

**HIGH COURT OF DELHI****Date of Decision: March 01, 2024****CORAM: HON'BLE MR. JUSTICE SURESH KUMAR KAIT, HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****MAT.APP.(F.C.) 298/2023****Xxx ..... Appellant****VERSUS****Xxx ..... Respondent****Legislation:**

Sections 13(1)(ia), 13(1)(ib), 28 of the Hindu Marriage Act, 1955 ()

**Subject:** Matrimonial appeal challenging the dismissal of divorce petition on the grounds of cruelty and desertion.**Headnotes:**

Matrimonial Dispute - Divorce Petition under Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 - Allegations of cruelty and desertion by the appellant/husband against the respondent/wife - Appellant's claim of mistreatment and refusal to live together - Respondent's assertions of being a dutiful wife and attempts at reconciliation - Assessment of evidence and credibility of parties' testimonies - Lack of substantiated allegations of cruelty or desertion - Observations on reconciliatory efforts and intention to maintain matrimonial obligations - Dismissal of divorce petition - Principle of not rewarding unilateral refusal of matrimonial obligations - Appeal dismissed.

Cruelty and Desertion Allegations – Evaluation – The Court extensively reviewed allegations of cruelty and desertion made by the appellant/husband, considering evidence including behavioral instances, separation periods, and attempts at reconciliation. [Para 20-45]

Cruelty under Section 13(1)(ia) – Findings – Held, allegations of cruelty by the appellant/husband were unsubstantiated. The court agreed with the lower court's conclusion that the incidents cited by the appellant were part of normal marital adjustments and did not constitute legal cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955. [Para 23-24]

Desertion under Section 13(1)(ib) – Analysis – Held, the evidence did not support the claim of desertion by the respondent/wife. The Court noted the respondent's continuous efforts for reconciliation and the lack of any intention on the part of the appellant/husband to resume cohabitation, contradicting the claim of desertion. [Para 25-47]

Decision – Dismissal of Divorce Appeal – The Court concluded that the appellant/husband's conduct was recalcitrant and unreasonable, failing to prove the grounds of cruelty and desertion. The appeal was dismissed, upholding the lower court's decision. [Para 48-50]

### **Referred Cases:**

- Bipinchandra Jaisinghbai Shah vs. Prabhavati, 1956 SCC OnLine SC 15

Representing Advocates:

Ms. Gauri Puri & Ms. Yamini Mukherjee for the appellant

Ms. Jyoti Gupta for the respondent

### **J U D G M E N T**

#### **NEENA BANSAL KRISHNA, J.**

**Unfortunate are the matrimonial disputes where the fountain head of friction *inter se* the spouses is mere lack of adjustment, understanding and the will to stay together. These factors are the wheels of the chariot of a workable marriage and if either spouse becomes averse to move together and chooses to abandon the relationship, then extensive reconciliatory efforts by one spouse, would also not yield any results.**

1. The present Appeal under Section 28 of the Hindu Marriage Act, 1955 (*hereinafter referred to as "HMA, 1955"*) has been filed on behalf of the appellant/husband assailing the Judgment and Decree dated 07.01.2009 *vide* which the Divorce Petition under Sections 13(1)(ia) and 13(1)(ib) of HMA, 1955 filed on behalf of the appellant/husband, has been dismissed.

2. **The facts in brief as narrated** by the appellant/husband (*who was the petitioner in the Divorce Petition*), are that the appellant/husband got married to the respondent/wife according to the Hindu customs and rites on 16.04.1994 at Delhi. One daughter was born from their wedlock on 12.08.1995.

3. **According to the appellant** the respondent/wife (*who was the respondent in the Divorce Petition*) started misbehaving within 2-3 days of the marriage and started making demands for a separate accommodation. It is claimed that the appellant/husband was subjected to various acts of cruelty by the respondent by refusing to participate in the festivals such as *Janamasthmi* and rejecting the gifts given by the appellant claiming them to be cheap. The appellant/husband has further asserted that the respondent/wife again made a demand for a separate kitchen on 12.02.1995 and an oral settlement was entered into between the parties on 13.02.1995.
4. In March, 1995, the respondent/wife locked herself in the room and refused to open the door and such erratic behaviour caused grave mental agony to the appellant/husband.
5. The appellant/husband has asserted that the father of the respondent/wife called him to this office and questioned him as to why the respondent/wife was not wearing ornaments at the time of *Kirtan* held in the house of the appellant/husband.
6. It was further asserted that the respondent/wife was employed as a Teacher in the Municipal Corporation School at Patel Nagar, New Delhi and he made every effort to get the transfer of the respondent/wife to Geeta Colony. She had left the matrimonial home and had gone to her parental home for enjoying summer vacations in May, 1995 while she was in family way. The respondent/wife was admitted in the St. Stephan Hospital on 10.11.1995, where she misbehaved with the appellant/husband and his family members in the Hospital. Post discharge from the Hospital after 3-4 days, she went to the parental home instead of coming back to the matrimonial home.
7. On 29.06.1995, the respondent/wife rejoined her school after the summer vacations were over, but instead of returning to the matrimonial home, she went to reside with her *Mausi*, where she resided till 15.07.1995. During that period, both the appellant/husband and the respondent/wife were searching for a rental accommodation, but she did not approve of any accommodation. Ultimately, the respondent/wife left her *Mausi's* house and went to reside in her parental home and since then she refused to entertain the phone calls of the appellant/husband.
8. The respondent/wife got admitted at St. Stephan Hospital where she gave birth to a daughter on 12.08.1995. The appellant/husband and his family members visited the respondent/wife in the Hospital, but the brother of the respondent/wife misbehaved with them. It was mutually agreed that post her delivery, she would reside in her parental home for 40 days and thereafter,

- she would join the appellant/husband in their separate accommodation. Thus, the appellant/husband took a rented accommodation in September, 1995 at Krishan Nagar, Delhi. However, the respondent/wife joined her duty after her maternity leave, but still she did not join the company of the appellant/husband at the rented accommodation.
9. It is submitted that the respondent/wife and her father in the first week of November, 1995 even went to the house of the matrimonial home of the appellant/husband's sister and they misbehaved with the appellant/husband which caused great mental agony to him.
  10. The appellant/husband has also asserted that the respondent/wife had visited the office of appellant/husband and shouted at him in the presence of his boss. On 24.11.1995, the respondent/wife again came to the office of appellant/husband and met the Joint Secretary, Ms. Rewa Nayyar and on her request, the appellant/husband accompanied the respondent/wife in a TSR to go to their home, but the respondent/wife directed the TSR to Police Station, Tilak Nagar to get the appellant/husband arrested. In order to save himself, the appellant/husband had to jump out of the TSR and escape.
  11. The appellant/husband thus contended that the respondent/wife has been residing away from him since May, 1995 and has refused to join his company even in the rented accommodation. Hence, the divorce was sought on the ground of cruelty and desertion.
  12. **The respondent/wife has contested the Divorce Petition** and in her *Written Statement* took the preliminary objections that the Divorce Petition did not disclose any cause of action and that the appellant/husband himself was guilty of cruelty towards the respondent/wife.
  13. The respondent/wife, *on merits*, denied all the allegations made against her and asserted that she has always been a sincere and dutiful Hindu wife. She claimed that while she was in advance stage of pregnancy, she was not permitted to live in her matrimonial home by her in-laws and because out of the compulsion, the respondent/wife went to stay in the house of her *Mausi* temporarily.
  14. The respondent/wife often called the appellant/husband to take her back to the matrimonial home, but the appellant/husband had no interest. Therefore, the respondent/wife submitted that the Divorce Petition was liable to be dismissed.
  15. On the pleadings, the issues were framed on 26.05.2003 which read as under: -

*“(i) Whether the respondent has treated the petitioner with cruelty as alleged? OPP*

*(ii) Whether the respondent has deserted the petitioner for continuous period of not less than two years immediately preceding the presentation of petition? OPP*

*(iii) Whether the petitioner is trying to take advantage of his own wrongs, if so, its effect? OPR.*

*(iv) Relief.”*

16. The appellant/husband appeared as **PW1** and also examined **PW2/Rajinder Shah Singh**, his family friend and **PW3/K.L. Sikka**, the landlord of the premises which were taken on rent by the appellant/husband from October, 2000 till he came to seek divorce in the Court.

17. The respondent/wife examined herself as **RW1**.

18. **The learned Additional District Judge, referred** to the various incidents as narrated by the appellant/husband to conclude that it was the appellant/husband who compelled the respondent/wife to live separately and made no efforts whatsoever to bring her back to the matrimonial home. Thus, it was concluded that the husband has not been able to substantiate any of the allegations and it was the appellant/husband who had committed the matrimonial wrong of deserting his wife without any sufficient cause. **Therefore, the Divorce Petition was dismissed.**

19. Aggrieved by the Judgment and Decree dated 07.01.2009, the present Appeal has been preferred by the appellant/husband.

20. **Submissions heard from learned counsels for the parties and the documents as well as the record perused. Cruelty under Section 13(1)(ia) of HMA, 1955:-**

21. Admittedly, the parties got married on 16.04.1994 and from the pleadings, it is apparent that the differences arose *inter se* the parties soon after their marriage.

22. The respondent/wife had been living separately from 26.05.1995 which implies that the parties resided together for about 13 months and have been living separately for the last 30 years. Essentially, the acts of cruelty that were alleged by the appellant/husband to have been committed by the respondent/wife were that she had scant regard for the gifts that the appellant/husband gave on her birthday. The respondent/wife refused to

participate in the festivals like *Janmastami* and that she was insisting on a separate accommodation.

23. None of these allegations as claimed by the appellant/husband were substantiated and neither has he made any serious allegation, grave and weighty enough to grant divorce on the ground of cruelty which could cause reasonable apprehension in the mind of the appellant/husband that living with the wife is unsafe and harmful for him. The Learned Additional District Judge has rightly concluded that no acts of cruelty as envisaged under Section 13(1)(ia) of HMA, 1955 were proved by the appellant/husband; rather they were incidents of normal wear and tear and minor initial adjustments.
24. **Accordingly, we concur with the findings of the Learned Additional District Judge and do find any infirmity in the conclusions so arrived. Therefore, we observe that divorce petition has rightly dismissed by the Ld. ADJ under Section 13(1)(ia) of HMA, 1955.**

**Desertion under Section 13(1)(ib) of HMA, 1955:-**

25. The appellant/husband had also sought the Divorce on the ground of desertion under Section 13(1)(ib) of HMA, 1955.
26. The appellant had alleged that after their marriage on 16.04.1994 there were adjustment issues and alleged cruelties (*though not proved as held above*) by the respondent.
27. The appellant in his testimony had deposed that the respondent who was a teacher in MCD School, had gone to her parental home during her Summer vacations on 26.05.1995. The respondent has countered it by asserting that in fact on that day she had gone along with the appellant for her regular check up to St. Stephens Hospital, but the appellant instead of bringing her back home after the check up, compelled her to go to her parental home. While she was in her parental home, she was admitted in the St. Stephens Hospital on 10/11.6.1995, where she remained admitted for 3-4 days but neither the appellant nor his family members came to visit her. She after being discharged, had no option but to go back to her parental home. Pertinently, all these facts have been admitted by the appellant in his cross-examination.
28. It further emerges from the respective testimony of the parties that the school of the respondent re-opened on 29.06.1995 and admittedly she went to stay in the house of her maternal aunt. The respondent had deposed that she was compelled to go to her maternal aunt's house since the appellant was not forthcoming in taking her to the matrimonial home. Whereas, the appellant had asserted in his testimony that respondent herself did not return to the



- matrimonial home, which in fact lends credence to the testimony of the respondent that appellant had no inclination to take her to the matrimonial home. Thus, it is difficult to accept the contention of the appellant that the respondent voluntarily and without their being compelling circumstances, would prefer to go to stay in the house of her *mausi* instead of coming to her matrimonial home.
29. The respondent had further asserted that on 12.08.1995, on the birth of the daughter, neither the appellant nor his family members visited her and the hospital expenditure was also borne by her. The appellant has admitted that he was not present in the hospital on the day she was discharged from the hospital. The appellant in his cross-examination has admitted that he went to visit her only once in the Hospital and also that the hospital expenditure was borne by the respondent, though he asserted that the same was reimbursed by her Department. It thereby implies that he admittedly did not bear the hospital expenditure.
  30. Clearly, the circumstances support the truthfulness of the testimony of the respondent. Admittedly, since 26.05.1995 the respondent has been staying either at the house of her *mausi* and after the delivery she shifted to her parental home.
  31. Further, it is admitted by the appellant that prior to delivery of the child on 12.08.1995, the respondent along with one Mr. Malhotra had visited the office of the appellant where Mr. Sourabh, brother and Mr. Sanjay, brother-in-law of appellant were already present. She has deposed that she was told by them in clear words that she would not be permitted to live in the matrimonial home which caused her great mental agony resulting in premature delivery of the child on 12.08.1995 when in fact the date of delivery was 26.08.1995.
  32. That the appellant never had any inclination for the respondent to return to the matrimonial home is further reinforced from his blatant admission in his cross-examination that he never went to the house of the respondent after she was discharged from the hospital post delivery of the daughter. His explanation for the respondent having gone to her parental home was that it was agreed that she would stay in her parental home post delivery for 40 days and thereafter they would shift to a rented accommodation. While the appellant has claimed that there was an understanding of respondent going to live in the parental home, but his own admissions that he was not present at the time of discharge of the respondent from the hospital, again corroborates the assertions of the respondent that appellant had no interest, whatsoever, in taking her back to the matrimonial home.

33. The appellant had tried to create a story of having taken the premises at Krishna Nagar on rent in September, 1995. In support of his assertions, he has relied on a Rent Deed *Ex.PW1/C* executed between the landlord Manjeet Singh and himself. Interestingly, while according to the testimony of the appellant, he had taken the premises on rent in September, 1995, but this Rent Deed is of November, 1999. There is no mention in this Rent Deed that the appellant had been in his premises as a tenant since 1995.
34. Pertinently, in his cross-examination he was asked to produce a proof of having paid rent for the accommodation allegedly taken on rent by him pursuant to the insistence of the respondent for separate residence, but he had no document whatsoever in support thereof. His Income Tax Returns were put to him where there was no mention of any rent having been paid by him. He also admitted that he had not given any intimation to his Department about taking of premises on rent. The appellant has, therefore, not been able to establish that the respondent was insisting on a separate accommodation or that he to honour her wish, had taken the premises on rent in September, 1995. Once, it is held that the appellant has not been able to prove that he ever taken any premises on rent in September, 1995, his further assertion that despite his intention of taking the respondent to the rented accommodation, she herself did not join him, becomes untruthful. The appellant has been only creating evidence by producing a Rent Agreement which is also dated 18.11.1999 i.e. of almost four years since 1995.
35. Another interesting aspect which emerges from this Lease Deed *Ex.PW1/C* is Clause 7, which reads as under:
- “7. That it has been further agreed between the parties that only the tenant/second party himself shall use the said tenanted premises under his occupation and no other person including **his wife**, mother, son or any other relation of the 2<sup>nd</sup> party shall be entitled to use the said premises without the written permission of the 1<sup>st</sup> party/ landlord-owner.”*
36. The appellant has himself conceded to not taking his wife to the rented premises. This further reinforces the testimony of the respondent that he never had any intention to take her to the matrimonial home.
37. The appellant himself has further deposed that in the first week of November, 1995 the respondent along with her father, visited the house of in-laws of his sister. According to the respondent she had gone there with an endeavour to seek their intervention for reconciliation of inter-se differences between the appellant and the respondent and to convince the appellant to take her back in the matrimonial home. This incident has been explained by the respondent



in her evidence wherein she has deposed that as soon as she reached the house of the father-in-law of the sister of the appellant, the appellant and his brother reached there and threw out the respondent and her father and even abused them.

38. The efforts of the respondent for reconciliation continued further when on 18.11.1995, she met the Head of the Union of which the mother of the appellant was a member, but there also she did not succeed.
39. The appellant in his affidavit of evidence has denied the visit of the respondent in the office on 11.08.1995, but admitted that she with the small child, had come to his office on 24.11.1995 and had met his Officer Ms. Reva Nayyar, Joint Secretary who counseled them both and told the appellant to take the respondent and the child, to his house. It is admitted by the appellant that while they were on their way to his house in the TSR, he got out mid way and left. The explanation given by him is that the respondent had directed the TSR driver to go to the Police Station to get him arrested and because of the fear of getting arrested, he got off mid way. The respondent on the other hand, has explained that after traveling barely 100 meters, the appellant got the TSR stopped and went away because he did not want to take her to his house. This is also corroborated by the fact that the appellant, had miserably failed to prove that he had taken separate premises on rent, as was asserted by him.
40. The testimony of respondent that she persistently made efforts for reconciliation, emerges as truthful because it is an admitted fact that respondent never made any complaint to any Authority be it Police, Legal Aid or CAW Cell nor did she initiate any litigation till the divorce petition was filed.
41. It is obvious from the overwhelming evidence as discussed above, that the appellant had no inclination whatsoever to take her back with him. While he had been compelled by Senior Officer to take her along with him, he immediately deserted her mid way by getting out of the TSR. The admissions of the appellant clearly reflect that he never had any intention to take the respondent back to the matrimonial home and has not been able to explain any circumstance for his apprehension to let the respondent be with him in his house.
42. The efforts of the respondent for reconciliation and to be able to go back to the matrimonial home did not end only with an endeavour to contact the superior Office of the appellant to intervene.

43. She admittedly along with her father and brother, took a bus to Chandigarh to meet Mr. Kharbanda, maternal uncle of the appellant who had influence on the family of the appellant, as admitted by him in cross-examination. Dr. Vinod Narang, cousin brother of appellant was also traveling on the same bus. The respondent has deposed that she had talked to Dr. Vinod Narang on the way to Chandigarh, but he expressed his inability to be able to intervene in their matter because he felt that the family of the appellant would not pay heed to his advice. She made all efforts by approaching the family members of the appellant, but did not meet any success.
44. Her efforts for reconciliation did not end there. Admittedly, she continued her efforts and eventually a meeting was organized on 31.07.1997 at the Clinic of Dr. Takkar, friend of the appellant's father at Paschim Vihar, Delhi. A second meeting at the Clinic took place on 11.09.1997 but it did not yield any result because as per the testimony of the respondent, the appellant and his father were absolutely adamant on not taking her to the matrimonial home.
45. The entire evidence, which is essentially not disputed but is admitted by the appellant thus, proves that the appellant at every point of time resisted the reconciliatory efforts made by the respondent and despite persistent efforts of the respondent did not permit her to join him in the matrimonial home. The appellant has also not been able to explain the reason why he never went to meet the respondent or make any effort to bring her back.
46. In order to be able to succeed to prove desertion, two ingredients are essential : *Factum Deserendi* and *Animus Deserendi* i.e. the factum of separation, and the intention to bring cohabitation permanently to an end as held in the case of *Bipinchandra Jaisinghbhai Shah vs. Prabhavati* 1956 SCC OnLine SC 15.
47. In the present case, there is no evidence whatsoever to prove that the respondent had shifted out of the matrimonial home; without any reasonable excuse rather it is established that the appellant compelled her to shift out. It is also not proved that the respondent had any animus or intention to leave the matrimonial home. **The appellant has miserably failed to prove that the respondent had deserted the appellant. The appellant was thus, rightly denied divorce on the ground of Desertion under S.13 (1) (ib) of HMA, 1955 by the Ld. ADJ, Delhi.**

**Conclusion:-**

48. We are conscious that this is a broken marriage where parties are residing separately for about 30 years and there is no possibility of reunion between

the parties. It is a case where the marriage is dead but in recognition of the principle under S.23 (1)(a) HMA,1955, to grant a Divorce in the present case would be to add a premium to the recalcitrant and unreasonable conduct of the appellant in unilaterally refusing to discharge his matrimonial obligations and has indeed caused undefinable cruelty to the respondent by denying her the conjugality without any fault.

49. We hereby conclude from the aforesaid discussion that the divorce petition of the appellant on the ground of cruelty and desertion under S.13(1)(ia) and (ib) HMA,1955 has been rightly dismissed by the learned Additional District Judge and does not call for any interference.
50. **The appeal is accordingly dismissed with pending application(s), if any.**

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