



2025:DHC:9405-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 13.10.2025
Judgment pronounced on: 29.10.2025

+ MAT.APP.(F.C.) 87/2016

SUMAN

.....Appellant

Through: Mr. Shailender Dahiya,
Advocate.

versus

RAJBIR MATHUR

.....Respondent

Through: Mr. Dilip Singh, Advocate.

CORAM:**HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR****J U D G M E N T****HARISH VAIDYANATHAN SHANKAR, J.**

1. The present Appeal, filed under Section 19 of the **Family Courts Act, 1984**, assails the **Judgment & Decree dated 09.05.2016**¹ passed by the **learned Principal Judge, Family Courts, Rohini, New Delhi**² in case bearing HMA No. 509 of 2009 (re-numbered as HMA No. 596/2014), titled '*Rajbir Mathur v. Suman*', whereby the marriage between the Appellant-Wife and the Respondent-Husband was dissolved under Section 13(1)(ib) of the **Hindu Marriage Act, 1955**³.

¹ Impugned Judgement.

² Family Court.

³ HMA.



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BRIEF FACTS:

2. The material facts necessary for consideration in the present matter are summarized as under:

- (a) The parties to the present proceedings were lawfully united in matrimony on 24.12.1993, in accordance with Hindu rites and ceremonies. Out of the said wedlock, two children were born - a daughter, Priya, on 23.06.1995, and a son, Vaibhav, on 18.05.1996.
- (b) The Respondent-Husband instituted a petition for dissolution of marriage under Sections 13(1)(ia) and 13(1)(ib) of the HMA on 15.07.2009, alleging cruelty and desertion on the part of the Appellant-Wife. It was the case of the Respondent-husband that the Appellant-Wife exhibited a quarrelsome and cantankerous disposition from the very inception of the matrimonial alliance, and that she habitually taunted, derided, and humiliated the Respondent-Husband as well as his family members.
- (c) The Respondent-Husband further averred that the Appellant persistently neglected to discharge her marital and domestic obligations and made unreasonable and immoral demands, *inter alia*, insisting that the Respondent-Husband separate from his parents and relocate to premises situated in proximity to her parental residence.
- (d) It was additionally alleged that the Appellant-Wife, without consent or intimation, frequently left the matrimonial home and resided with her parents for prolonged intervals.
- (e) The Respondent-Husband asserted that the cumulative effect of the Appellant's conduct caused severe mental anguish and turmoil within the family, and that her continuous quarrelsome



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behaviour and acts of discord deeply affected the household environment, resulting in his father suffering a cardiac arrest and subsequently passing away in July 1994.

- (f) The Respondent also contended that notwithstanding the birth of the two children, there was no amelioration in the Appellant's conduct. It was specifically alleged that the Appellant-Wife exhibited callous indifference towards their daughter, who consequently developed a deformity in her neck, necessitating continuous medical treatment for a period of about two to three years at the Medical College, Rohtak.
- (g) It was further stated that during the said period, the Respondent's sister (*the paternal aunt of the child*) tended to the minor and, even after the completion of treatment, the daughter continued to reside under her care. The Respondent also asserted that upon conception of the second child, the Appellant attempted to terminate the pregnancy.
- (h) The Respondent-Husband alleged that following another altercation, the Appellant-Wife left the matrimonial home on 16.05.1996, and while staying at her parental residence, suffered an accident on 18.05.1996, which led to her hospitalization and the premature delivery of the male child. The Respondent-Husband claimed to have taken the newborn to the nursery of Sunder Lal Jain Hospital, where the infant remained admitted for approximately twenty days, during which the Appellant allegedly failed to visit or care for him.
- (i) It was the Respondent's case that in September, 1999, the Appellant finally abandoned the matrimonial home and has remained away ever since, save for a brief visit on 17.01.2000,



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when she attended, for a few hours, the marriage of the Respondent's brother.

- (j) It was further alleged that during the said wedding, the Appellant created an unseemly scene and indulged in disruptive behaviour, and that the said incident marked her last visit to the matrimonial home.
- (k) Upon evaluation of the evidence, the Learned Family Court, by the Impugned Judgement, dismissed the plea of cruelty but found the ground of desertion established under Section 13(1)(ib) of the HMA and consequently dissolved the marriage by a decree of divorce on that ground.
- (l) Aggrieved by the said judgment and decree, Appellant-Wife preferred the present appeal before this Court, challenging the finding of the learned Family Court on the issue of desertion and seeking the setting aside of the decree of divorce.

CONTENTIONS OF THE APPELLANT:

3. Learned Counsel for the Appellant-Wife submitted that on 02.04.2009, the Respondent-Husband, after subjecting her to verbal abuse in highly intemperate and humiliating language and inflicting physical assault, forcibly deprived her of all her valuables and personal belongings and took away both minor children from her custody. It was further asserted that the Appellant was thereafter expelled from the matrimonial home, leaving her with no option but to seek shelter at her parental residence, clad only in the clothes she was wearing at the time of such forcible eviction.

4. The Appellant would contend that the finding of the Family Court on the aspect of desertion is unsustainable, as the date and



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factum of desertion were not established conclusively from the evidence placed on record. It would be further submitted that the testimony of the daughter (PW-6), who stated that she could not recognize her mother, was manifestly influenced by the Respondent-Husband, inasmuch as her deposition clearly reflects that her understanding of events was derived from what she had been told by the Respondent-Husband.

5. Learned Counsel for the Appellant-Wife would further contend that she has consistently been ready and willing to resume cohabitation with the Respondent, and that her separation was neither voluntary nor with the intent to bring the marital relationship to an end.

CONTENTIONS OF THE RESPONDENT:

6. *Per contra*, learned Counsel for the Respondent-Husband would submit that the factum and period of desertion stand conclusively established on record. It would be contended that the evidence adduced before the Learned Family Court clearly demonstrates that the Appellant had voluntarily left the matrimonial home in or around the year 1999, and that, in any event, she has been living separately from the Respondent for well over the statutory period of two years preceding the filing of the divorce petition.

7. It would be further submitted that the Appellant made no sincere effort to resume cohabitation or reconcile with the Respondent and failed to offer any reasonable explanation for her continued absence.



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ANALYSIS:

8. We have considered the submissions advanced by learned Counsel for both parties, perused the evidence adduced before the Learned Family Court, and carefully examined the entire record.

9. In the Impugned Judgment, the Learned Family Court proceeded upon two principal issues, viz.:

(a) Whether the Respondent–Husband had established the allegations of *cruelty* and *desertion* against the Appellant–Wife; and

(b) Whether, on proof of either of those matrimonial offences, the Respondent was entitled to a decree of dissolution of marriage.

10. After a careful and balanced appraisal of the pleadings and the totality of the evidence, the Learned Family Court concluded that the charge of *cruelty* was not established. The instances relied upon by the Respondent, when considered cumulatively, did not attain the requisite gravity and persistence necessary to render a legal finding of cruelty that would evince continued cohabitation intolerable. Conversely, having evaluated the contemporaneous circumstances, the admissions made in evidence and the testimony of witnesses, the learned Family Court was satisfied that the *factum of separation* and the requisite *animus deserendi* were proved. The learned Family Court drew legitimate inferences from the material on record and concluded that the Appellant-Wife had, without reasonable cause, ceased marital cohabitation for a continuous period sufficient to invoke Section 13(1)(ib) of the HMA.

11. The finding of the Learned Family Court rejecting the allegation of cruelty, not having been assailed by the Respondent–Husband, has attained finality. Consequently, the scope of the present

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appeal stands confined to the solitary question as to whether the Learned Family Court was justified, on a proper appraisal of the evidence and in accordance with law, in concluding that the Appellant–Wife had, without reasonable cause and with the requisite *animus deserendi*, withdrawn from the society of the Respondent–Husband, thereby warranting the dissolution of marriage under Section 13(1)(ib) of the HMA.

12. At this juncture, we consider it apposite to reproduce the analysis and findings of the Learned Family Court on the issue of *desertion*, as recorded in the Impugned Judgment. The relevant extract is set out hereinbelow for ready reference:

Issue No.-2:- Whether respondent has deserted the petitioner w.e.f. 17.05.1996, onwards for a continuous period of not less than two years immediately preceding the present petition? OPP

8.1 I shall now analyze the evidence on record, to find out, if petitioner is entitled to decree of dissolution of marriage, on the ground of desertion. Before advertng to the fact of the present case, it shall be apposite to refer to the settled law on this aspect. The necessary ingredients required to be established for an aggrieved party to seek dissolution of marriage on the ground of desertion are *animus deserendi* and the *factum* of separation. Similarly, two elements essential to be proved by the deserted spouse are absence of consent and absence of conduct giving reasonable cause to spouse leaving the matrimonial home. The relevant law has been laid down in ***Lachman Vs. Meena*** reported as ***AIR 1964 SC 40***.

“Heavy burden lies upon a petitioner, who seeks relief on the ground of desertion to prove four essential conditions, namely-

- (1) the factum of separation;*
- (2) animus deserendi;*
- (3) absence of his or her consent; and*
- (4) absence of his or her conduct giving reasonable cause to the deserting spouse to leave the matrimonial home.*

The offence of desertion must be proved beyond any reasonable doubt. As a rule of prudence the evidence of the petitioner shall be corroborated.

In short, the proof required in a matrimonial case is to be equated to that in a criminal case.

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It was further observed by the apex Court that :-

“It is settled law that the burden of providing desertion – the ‘factum’ as well as ‘animus deserendi’ – is on the petitioner and he or she has to establish beyond reasonable doubt, to the satisfaction of the court, the desertion through the entire period of two years before the petition, as well as such desertion was without just cause. In other words, even if the wife – where she is the deserting spouse – does not prove just cause for her living apart, the petitioner husband has still to satisfy the court that the desertion was without just cause.”

A Division Bench of Bombay High Court reiterates such onus, in the case of ***Shyamsunder Amarlal Hotchandani Vs. Arii @ Sunita Shyamsunder*** reported as **200411DMC121 (Bom-DB)**.

8.2 To establish factum of separation, petitioner has pleaded that the respondent left the matrimonial home, without any just cause in the year 1999. He has deposed that she left the company of petitioner against his will and consent. He has specifically deposed that in September-1999, respondent left the matrimonial home, leaving behind the children, without any cause or reason, by saying that she will live her life according to her own wishes and desire. During his cross examination by Sh. Anil Daagar - Adv., Id. Counsel for the respondent, petitioner denied the suggestion that respondent lived with him upto 02.04.2009 or that on 02.04.2009, he and his family members had forcibly turned her out from matrimonial home. Testimony of other witnesses of the petitioner is also on the same lines. Bimla Devi (PW-2) deposed that respondent left the matrimonial home in the year 1999, leaving behind her children. She also denied the suggestion that respondent was forcibly turned out on 02.04.2009. She volunteered that respondent left the matrimonial home about 13-14 years earlier but she did not know the exact date, month or year. Neeraj Mathur (PW-3) has also deposed that respondent left the matrimonial home in September 1999 and, thereafter, visited only once on 17.01.2000 to attend the marriage of a brother of the petitioner. On being cross-examined, he that she might have left the matrimonial home in January or February-1999. However, he also denied the suggestion that respondent left the matrimonial home on 02.04.2009, when she was forcibly turned out. Shakuntala Devi (PW-4) deposed when cross-examined that she had not seen the respondent in the matrimonial home after 1997-1998. She also denied the suggestion that respondent lived in the matrimonial home till 2009. Meenu (PW-5) also deposed that respondent left the matrimonial home in the year 1999. On being cross-examined, she deposed that she had not seen the respondent at the matrimonial home since 1998-1999. She also denied the suggestion

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of forcible turning out of respondent on 02.04.2009. Priya Mathur (PW-6), daughter of the petitioner and respondent, deposed that she was told that her mother had left her, when she was 3-4 years old. She further deposed that she saw the respondent for the first time when she was called by the court and she had stated to the Hon'ble Judge that she did not know the respondent. She denied the suggestion, on being cross-examined, that her mother lived with her father till 02.04.2009. Respondent, in her examination in chief as RW-1, has deposed that petitioner and his family members committed cruelty upon her and made her life miserable. On 02.04.2009, her valuables were taken away and she was forced out, after giving merciless beatings and snatching her children. However, the proverbial cat was out of the bag, when on being cross-examined by Sh. Raj Pal Singh, Id. Counsel for the petitioner, she admitted that she had not filed any complaint to the police or any other authority 'till September-1999 till she stayed with the petitioner'. Her further cross-examination cements likely time of leaving the matrimonial home. She deposed that she did not know the school, in which her son had taken admission in nursery class. She admitted that her daughter since the beginning had studied at Rohtak, living at the house of her bua. She also admitted that her guardianship case for the custody of children was dismissed. She denied the suggestion that the case was dismissed, as her son did not recognize her, when produced before the Family Court, Dwarka. She, however, had not filed any appeal against the dismissal.

8.3 From the evidence, as notice above, this court is of the opinion that respondent had left the matrimonial home, even before her son sought admission in Nursery class. Had she been living in the matrimonial home at that time, she would have definitely known name of the school, where her son sought admission for Nursery class. Similarly, there could be no justifiable reason for her daughter to be living at Rohtak with her bua; unless the mother was not available to take care of a growing female child. Further not pursuing the Guardianship case and the suggestion that the same was dismissed as her son failed to recognize her; establish that she had left the matrimonial home long ago; contrary to her claim of leaving the same in 2004.

8.4 Respondent's brother Shantey (RW-2) has also deposed that she lived in her matrimonial home till 02.04.2009. However, on being cross-examined, he came out with a story, which is contrary to the pleadings and the respondent's evidence. He deposed that his niece nephew resided with them upto 2-3 years of age and, thereafter, resided with the petitioner. They were not allowed to meet the niece and nephew. He further deposed that the petitioner took his niece to Rohtak from their residence, when she was aged

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about 2-3 years. It has not been the case of the respondent herself in her WS that she lived with the children at her parental home till the children were 2-3 years old. It is also not her case that her daughter was taken away from her parental home to Rohtak. The story, thus, put forth by Shantey (RW-2) in his cross-examination is contrary to the pleadings and, therefore, does not help the respondent at all.

8.5 From the pleadings and from evidence of PW-1 to PW-6 and the RWs, as noticed above; the story of respondent having left the matrimonial home on 02.04.2009 seems totally improbable. A mother, who is unable to state the school, to which her child got admission in nursery cannot be believed to be living with the child, when the child first went to school. Explanation, which has been given by her brother Shantey that she is illiterate and, therefore, could not state name of school should have come from her mouth and not from her brother's mouth, who was examined on a subsequent date and possibly tutored to say so.

8.6 Moreover, I find no reasons to disbelieve the testimony of her own daughter (PW-6), who deposed that she was not able to recognize her mother and that she had seen her for the first time in court. The argument by Id. Counsel for the petitioner that petitioner's guardianship petition was dismissed by the court, as the children had refused to identify her or to live with her also supports the petitioner's case that respondent had left the matrimonial home in the year 1999. Further, though, the respondent has chosen not to place on record her complaint made before CAW Cell; yet it has been admitted by her that the first complaint was made against the petitioner after the year 1999. This supports the petitioner's case that respondent left the matrimonial home in 1999. I, therefore, hold that the respondent's defence of leaving the matrimonial home on 02.04.2009 is totally improbable and the petitioner's case of respondent leaving the matrimonial home in 1999 is very likely and very probable. In fact, there is no doubt on the fact that respondent had left the matrimonial home more than 2 years prior to filing of petition. I, therefore, hold that the respondent left the company of the petitioner in the year 1999. Thus, the first ingredient i.e. 'factum of separation' is held to have been proved, beyond reasonable doubt.

8.7 As regards the second ingredient i.e. 'animus deserendi' i.e. the intention to permanently cease cohabitation can also be gathered from the circumstances that since 1999 till the filing of petition in July-2009, no efforts have been made by the respondent to join the matrimonial home. It is not the case of the respondent that she had any petition u/sec.-9 of the HMA to seek restitution of conjugal rights. In her cross-examination, she has admitted that petitioner

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visited her parental home for reconciliation. She also admitted that her uncles and brothers used to remain present in such meetings. This re-enforces petitioner's case that he made several attempts to bring back the respondent to the matrimonial home and that several panchayats were held. I, thus, hold that petitioner and respondent, who have lived separately for almost 10 years at the time of filing of petition and presently for about 17 years, have no intention of living together. Thus, establishing the second ingredient i.e. animus deserendi.

8.8 Before finally deciding the issue in favour of the petitioner, it is incumbent upon the court to analyze whether the petitioner himself is responsible for the factum of desertion and the animus of desertion or if he had consented to her leaving the matrimonial home. Though, respondent, in her WS and in her affidavit of examination in chief Ex.RW-I/A has pleaded and deposed that she was forcibly and illegally thrown out of the matrimonial home; however, this fact has been established to be false. It is the case of the respondent that she was forcibly driven out of the matrimonial home after snatching her jewellery and her children on 02.04.2009. This court in para no. 8.6 above, has already held that the respondent's case of being driven out on 02.04.2009 is totally improbable. Thus, the story of the respondent having been forcibly driven out on 02.04.2009 having been rejected, her plea of having been driven out of the matrimonial home against her wishes is falsified, the court would not accept a part of her plea to be correct; when the other half has been established to be false. Rather, the court has recorded a finding that she left the matrimonial home in the year 1999, on her own accord. The fact that she did not pursue her complaint before CAW Cell, also indicates that it was not the conduct of the petitioner, which drove her out of the matrimonial home. Respondent's admission that petitioner visited her house to take her back establishes that desertion is without his consent.

8.9 For the reasons stated above, I am of the considered opinion that petitioner has proved beyond reasonable doubt that respondent is guilty of deserting the matrimonial home more than two years ago with the intention of permanently cease cohabitation, on her own accord. Issue no.-2 is accordingly held in favour of the petitioner.

Issue No.-3:- Whether the petitioner is entitled to a decree of divorce on the grounds, as prayed for? OPP

9. In view of the findings of issue no.-2, the petitioner Rajbir Mathur is entitled to a decree of divorce, on the ground of desertion u/sec.- 13 (1) (i-b) of the HMA.

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Issue No.-4:- Relief.

10. The petition is, thus, allowed and the marriage between petitioner Rajbir Mathur and respondent Suman is dissolved, with immediate effect by way of decree of divorce u/sec.-13 (1) (i-b) of HMA. However, petitioner's case for dissolution of marriage on the grounds of cruelty is rejected. Decree sheet be accordingly prepared. File be consigned to record room. Parties to bear their own costs."

13. It is a firmly entrenched principle of matrimonial jurisprudence that a decree of divorce on the ground of desertion can rest only upon the concurrent existence of two indispensable ingredients - the *factum of separation* and the *animus deserendi*. Both elements must be affirmatively established by the party who seeks dissolution, and must survive the exacting test of proof *beyond reasonable doubt*.

14. The law, mindful of the enduring character and public interest in the stability of marriage, casts upon the claimant a correspondingly onerous burden so as to guard against speculative inferences or precipitous severance of the marital tie upon slender or equivocal evidence. It is therefore essential that the deserted spouse demonstrate not merely non-consent to the separation but also the absence of any reasonable cause which could have justified the other party's conduct.

15. In this regard, the notion of desertion transcends a mere change of domicile; it connotes a purposive and wilful relinquishment of the cardinal obligations incident to marriage - companionship, consortium and cohabitation. Desertion is seldom susceptible of direct proof; it is ordinarily a conclusion of fact to be inferred from a careful and panoramic appraisal of the parties' conduct, circumstances and communications, both antecedent and subsequent to the alleged separation.



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16. For these reasons, the Court must approach claims of desertion with heightened caution. The requisite *animus deserendi* may not be disclosed by a solitary act but by the cumulative tenor of conduct over time. A failure to establish either of the twin elements, or any suggestion that the petitioner seeks to profit from his or her own wrongful conduct, will be fatal to the plea and will disentitle the claimant to the remedy of divorce on this ground.

17. We deem it apposite to place reliance upon the pronouncement of the Hon'ble Supreme Court in *Savitri Pandey v. Prem Chandra Pandey*⁴, wherein the Court has comprehensively examined and crystallized the principles governing the law of desertion. For ease of reference, the relevant passage from the said decision is reproduced hereinunder:

“7. No decree of divorce could be granted on the ground of desertion in the absence of pleading and proof. Learned counsel for the appellant submitted that even in the absence of specific issue, the parties had led evidence and there was sufficient material for the Family Court to return a verdict of desertion having been proved. In the light of the submissions made by the learned counsel, we have opted to examine this aspect of the matter despite the fact that there was no specific issue framed or insisted to be framed.

8. “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

⁴ (2002) 2 SCC 73



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conduct to be determined under the facts and circumstances of each case. After referring to a host of authorities and the views of various authors, this Court in ***Bipinchandra Jaisinghbai Shah v. Prabhavati*** [AIR 1957 SC 176] held that if a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion. It further held: (AIR pp. 183-84, para 10)

“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 coexist. 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

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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 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 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.”

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.”

9. Following the decision in ***Bipinchandra*** case [AIR 1957 SC 176] this Court again reiterated the legal position in ***Lachman Utamchand Kirpalani v. Meena*** [AIR 1964 SC 40] by holding that in its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (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. For holding desertion as proved 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.

10. To prove desertion in matrimonial matter it is not always necessary that one of the spouses should have left the company of the other as desertion could be proved while living under the same roof. Desertion cannot be equated with separate living by the

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parties to the marriage. Desertion may also be constructive which can be inferred from the attending circumstances. It has always to be kept in mind that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case.

11. There is another aspect of the matter which disentitles the appellant from seeking the relief of divorce on the ground of desertion in this case. As desertion in matrimonial cases means the withdrawal of one party from a state of things i.e. the marital status of the party, no party to the marriage can be permitted to allege desertion unless he or she admits that after the formal ceremonies of the marriage, the parties had recognised and discharged the common obligation of the married life which essentially requires the cohabitation between the parties for the purpose of consummating the marriage. Cohabitation by the parties is an essential of a valid marriage as the object of the marriage is to further the perpetuation of the race by permitting lawful indulgence in passions for procreation of children. In other words, there can be no desertion without previous cohabitation by the parties. The basis for this theory is built upon the recognised position of law in matrimonial matters that no one can desert who does not actively or willfully bring to an end the existing state of cohabitation. However, such a rule is subject to just exceptions which may be found in a case on the ground of mental or physical incapacity or other peculiar circumstances of the case. However, the party seeking divorce on the ground of desertion is required to show that he or she was not taking the advantage of his or her own wrong. In the instant case the appellant herself pleaded that there had not been cohabitation between the parties after the marriage. She neither assigned any reason nor attributed the non-resumption of cohabitation to the respondent. From the pleadings and evidence led in the case, it is apparent that the appellant did not permit the respondent to have cohabitation for consummating the marriage. In the absence of cohabitation between the parties, a particular state of matrimonial position was never permitted by the appellant to come into existence. In the present case, in the absence of cohabitation and consummation of marriage, the appellant was disentitled to claim divorce on the ground of desertion.”

18. Upon a comprehensive evaluation of the record and the evidence adduced before the Learned Family Court, we discern no infirmity or perversity in the conclusions reached. The findings are established upon a judicious appraisal of credible evidence and

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conform to the legal principles governing the ground of *desertion* as envisaged under Section 13(1)(ib) of the HMA.

19. In our considered view, one of the most compelling circumstances that conclusively establish prolonged separation is found in the Appellant's own deposition, wherein she admitted her ignorance of the name of the school in which her son had been admitted. It stands admitted that the son was born on 18.05.1996, which would ordinarily make him eligible for admission to nursery around 1999 or 2000. The Appellant's obliviousness to such a significant event in her child's early life is not a trivial omission; it is, rather, a telling reflection of her long-standing absence from the matrimonial home and disengagement from parental responsibilities.

20. The admission of a child to school is a defining milestone in the life of any parent - one that cannot ordinarily escape a mother's knowledge or memory. The Appellant's total lack of awareness of this event, therefore, assumes evidentiary significance. It constitutes a strong and reliable indicator of the point of separation and lends substantial support to the Respondent's assertion that the Appellant had withdrawn from cohabitation many years before the institution of the petition.

21. Equally, and perhaps even more poignantly, the testimony of the daughter Ms. Priya (PW-6) warrants emphasis. The child categorically deposed that she did not recognize her mother and had met her for the first time when summoned before the Court. Such a statement is indeed distressing and can only be characterized as a tragic manifestation of complete estrangement. That a daughter should fail to identify her own mother speaks volumes about the duration and extent of the separation. It lends strong corroboration to the Family

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Court's finding that the Appellant had voluntarily abandoned the matrimonial home when the child was of tender age.

22. Learned Counsel for the Appellant sought to challenge this inference by referring to a stray line in the cross-examination of PW-6 suggesting that parts of her affidavit were based on information received from her father. However, this isolated statement cannot efface the categorical assertion made by the witness - both in her affidavit and in her oral testimony - that she did not know or recognize the Appellant as her mother. Her evidence, when read as a whole, carries the ring of truth and aligns with the consistent testimony of other witnesses.

23. Indeed, paragraph 4 of the daughter's affidavit makes it explicit that even before filing the affidavit, she had stated before the learned Family Court that she neither knew the Appellant nor wished to reside with her. This expression of estrangement by a daughter towards her natural mother is a powerful circumstance, the significance of which cannot be diluted by a single equivocal remark elicited during cross-examination. Paragraph 4 of the daughter's affidavit is reproduced hereinbelow for ready reference:

"4. That I have seen the respondent for the first time when I was called by the court and I stated to the Hon'ble Judge that I do not know the respondent and I also stated that I do not want to live with the respondent"

24. Moreover, the daughter's testimony that she was deprived of her mother's affection and was brought up entirely under the care of her paternal grandmother and *bua* further reinforces the inference of long-standing separation. Had the Appellant been residing in or maintaining consistent contact with the matrimonial household, it is inconceivable that her own child would speak in such terms.



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25. The Appellant's version that she was forcibly expelled from the matrimonial home in 2009 is plainly inconsistent with the evidence of her daughter and other independent witnesses. If indeed she had resided with the Respondent until 2009, the daughter - who would by then have been approximately fourteen years of age - could not have possibly deposed to complete non-recognition of her mother. The only reasonable inference, therefore, is that the Appellant had withdrawn from the company of the Husband much earlier, around 1999, when her children were still of tender age.

26. We also find no merit in the testimony of the Appellant's brother (RW-2), who attempted to introduce a version of events inconsistent with the pleadings and the Appellant's own deposition. As rightly observed by the Learned Family Court, his evidence lacked probative value and appeared to be a belated attempt to bolster an untenable defence. The Learned Family Court's rejection of his testimony is reasoned and calls for no interference.

27. The material on record further reveals that the Appellant had visited the matrimonial home only once, on 17.01.2000, to attend the marriage of the Respondent's brother. This solitary visit, by its very nature, cannot be construed as a resumption of cohabitation or reconciliation. Beyond that isolated occasion, there is nothing on record to suggest that the Appellant made any genuine attempt to return to or resume matrimonial life with the Respondent. Hence, mere temporary or perfunctory interaction between estranged spouses, without demonstrable intent to resume cohabitation, cannot amount to a revival of the matrimonial relationship. The law recognises that desertion, once established, continues uninterrupted unless there is clear evidence of *animus revertendi* - a genuine desire to return to the

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marital union. In the absence of such proof, the continuity of desertion remains unbroken. This principle has been lucidly enunciated by the Hon'ble Supreme Court in ***Debananda Tamuli v. Kakumoni Kataky***⁵. The relevant excerpt of the judgement is reproduced hereinbelow for reference:

“Merely because on account of the death of the appellant's mother, the respondent visited her matrimonial home in December 2009 and stayed there only for one day, it cannot be said that there was a resumption of cohabitation. She has not stated that she came to her matrimonial home on 21-12-2009 with the intention to resume cohabitation. The intention on the part of the respondent to resume cohabitation is not established. Thus, in the facts of the case, the factum of separation has been proved. From the evidence on record, an inference can be drawn that there was *animus deserendi* on the part of the respondent. She has not pleaded and established any reasonable cause for remaining away from her matrimonial home.”

28. These cumulative circumstances - the Appellant's own admissions, her long absence from the matrimonial home, her ignorance of material facts concerning the children, and the daughter's categorical disassociation - irresistibly lead to the conclusion that the Appellant had, without reasonable cause, abandoned the Respondent with the intention of bringing cohabitation permanently to an end. The Family Court's conclusion, therefore, fully accords with the principles enunciated by the Hon'ble Supreme Court in ***Bipinchandra Jaisinghbhai Shah v. Prabhavati***⁶, where it was held that desertion must be inferred from the conduct of the parties, and that both *factum deserendi* and *animus deserendi* must coexist and persist throughout the statutory period.

29. Similarly, in ***Savitri Pandey v. Prem Chandra Pandey*** (*supra*), the Hon'ble Supreme Court reaffirmed that desertion is not a mere

⁵ 2022 SCC OnLine SC 187.

⁶ AIR 1957 SC 176.



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physical act but a deliberate course of conduct demonstrating a clear intention to repudiate the marital obligation. Tested against these well-settled principles, the Family Court's finding of desertion in the present case is unassailable.

CONCLUSION:

30. In light of the foregoing, we find ourselves in complete agreement with the reasoning and conclusion of the Learned Family Court. The finding of *desertion* is firmly supported by the evidence on record, is consonant with established legal precedents, and therefore warrants affirmation by this Court.

31. Accordingly, the present appeal, along with pending application(s), if any, stands disposed of in the above terms.

32. There shall be no order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

OCTOBER 29, 2025/tk/kr