

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.61 of 2014

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Rekha Devi D/o Kameshwar Sharma, R/o Village Of Mohalla, New Area,
P.O. Dalmia Nagar, P.S. Dehri, District Rohtas.

... .. Appellant/s

Versus

Binod Kumar Sharma S/o Munsu Sharma, R/o Mohalla Subhash Nagar, P.O.
Dalmia Nagar, P.S. Dehri, District Rohtas.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Amaresh Kumar Sinha, Advocate.
For the Respondent/s : Mr. Siddharth Harsh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 07-04-2025

1. Heard both the parties.
2. This Miscellaneous Appeal has been filed against the judgment dated 19.12.2013 and decree dated 07.01.2014 passed by the learned Principal Judge, Family Court, Rohtas at Sasaram in Matrimonial Case No. 28 of 2007 whereby and whereunder the learned Family Court allowed the decree of divorce in favour of the respondent.
3. The brief facts of the case is that the appellant-wife married to the respondent-husband in the year 1997 as per Hindu rites and rituals and from their wedlock they are blessed with two children namely, Anjani Kumari and Anshu Kumar,



who were born on 16.07.1998 and 23.12.2000 respectively. Soon after their marriage the appellant-wife asked the respondent-husband to live separately from his parents and on avoidance of the same by the respondent, the behaviour of the appellant gradually changed towards respondent-husband and his family members. In furtherance, the appellant-wife left her matrimonial home on 09.04.2002 and went to her parental home and never returned to her matrimonial home. On 02.09.2002 the respondent-husband requested via notice to return to her *sasural* along with children within 10 days from the date of receipt of the notice which was ignored by the appellant and not turn up to her matrimonial home. Such ignorance and behaviour of appellant-wife towards respondent-husband caused mental cruelty to the petitioner. The respondent-husband filed Matrimonial Case No. 28 of 2007 for divorce mainly on the ground of desertion stating that the appellant-wife had deserted him for a continuous period of more than two years without any proper reason, cause or consent of the respondent-husband.

4. In the written statement filed by the appellant-wife it was submitted that the respondent-husband and his family member used to insult and assault the appellant-wife which was too cruel to tolerate thereby leaving the appellant-



wife with no choice than to take shelter at her parental home since April, 2002. Moreover, the appellant-wife never asked her husband to leave his parents and family. It was further stated that the appellant-wife being incapable to maintain herself and her children filed Maintenance Case No.04 of 2003, which was decided in her favour, in furtherance she started getting Rs.2,000/- per month as maintenance for herself and Rs.1,000/- per month towards maintenance of each child which have been increased as Rs.4,000/- per month for appellant-wife and Rs.2,000/- per month each to both the children. Moreover, it is stated that the appellant-wife along with her parents had requested the respondent-husband and his family to restore their relationship and accept the appellant as his wife, but the same was ignored. She is ready to live with her husband. Also, the notice dated 02.09.2002 was sent only with view to create an evidence. Therefore, the suit filed by the respondent-husband be dismissed.

5. On behalf of the respondent-husband he himself examined as P.W.-1. Eight documentary evidence were exhibited by the respondent-husband, viz., copy of Advocate Notice (Ext.1), postal receipt (Ext. 1/A), acknowledgment (Ext.1/B), certified copy of petition filed in Dehri P.S. Case



No.147 of 2002 (Ext. 2), certified copy of the protest petition of 147 of 2002 (Ext.3), certified copy of FIR of Dehri P.S. Case No.147 of 2002 (Ext.4), order of SDJM Sasaram in Gr. Case No. 834 of 2002 (Ext.5), certified copy of chargesheet of Dehri P.S. Case No. 147 of 2002 (Ext.6) and certified copy of FIR of Dehri P.S. Case No.108 of 2010 (Ext. 7). On the other hand, on behalf of the appellant-wife, two witnesses were examined viz., O.P.-1 Rekha Devi (appellant) and O.P.-2 Kameshwar Sharma (father of appellant). One documentary evidence was adduced which is copy of F.I.R. of Dehri P.S. Case No. 147 of 2002 (Ext. A).

6. On the basis of pleading and submissions advanced on behalf of the parties, the learned Family Court framed following issues:-

- (i) whether the present matrimonial suit as framed is maintainable?*
- (ii) whether the petitioner has valid cause of action?*
- (iii) whether the respondent has deserted the petitioner?*
- (iv) whether the respondent has treated with cruelty to the petitioner?*
- (v) whether the petitioner is entitled to a decree of divorce as prayed for?*
- (vi) to what other relief or reliefs the parties are entitled to?*

7. The learned Family Court, after hearing the parties and considering the material available on record held



that the respondent-husband had not proved the *factum* of cruelty. However, the suit for dissolution of marriage is maintainable and the appellant-wife has voluntarily deserted the respondent-husband without any reasonable cause and without the consent of the respondent-husband. Therefore, the marriage between the parties was dissolved on the ground of desertion and the respondent-husband is entitled to get a decree of divorce. The appellant being not satisfied and aggrieved by the said judgment filed the present appeal.

8. The learned counsel on behalf of the appellant-wife submitted that the learned Family Court has erred in the judgment and without considering the facts and evidence on record, decreed divorce in favour of respondent-husband. It is further submitted that the learned family court failed to appreciate that the appellant-wife had reasonable cause to leave her matrimonial house based on cruelty and rude behaviour of the respondent-husband and his family members. Moreover, learned Family Court failed to consider that the appellant-wife was residing in her parental house due to compulsion. He also submitted that even otherwise the learned Family Court has not granted any permanent alimony in favour of the appellant-wife who has no source of income. Hence, the impugned judgment



and decree passed by learned Family Court is liable to be set-aside.

9. Per contra, learned counsel on behalf of respondent-husband submitted that that the learned Family Court after appreciating the evidences and considering the material available on record has rightly allowed the petition for divorce filed by the appellant-husband.

10. In view of the rival contentions, the point for determination in this appeal is “*whether the appellant-wife has deserted the respondent-husband and based on that aforesaid ground the respondent-husband is entitled to get a decree of divorce?*”

11. Living together is the essence of marriage and living apart is its negation. The law regards the negation of the very essence of marriage as desertion. Desertion of one spouse by the other is recognized as ground for divorce under Section 13 (1) (ib) of the Hindu Marriages Act, 1955. It refers to total abandonment of matrimonial obligation. The following ingredients must be fulfilled for desertion:-

(i) *The factum of separation i.e., the petitioner and the respondent should either be physically or mentally separated from each other;*

(ii) *Animus deserendi i.e., an intention to*



permanently desert the spouse;

(iii) Desertion should have been without any reasonable cause;

(iv) It should have been without the consent of the spouse; and

(v) It should have been for a continuous period of two years, immediately preceding the presentation of the petition in Court.

12. Desertion is not withdrawal from a particular place, but it is withdrawal from a particular state of things i.e., cohabitation. It can be asserted that desertion is a continuing course of conducts and not a single act. Desertion is deemed complete when the period prescribed in law expires, and a petition for remedy is filed on its ground. However, if the deserter returns before the expiry of the prescribed period, the desertion stands terminated.

13. In the instant case, the marriage between the parties was solemnized in the year 1997 and it was love marriage but the conjugal relationship between the parties has been snapped since 2002 and the appellant-wife is residing in her parental house thereafter and had filed maintenance case against the respondent-husband. The respondent-husband filed divorce case in the year 2007. At this stage, we are conscious of the fact that there are so many unprecedented things happened



in the life between the parties and they never resumed the cohabitation after the year 2002 and during last more than two decades efforts to restore their conjugal relationship failed. Keeping in view, the facts and circumstance of the case and the materials available on record coupled with the allegations leveled against each other embedded with hatredness, we find it to be a case of complete breakdown of marriage for about 23 years and as such the impugned judgment and decree passed by the learned Family Court requires no interference by this Court in this appeal. The only question which requires to be decided at this stage is with respect to determination of permanent alimony to be granted to the appellant-wife considering the facts and circumstances of this case.

14. Admittedly, both the parties are living separately since 2002. The respondent-husband entered into second marriage on 16.12.2014 with Nitu Sharma and they are blessed with two children from their wedlock. One daughter was born on 14.10.2015 and one son was born on 31.01.2019. Since 2009, the respondent-husband is paying monthly maintenance a sum of Rs. 8,000/- (Rs. 4,000/- per month to appellant and Rs.2,000/- per month each to both children) which is payable from the date of filing the Maintenance Case No. 4 of 2003 i.e.,



16.01.2003. In compliance of order dated 12.11.2024, the respondent-husband paid Rs. 5 lacs to appellant-wife as an interim measure towards maintenance or part of permanent alimony.

15. Section 25 of Hindu Marriage Act, 1955 provides for grant of permanent alimony and maintenance. The primary objective of granting permanent alimony is to ensure that the dependent spouse is not left without any support and means after the dissolution of the marriage. It aims at protecting the interests of the dependent spouse and does not provide for penalizing the other spouse in the process.

16. The Hon'ble Supreme Court in the case of **Rajnish v. Neha** reported in **(2021) 2 SCC 324**, provided a comprehensive criterion and list of factors to be looked into while deciding the question of permanent alimony. This judgment lays down an elaborate and comprehensive framework necessary for deciding the amount of maintenance in all matrimonial proceedings, which specific emphasis on permanent alimony and the same has been reiterated by Hon'ble Supreme Court in **Kiran Jyot Maini v. Anish Pramod Patel** reported in **2024 SCC OnLine SC 1724**.

17. The Hon'ble Supreme Court in **Kiran Jyot**



Maini (*supra*), while discussing the husband's obligation to maintain the wife and the importance of his financial capacity in deciding the quantum, observed under para 26 that:-

“26. Furthermore, the financial capacity of the husband is a critical factor in determining permanent alimony. The Court shall examine the husband's actual income, reasonable expenses for his own maintenance, and any dependents he is legally obligated to support. His liabilities and financial commitments are also to be considered to ensure a balanced and fair maintenance award. The court must consider the husband's standard of living and the impact of inflation and high living costs. Even if the husband claims to have no source of income, his ability to earn, given his education and qualifications, is to be taken into account. The courts shall ensure that the relief granted is fair, reasonable, and consistent with the standard of living to which the aggrieved party was accustomed. The court's approach should be to balance all relevant factors to avoid maintenance amounts that are either excessively high or unduly low, ensuring that the dependent spouse can live with reasonable comfort post-separation.”

18. The Hon'ble Supreme Court in the case of **Pravin Kumar Jain v. Anju Jain** reported in **2024 SCC OnLine SC 3678** has taken note of the various judgments to clarify the position of law with regard to determination of permanent alimony and the factors that need to be considered in order to arrive at a just, fair, and reasonable amount of permanent alimony. In para 31 it is held as under:

“31. There cannot be strict guidelines or a



fixed formula for fixing the amount of permanent maintenance. The quantum of maintenance is subjective to each case and is dependent on various circumstances and factors. The Court needs to look into factors such as income of both the parties; conduct during the subsistence of marriage; their individual social and financial status; personal expenses of each of the parties; their individual capacities and duties to maintain their dependents; the quality of life enjoyed by the wife during the subsistence of the marriage; and such other similar factors. This position was laid down by this Court in Vinny Paramvir Parmar v. Paramvir Parmar, and Vishwanath Agrawal v. Sarla Vishwanath Agrawal.”

19. The Hon’ble Apex Court, taking note of **Rajnish v. Neha** (*supra*) and **Kiran Jyot Maini** (*supra*), in para 32 of **Pravin Kumar Jain** (*supra*) laid down the following eight factors to be looked into in deciding the quantum:

- “i. Status of the parties, social and financial.*
- ii. Reasonable needs of the wife and the dependent children.*
- iii. Parties’ individual qualifications and employment statuses.*
- iv. Independent income or assets owned by the applicant.*
- v. Standard of life enjoyed by the wife in the matrimonial home.*
- vi. Any employment sacrifices made for the family responsibilities.*
- vii. Reasonable litigation costs for a non-working wife.*



viii. Financial capacity of the husband, his income, maintenance obligations, and liabilities.

These are only guidelines and not a straitjacket rubric. These among such other similar factors become relevant.”

20. It is pertinent to mention here that duration of the marriage is also a relevant factor in determining the permanent alimony. The Hon’ble Supreme Court in **Rajnesh v. Neha** (*supra*) in para 74 observed that:-

“74. In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid.”

21. In the present case, the parties are living separately for about 23 years. It appears from petition of the appellant-wife that she is unemployed having no independent income and is solely dependent upon the alimony. She is residing in her parental house and her female child has completed B.Tech on student loan of Rs.4,00,000/-. The male child has also completed B.Tech and M.Tech. The educational expenses were borne by the appellant-wife with help of loan and other acquaintances. On the other hand, it appears from the



affidavit of respondent-husband that he is earning Rs.3,20,000/- per annum. He asserted that he has no assets except a small plot of land. He is residing in a house constructed by his father and he used to earn his livelihood from a small wood shop. He also claimed that the male child has already attained majority and is not entitled to be maintained further. The respondent-husband solemnized his second marriage and have been blessed with two children to whom he is also liable to maintain. It is claimed by the respondent-husband that his parents are old and ailing who are dependent upon him and his brother. In his cross-examination before the learned Family Court, he had stated that he was working in an electronic shop. Keeping in view thereof, we feel it appropriate to grant permanent alimony to the tune of Rs.18 Lakhs to be paid by the respondent-husband as one time settlement to the appellant-wife, thereby, upholding the principle of fairness and equity in matrimonial disputes.

22. The respondent-husband has already paid Rs.5 Lakhs to the appellant-wife and he is required to pay the remaining amount of Rs.13,00,000/- (Rupees Thirteen Lakhs Only) to the appellant-wife within a period of four months from the date of passing of this judgment.

23. It is clarified that any balance amount payable



to appellant and her son and daughter for their maintenance in Maintenance Case No.04 of 2003 till the date of this judgment shall be paid by the respondent-husband without fail and at the earliest.

24. This Miscellaneous Appeal stands dismissed with aforesaid directions.

25. Pending I.A(s)., if any, stands disposed of.

(Sunil Dutta Mishra, J)

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P. B. Bajanthri, J

(P. B. Bajanthri, J)

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