daughter had been produced as RW2 to depose about this case as a witness of the appellant. The appellant had already instituted a suit against the respondent qua the aforesaid property in her own name before Civil Judge, Gurgaon in November 2012, despite which she filed another litigation in the name of the daughter against the respondent in May 2018. Thus, it emerges that the appellant who admittedly had some differences with the respondent/ husband, chose to retaliate by using the child as a tool who was barely 12 years old in November, 2010, to get back to the respondent. The ultimate act was taking a child with her to the house of 'R' on 04.11.2010 wherein aggressive exchange of words took place between the appellant and the respondent which was witnessed by the child. The respondent was not even allowed to talk to the daughter. The learned Principal Judge further observed that the alienation of the child from the respondent did not end there as according to the respondent, the appellant shifted to Pune along with the child in the year 2012 without his knowledge and information. Moreover, Sejal the daughter was even produced in the Divorce case as a witness and deposed that she has not been in contact with her father since 2013 till 2018.

35. Learned Principal Judge from all the circumstances as detailed above concluded that it makes it evident that the child had been totally and



intentionally alienated from her father by the mother. The discord and the disputes were between the husband and wife and no matter how bitter the relationship between them had become, it was not appropriate to involve the child or embitter her against the father or to use her as a tool against him.

36. In the case of Prabin Gopal vs. Meghna 2021 SCC OnLine Ker 2193 in a similar situation, the Kerala High Court observed that the mother had intentionally distanced the child from the father and had deprived the child from the parental love and affection. It was a case of parental alienation where the child, who was in the custody of one parent, had been psychologically manipulated against the estranged parent. It was a strategy whereby one parent intentionally displayed to the child unjustified negativity aimed at the other parent, with the intent to damage the relationship between the child and the estranged parent and to turn the child emotionally against the parent. It was observed by Kerala High Court that the child has a right to love and affection of both the parents and likewise, the parents also have a right to receive love and affection of the child. Any act of any parent calculated to deny such affection to the other parent, amounts to alienating the child which amounts to mental cruelty. Since the child was in the custody of the mother, it was held that the mother had breached her duty which she owed as a custodian parent to instil love, affection and feelings in the child for the father. Nothing more can be more painful than experiencing one's own flesh and blood i.e., the child, rejecting him or her. Such wilful alienation of the child amounts to mental cruelty.

37. In the present case as well, the child has not only been totally alienated, but has also been used as a weapon against the father. Nothing can be more painful for a parent to see the child drifting away and being



totally against the father. This assumes some significance in the light that the father never failed to provide for the child either for her education or otherwise or to provide army facilities as were available. So much so, 10% of his salary was being paid to the child for her maintenance which was subsequently increased to 20%.

38. The learned Principal Judge, Family Courts has, therefore, rightly concluded that such child alienation is an extreme act of mental cruelty towards a father who has never shown any neglect for the child.

39. Furthermore, the appellant had addressed communications dated 07.05.2015, 23.06.2015, 24.06.2015 and 13.07.2015 collectively Ex.PW6/O, wherein averments were made questioning the respondent's promotion as a Commanding Officer and also seeking a stay on his transfer from a high altitude posting where he had completed his two years. Not only this, she also made an allegation that the respondent had falsely claimed House Rent Allowance. She also made a complaint that he had gotten the AWHO flat registered in his individual name, even though it was allotted in their joint name. These complaints made by the appellant in the year 2015 also reflect the vindictive attitude of the appellant wherein she was out to ruin the career of the respondent. So much so, even disciplinary proceedings were initiated against the respondent at the behest of the appellant, though as per the testimony of PW6, Col. Aakash Mishra, from HR Department of Army, he stood exonerated from them.

40. In the recent case of Joydeep Majumdar vs. Bharti Jaiswal Majumdar 2021 SCC OnLine SC 146, in similar facts, not only defamatory complaints were made to the Superiors of the husband in the Army for which a Court of Inquiry was held, but it had an impact on his career progression as well. It



was observed that the allegations levelled by a highly educated spouse which have a propensity to irreparably damage the character and reputation of the appellant and sully his reputation amongst his colleagues, superiors and society at large would be such acts, condonation of which is difficult to be expected from the aggrieved party. The explanation of the wife that the complaints were made in order to protect the marital ties, cannot by any standard considered a reasonable explanation to justify her persistent efforts to undermine the dignity of the husband. In such circumstances, the wronged party cannot be expected to continue the matrimonial relationship and there is enough justification for separation.

41. In the present case as well, such conduct from an educated spouse cannot be expected and such complaints as made by her further proves her vengeance to bring down the respondent. Once vindictiveness has crept in and the appellant had marched on to the war path filed only complaints in the Department but also initiated various civil/legal cases since 2011, i.e., for about 12 years and has even alienated the daughter from the respondent, it leads to irresistible conclusion that various acts of cruelty have been committed towards the respondent.

42. From the above discussion we conclude that the learned Principal Judge, Family Court has rightly held that the respondent was entitled to divorce on the ground of cruelty under Section 13 (1)(ia) of the Act, 1955. The situation does not change merely because the respondent has expired on 02.12.2021 and his legal heirs i.e. the mother and daughter have been impleaded as a party.

43. The divorce was also granted on the ground **of desertion**, but from the above discussion, it is evident that the things had gone to an extent



where neither the appellant nor the respondent were in a position to restore their marital ties. In these circumstances, it cannot be held that it was a case of desertion by the wife for a period of more than two years from the date of separation i.e. July, 2011 onwards.

44. We, therefore, find that divorce on the ground of desertion is not made out. Therefore, we partially modify the impugned judgment and decree dated 04.09.2018 and set aside the divorce on the ground of desertion but uphold the Divorce on the ground of cruelty.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 13, 2023
va/jn