

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.437 of 2021

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Vishal Gupta son of Late Bejoy Kumar Gupta resident of 10/1, Burnt Salt Gola Lane, Near Anjali Eye Centre, Howrah, West Bengal- 711101.

... .. Appellant/s

Versus

Nandita wife of Sri Vishal Gupta @ daughter of Late Jagmohan Goel, resident of Goel Apartment, Wireless Street, J.B. Nagar, Andheri (E), Mumbai- 400 059.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajani Kant Mishra, Advocate
For the Respondent/s : Ms. Sakshi Bhatnagar, Advocate

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CORAM: HONOURABLE MR. JUSTICE NANI TAGIA

and

HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 06-02-2026

1. Heard learned counsel for appellant as well as the learned counsel for respondent.

2. The present appeal has been filed under Section 19 of the Family Courts Act, 1984 by the appellant for setting aside the order dated 05.01.2017 and decree dated 19.01.2017 passed by the learned Principal Judge, Family Court, Vaishali at Hajipur (hereinafter referred to as 'Family Court') in Divorce Case No. 263 of 2016 whereby and whereunder the Divorce Petition filed by the respondent-wife was allowed *ex-parte* and the marriage of the appellant with the respondent was dissolved.

3. The facts of the case, in brief, is that the



marriage between the appellant-husband and the respondent-wife was solemnized on 08.02.2012 at Mumbai in accordance with Hindu rites and customs. The marriage was a love marriage, the parties having come into contact while pursuing their studies at Melbourne, Australia, and was later solemnized with the consent of their respective families. After marriage, the parties resided together as husband and wife and consummated the marriage; however, no child was born from the wedlock. The respondent-wife, a medical professional by qualification, pursued higher studies in Radiology at Ahmedabad in the year 2013 with the consent of the appellant. During this period, according to the respondent, the conduct of the appellant underwent a marked change, and he allegedly began neglecting her, avoiding communication, and displaying indifferent behaviour. It was further alleged that during her serious illness in November 2013, when she was diagnosed with bone tumor and hospitalized at Mumbai, the appellant failed to provide care or support and he was not available for her when she was struggling with her life and death. This conduct of the appellant towards the respondent gave her mental tension. The respondent further alleged that the appellant developed an illicit relationship with another woman, abused her and her mother, and ultimately



refused to cohabit or discharge marital obligations. It was contended that the appellant deserted the respondent since February 2014 and expressly stated his unwillingness to continue the matrimonial relationship. In spite of best efforts of the respondent, the appellant refused to live with her as a husband and wife. The respondent waited for a long time to establish her matrimonial and conjugal rights, but the appellant did not even make a phone call to the respondent in between. Owing to continued neglect, alleged cruelty, and desertion, the respondent whose health was affected badly, joined a job as radiologist at Super Ultra-sound Centre at Hajipur, District Vaishali, Bihar, in April 2016. In the facts and circumstances, the respondent instituted a petition for dissolution of marriage under the provisions of the Hindu Marriage Act, 1955 (hereinafter referred to as 'Act').

4. Despite the Court notice through ordinary process as well as substituted service the appellant-husband did not appear. Accordingly, the case was proceeded *ex-parte* hearing by the learned Family Court and the appellant-husband/Opposite Party failed to file his written statement or adduce any evidence.

5. On the basis of pleading and submission



advanced on behalf of the respondent, the learned Family Court framed the issue as to “*whether petitioner is entitled to get decree of divorce from the O.P.?*”

6. On behalf of the respondent-wife, altogether five witnesses have been examined to prove her case. They are as hereinunder:

P.Ws. Names

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|--------|--|
| P.W.-1 | Nandita Jagmohan Goel @Nandita (Respondent-wife) |
| P.W.-2 | Dr. Santosh Jagmohan Goel (Mother of the respondent-wife) |
| P.W.-3 | Krishna Gupta (Paternal-aunt of the respondent-wife) |
| P.W.-4 | Mukul Mani (Landlord of rented residence where the respondent-wife was residing) |
| P.W.-5 | Braj Nandan Singh (Employee of Super Ultra-sound Centre at Hajipur where the respondent-wife was working as a Doctor). |

7. P.W.-1, Nandita, respondent-wife has deposed that her marriage with the appellant was solemnized on 08.02.2012 and she cohabited for six months with her husband after marriage. She stated that she has been living separately with her husband since last three years and her husband has some illicit relation with another woman. It is further stated that her husband has left visiting her and has always kept her in dark. Moreover, when she protested on the behaviour of the appellant, he abused her and intimidated her for assault. In reply



to the Court question, she stated that her husband is an M.B.A. qualified and he is not doing any permanent job.

8. P.W.-2, Dr. Santosh Jagmohan Goel has supported the case of respondent-wife and deposed that the appellant was in illicit relation with another woman and when the respondent-wife opposed such behaviour of the appellant-husband, he tried to assault her. She further deposed that she has witnessed the cruel behaviour of the appellant-husband and it is not possible for the respondent-wife to stay in the wedlock.

9. P.W.-3, Krishna Gupta has also supported the case of the respondent-wife and has deposed that the appellant-husband used to misbehave with the respondent-wife and the appellant-husband has developed illicit relation with some other woman and it is not possible for the respondent-wife to stay in the wedlock. Furthermore, P.W.-4 and P.W.-5 have deposed that the respondent-wife resides in Hajipur and she works in Super Ultra-sound Centre in Hajipur, respectively.

10. The learned Family Court, after hearing the respondent-wife and considering the material available on record, held that the behaviour of appellant-husband is cruel towards the respondent-wife and the respondent-wife does not want to live with the appellant-husband as she feels threat of her



life. Accordingly, the learned Family Court allowed the divorce case filed by the respondent-wife *ex-parte* and the marriage of the appellant with the respondent was declared dissolved *vide* order dated 05.01.2017 and decree date 19.01.2017. The appellant being not satisfied and aggrieved by the said order and decree filed the present miscellaneous appeal on 20.07.2021.

11. Learned counsel appearing on behalf of the appellant-husband assailed the impugned *ex-parte* order and decree of divorce primarily on the ground that notice on appellant-husband was not validly served in view of the fact that the appellant-husband was residing at Kolkata, and address at Mumbai was deliberately supplied, resulting in service of summons at a place where the appellant-husband was not residing. According to learned counsel, the consequential substituted service and *ex-parte* proceedings were thus vitiated at their very inception.

12. It is further submitted by the learned counsel for appellant-husband that the respondent-wife had suppressed material facts from the learned Family Court, including the pendency of other civil suits between the parties and the subsequent settlement wherein both parties had acknowledged the absence of cruelty and expressed their intention to seek



divorce by mutual consent. It is, moreover, submitted that the learned Family Court, being kept in dark about these developments, proceeded to pass the decree on the ground of cruelty despite the divorce petition having been filed under Section 13(1)(ib) of the Act.

13. Learned counsel for the appellant-husband referred to consent term (Annexure-2 annexed with this appeal) and submitted that in Spl. Suit No.118 of 2016 (Nandita and Anr. v. Vishal Gupta) *vide* the consent term dated 21.12.2016, it was decided between the parties that they have mutually decided to separate themselves by obtaining necessary decree of divorce and the said consent term be also treated as consent given by the parties for the purpose of obtaining necessary decree of divorce and the respondent-wife had confirmed that she does not have any claim of whatsoever nature against the appellant-husband with respect to maintenance. Both the parties had also agreed to withdraw any or all the allegations against each other. But this fact was not disclosed by the respondent-wife in the Family Court.

14. Learned counsel further submitted that the allegations of cruelty were vague, unsubstantiated, and unsupported by cogent evidence, and that the findings recorded



by the learned Family Court were based solely on untested and one-sided assertions. It is further submitted that the divorce petition had been filed under Section 13 (1) (ib) of the Act i.e., on the ground of desertion but the learned Family Court treated desertion as cruelty and granted decree of divorce on both grounds which is not tenable in law. Lastly, it is submitted that the impugned order and decree is liable to be set-aside.

15. Per contra, learned counsel on behalf of respondent-wife submitted 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 respondent-wife. It is submitted that the respondent-wife has already solemnized her marriage subsequent to the decree of divorce on 08.12.2017 and from the wedlock she has been blessed with a child and she along with her family is settled outside India. Moreover, it is submitted that the allegations imputing fraud and impropriety in obtaining the *ex-parte* order, are wholly false and misconceived, inasmuch as due service of summons and requisite paper publication were duly effected in accordance with law, and the appellant deliberately chose not to appear before the learned Family Court, which is evident from the court records. He further submitted that the law



is well settled that non-mentioning of any provision of law would not suffice to take away the jurisdiction of a Court, if it is otherwise vested in it under law. In the present case, non-mentioning of Section 13 (1) (ia) of the Act in the petition, by itself, does not take away the jurisdiction of the Court to adjudicate the same when there is pleading and evidence with respect to cruelty committed by the appellant-husband. Learned counsel further submitted that the present appeal has been filed by the appellant-husband with ulterior motive to harass the respondent-wife and the same is liable to be dismissed.

16. With respect to permanent alimony, learned counsel for the respondent-wife submitted that the respondent-wife is already settled in her life and requires no alimony from the appellant.

17. In view of the rival contentions, the point for determination in this appeal is “*whether the decree of divorce granted by the learned Family Court requires interference by this Court in the facts and circumstances of the case?*”

18. 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 Act. 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.

19. 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.

20. Moreover, on the point of mental cruelty, the Hon'ble Supreme Court in ***Rakesh Raman v. Kavita*** reported in



(2023) 17 SCC 433 observed that the long separation, absence of cohabitation and complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13 (1) (ia) of the Act. The Hon'ble Apex Court further 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)

21. The Hon’ble Supreme Court in *Amutha v. A.R.*

Subramanian reported in **2024 SCC OnLine SC 3822** has observed in para 34 as under:

“34.In matrimonial disputes, this Court has emphasized the need to prioritize welfare and dignity of both parties. Forcing a marriage to continue when it has become a source of unhappiness and conflict undermines the very purpose of the institution of marriage.....”

22. Having considered the pleadings, evidence on record, and the submissions advanced on behalf of the parties, this Court finds no illegality, perversity, or material irregularity in the impugned *ex-parte* order and decree passed by the learned Family Court. Also, sufficient opportunities were afforded to the appellant-husband to appear and contest the proceedings, and the learned Family Court proceeded *ex-parte* only after being satisfied about proper service in accordance with law.

23. We have closely examined the entire facts of the case which are present before us. In the instant case, the marriage between the parties was solemnized in the year 2012 and subsequently, after six months, the conjugal relationship



between the parties has been snapped. There is no child born out of their wedlock and the matrimonial bond between them has been completely broken. The respondent-wife filed the divorce case in the year 2016 wherein the learned Family Court considering the facts and circumstances of the case, the conduct of the appellant-husband towards the respondent-wife and desertion by the appellant for a long period which also amounts to cruelty, granted the decree of divorce. Admittedly, both the parties have been living separately since long and forcing a dead marriage to continue, undermines the very purpose of the institution of marriage and serves no interest. In the present case, the interest of both the parties are best served by allowing both the parties to move on with their lives independently.

24. At this stage, we are conscious of the subsequent developments in the life of both the parties. The respondent-wife has already got re-married on 08.12.2017 and has been blessed with a child from the wedlock. Both the parties are well-educated and settled in their life. They had already decided to take divorce on 21.12.2016 which is evident from the consent term between them. There was a complete breakdown of marriage due to a long period of separation and the matrimonial bond between the parties has reached to the stage



of beyond repair and the continuation of the same would amount to cruelty on both sides. In the facts and circumstances as exist today, we are convinced that the impugned order and decree of divorce granted by the learned Family Court requires no interference by this Court in this Miscellaneous Appeal.

25. Consequently, this Miscellaneous Appeal stands dismissed and the decree of divorce is upheld.

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

27. There shall be no order(s) as to costs.

(Sunil Dutta Mishra, J)

(Nani Tagia, J)

Ritik/-

(Nani Tagia, J)

AFR/NAFR	NAFR
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