

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.560 of 2023

=====

Dudheshwar Sharma Son of Late Benkatraman Sharma @ Benkat Sharma
Resident of Village- Ganghara, P.S.- Shahpur, District- Patna.

... .. Appellant/s

Versus

Kumari Punam Wife of Dudheshwar Sharma, Daughter of Late Madan
Kishore Mishra At present resident of Village- Banni, P.S.- Nagara, District-
Saran at Chapra.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mrs. Nivedita Nirvikar, Sr. Advocate Mrs. Shashi Priya, Advocate Mr. Pramod Mishra, Advocate
For the Respondent/s	:	Mr. Arun Kumar Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

20 17-03-2026 The present appeal is directed against the judgment

and decree of dismissal dated 17.07.2023 passed by the learned

Additional Principal Judge, Family Court, Patna in Matrimonial

(Divorce) Case No.951 of 2019.

2. Briefly stated, the case of the appellant, is that his
marriage was solemnized with one Km. Poonam, the respondent
herein, on 31.05.1985 according to Hindu rites and customs.

3. After marriage, the opposite party came to her
matrimonial home and initially lived together for about a month.
At the initial stage of marriage, the relationship between the
parties was very cordial. After one month, the opposite party



went back to her paternal home in connection with a traditional custom named “Bidai”. Thereafter, she started to deny to come back to her matrimonial home. The petitioner used to visit on some occasions to his matrimonial home, during the said period, the opposite party gave birth to one female child and another male child, who were on the date of filing of the plaint, aged about 30 years and 27 years respectively.

4. After the birth of children, the opposite party started to neglect her conjugal life with the petitioner. Since, the petitioner was posted as a Constable of Police at different places and due to the nature of job, it was not possible for her to keep the opposite party at her place of posting. However, when he was in posted in Bokaro, he took the opposite party to her place of posting but she also left Bokaro after about one month of her arrival. Subsequently, the petitioner came to understand that the opposite party did not want to lead marital life with the petitioner.

5. The opposite party for the last time came to the house of the petitioner in the month of June, 2000 and after 08 days, she permanently left her matrimonial home. It is alleged that the opposite party willfully and voluntarily deserted the petitioner. The petitioner also alleged that she was subjected to



cruelty by her wife. She used to assault her physically at times.

6. It is found from the record that the notice of the above-named matrimonial suit was duly served upon the respondents, but she did not come forward to contest the case. Accordingly, the case was her ex-parte and dismissed without cost.

7. The petitioner/husband has approached this Court in appeal against the impugned judgment and order of dismissal.

8. It is pertinent to mention at the outset that Section 13 of the Hindu Marriage Act, states as follows:-

“(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party--

(i)

(ia).....

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition”

9. The petition for divorce was filed on 29.07.2019.

10. The case of the appellant is that the respondent deserted her since 15.06.2000, inspite of his repeated attempt,



the respondent refused to lead marital life with the appellant and permanently deserted her.

11. The learned Trial Judge disbelieved the story of desertion raising a question as to why the appellant previously did not file a suit for restitution of conjugal rights.

12. The term ‘desertion’ in relation to matrimonial dispute can be defined as the intentional abandonment of one spouse by the other without reasonable cause or consent. Under the Hindu Marriage Act, these abandonment must last for a continuous period of at-least two years immediately preceding the filing of the petition.

13. In *Debananda Tamuli V. Kakumoni Katakya*, reported in (2022) 5 SCC 459, the Hon’ble Supreme Court explained the term desertion in the following words:-

“7. The law consistently laid down by this Court is that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be animus deserendi on the part of the deserting spouse. There must be an absence of consent on the part



of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.

8. The reasons for a dispute between husband and wife are always very complex. Every matrimonial dispute is different from another. Whether a case of desertion is established or not will depend on the peculiar facts of each case. It is a matter of drawing an inference based on the facts brought on record by way of evidence.”

14. It appears from the Lower Court Records as well as Paragraph No.3 of the impugned judgment that notice of Matrimonial (Divorce) Case No.951 of 2019 was sent to the respondent by post and she received the notice of the suit, in spite of receiving the notice of the suit, she had chosen not to appear and contest the suit for divorce, which was prayed for on the ground of desertion. It is of-course true that relationship between husband and wife is a very complex relation and it is one of the toughest act for the judiciary to come to a conclusive finding on due adjudication of the dispute between the parties. However, the fact remains that the appellant specifically pleaded that the respondent deserted her since 15.06.2000. The said fact was not denied by the respondent.



15. The learned Trial Judge was absolutely wrong in his approach that in order to get a decree of divorce on the ground of desertion, the appellant/husband must prove his intention to stay with his wife by filing a suit for restitution of conjugal rights.

16. In the instant appeal also, notice was served upon the respondent by Dasti service and the son of the respondent, who resides with her, received the said notice. However, the respondent did not appear before this Court to contest the appeal.

17. Thus, continuous, long and uninterrupted separation between the husband and wife since 15.06.2000 clearly proves that the respondent does not have any intention to stay with her husband and continue with normal marital life. The respondent has abandoned the appellant permanently and had no intention to establish his marital life. They are living separately for last 25 years.

18. The learned Trial Judge failed to consider such aspect of the matter, during trial of the case.

19. For the reasons stated above, we have no other alternative but to hold that the learned Trial Judge was wrong in his approach in deciding the case and finally passing an order of



dismissal of the suit.

20. The judgment and decree of dismissal dated 17.07.2023 passed by the learned Additional Principal Judge, Family Court, Patna in Matrimonial (Divorce) Case No.951 of 2019 is set aside.

21. The appeal be and the same is allowed.

22. Marriage between the appellant and the respondent is dissolved by a decree of divorce.

23. Decree be drawn, accordingly.

(Bibek Chaudhuri, J)

(Chandra Shekhar Jha, J)

mdrashid/-

U			
---	--	--	--

