

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.637 of 2022

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Anusneha Daughter of Sri Naresh Prasad, Resident of Village-Jagdishpur,
P.O.-Tyoghar, P.S.-Jayrampur, District-Sheikhpura.

... .. Appellant/s

Versus

Navin Kumar son of Shailendra Kumar Singh, Resident of Village-Tilaiya,
P.O.-Daliya Mahara, P.S. and District-Banka.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Akshansh Ankit, Advocate.

Mr. Bhola Kumar, Advocate.

For the Respondent/s : Mr. Narul Hoda, 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

Heard learned counsel for the parties.

2. This Miscellaneous Appeal has been filed against the judgment/order dated 30.09.2022 and decree dated 11.10.2022 passed by the learned Principal Judge, Family Court, Banka in Matrimonial (Divorce) Case No. 113 of 2021 filed by the respondent-husband under Section 13 (1) (ia) of Hindu Marriage Act, 1955, whereby and whereunder the learned Family Court allowed the decree of divorce in favour of the respondent-husband and directed to pay maintenance of Rs.6,000/- per month to his wife until she remarries.



3. The case of the respondent-husband is that marriage between the parties solemnized on 14.03.2016 and the appellant-wife stayed at the house of respondent-husband for only a total period of one month. It has been more than 5 years since she left her matrimonial home. Despite sincere efforts by the respondent-husband and his father, the appellant-wife refused to return to her matrimonial home. The respondent-husband filed Matrimonial (Divorce) Case No. 113 of 2021 seeking divorce, stating that the appellant-wife had deserted him for a continuous period of more than five years without any proper reason, cause or his consent, and by her such behaviour had caused mental torture.

4. No written statement has been filed on behalf of the appellant-wife. Further, the appellant-wife appeared on 20.04.2022 before the learned Family Court and on 23.06.2022 conciliation proceeding was held. Both the parties expressed their willingness to take divorce. Subsequently, the appellant-wife filed an affidavit dated 27.09.2022 duly attested by Notary Public stating therein that due to non-cordial relation of matrimonial life between the parties, she accepted the divorce petition instituted by her respondent-husband unconditionally, with no grievance against him. She also affirmed that she has already fixed her second marriage with another person.



Moreover, she has no objection to cessation of Rs.6,000/- monthly as per the order passed by learned Principal Judge, Family Court, Sheikhpura in Maintenance Case No. 49M of 2021 under Section 125 Cr.P.C. On the said affidavit her photograph was affixed.

5. On behalf of the respondent-husband, three witnesses were examined namely:

P.W.-1 Navin Kumar (the respondent-husband), who deposed that his marriage was solemnized with appellant on 14.03.2016, and the wife had lived with him for total one month and since 12.09.2016 the wife is residing separately from him and she refused to lead conjugal life with him. They have no child from their wedlock. The appellant-wife filed Maintenance Case No. 49M of 2021 in which respondent-husband is paying monthly maintenance amount @ Rs.6,000/- as per the order therein. Despite his sincere efforts, the appellant-wife was not ready to cohabit with him. In his cross-examination, he stated that he was ready to return the gift received at the time of marriage and is ready for one-time settlement as per the consent of both parties.

P.W.-2 Shailendra Kumar Singh (father of the respondent-husband), who supported his son's case. In cross-examination, he also stated that respondent-husband was ready for one time



settlement and to return the gifts at the time of marriage.

P.W.-3 Smt. Sunita Sinha (mother of respondent-husband), also supported the case of respondent. She was not cross-examined on behalf of the appellant wife.

It appears that except on the point of one-time settlement, there was no cross-examination or suggestion on behalf of the appellant-wife. The fact that, the appellant-wife had lived together with the respondent-husband only for a period of one month after her marriage and since 12.09.2016 she is residing at her parental home and has refused to lead conjugal life with him, has not been controverted by the appellant-wife by filing written statement or adducing any evidence on her behalf.

6. Keeping in view of the facts and circumstances, the learned Family Court has awarded a decree of divorce in favour of the respondent-husband stating that both the parties are free to live their own life and the respondent-husband has been directed to give maintenance of Rs.6,000/- per month to the appellant-wife until she remarries.

7. Learned counsel for the appellant-wife submitted that appellant had not gone to Banka on 27.09.2022 and had not filed any affidavit in Matrimonial Case No. 113 of 2021. He argued that learned Family Court had not verified the genuineness of the alleged affidavit dated 27.09.2022. It is



further submitted that the respondent-husband is a teacher in government school and he earns a handsome salary yet he did not obey the order passed in Maintenance Case No.49M of 2021. Moreover, it is submitted that all these documents are forged and fabricated and the appellant has not married and has no concern with Muneshwar Kumar Singh.

8. Per contra, learned counsel for the respondent-husband submitted that the learned Family Court rightly decreed divorce in favour of the husband and further submitted that at the fag end of the divorce case both the parties agreed for divorce and they returned the respective gifts which were given to them at the time of marriage. To that effect an affidavit dated 27.09.2022 (Annexure- R/A) was executed at the Banka Civil Court in presence of their learned Advocates. On the same day i.e. 27.09.2022, the appellant affirmed affidavit (Annexure- R/B) stating that she had no objection to the divorce decree, she was free to remarry, and the respondent-husband could cease Rs.6,000/- maintenance per month as per the order in Maintenance Case No. 49M of 2021.

9. In view of the rival contentions, the point for determination in this appeal is “*whether the appellant-wife has deserted the respondent-husband without any reason causing mental cruelty to the husband and based on the aforesaid ground*”



the respondent-husband is entitled to get a decree of divorce?”

10. In the instant case, it is clear from the facts that both the parties are living separately since last 9 years and there is no child out of their wedlock. The matrimonial bond is completely broken and is beyond repair. 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 Marriage Act, 1955. It refers to total abandonment of matrimonial obligations. 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.

11. 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.

12. The Hon'ble Supreme Court in **Rakesh Raman**

v. Kavita reported in (2023) 17 SCC 433 held that:

“26. This Court in Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511 though did ultimately give certain illustrations of mental cruelty. Some of these are as follows:

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long



period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

(emphasis supplied)

13. It appears from the perusal of proceeding/order sheet dated 23.06.2022 recorded by the learned Family Court that both the parties want to live separately and sought a divorce. The appellant-wife has not filed any written statement to convert the allegation made against her. In the cross-examination of respondent (PW-1) and his father (PW-2), except on the point of one-time settlement, on the facts neither anyone was cross-examined nor any suggestion was given to controvert the allegation against the appellant-wife. Further, on 06.10.2022, the appellant-wife executed another affidavit (Annexure-R/C) declaring herself to be a divorcee and also that she has solemnized her marriage with another person, namely, Muneshwar Kumar Singh. The said marriage was held on 04.10.2022 between the appellant-wife and Muneshwar Kumar Singh at Ghaneshwar Ghat Temple, Bihar Sharif has been supported by the priest Sri Shambhu Nath Mishra of Gurudham Ashram vide Annexure- R/D and the same has also been certified



by *sarpanch* of Bahorna, *gram panchayat* and Ward Member (Annexure- R/E series).

14. We have no doubt that this relationship must end, as its continuation is causing cruelty on both sides. The long separation and absence of cohabitation, and complete breakdown of all meaningful bonds have to be read as cruelty under Section 13 (1) (ia) of the Hindu Marriage Act, 1955. We, therefore, hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is long separation and absence of cohabitation as in the present case for the last 9 years, then the continuation of such a marriage would only mean giving sanction to cruelty which is inflicting on each other. We are also conscious of the fact that dissolution of marriage would affect only the two parties, as there is no child out of the wedlock.

15. It is found that the marriage between the parties was solemnized in the year 2016, and subsequently, after one month the conjugal relationship between the parties has been snapped. Thereafter, the appellant-wife is residing in her parental house and had filed maintenance case against the respondent-husband. The respondent-husband filed divorce case in the year 2021. 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 2016 and efforts to restore their conjugal relationship failed. Keeping in view, the facts and circumstance of the case and the materials available on record, we find it to be a case of complete breakdown of marriage due to a long period of separation and the matrimonial bond between the parties is beyond repair and the conduct of the appellant amounts to mental cruelty towards the respondent/husband and as such the impugned judgment and decree passed by the learned Family Court requires no interference by this Court in this appeal.

16. This Miscellaneous Appeal stands dismissed with aforesaid directions.

17. 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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CAV DATE	18.01.2025
Uploading Date	07.04.2025
Transmission Date	N/A

