

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

**HON'BLE SHRI JUSTICE ANAND PATHAK
&
HON'BLE SHRI JUSTICE PUSHPENDRA YADAV**

FIRST APPEAL NO. 666 of 2023

ANAND SHARMA

Vs.

SMT. REKHA SHARMA

APPEARANCE:

Shri Vivek Kumar Vyas – Advocate for the appellant.

Shri Santosh Kumar Sharma – Advocate for the respondent.

JUDGMENT

Delivered on day of October, 2025

Per: Justice Anand Pathak,

1. The present appeal under Section 19 of the Family Courts Act 1984 is preferred by the appellant/husband being crestfallen by the judgment dated 16-02-2023 passed by Additional Principal Judge, Family Court, Gwalior in RCSHM No.20371/2018 whereby the divorce petition preferred by the appellant under Section 13(1)(i-क)(i-ख) of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act of 1955”) has been dismissed.
2. Precisely stated facts of the case are that marriage of appellant and respondent was solemnized on 24-06-2011 at Gwalior through Hindu rites and rituals. According to appellant, soon after marriage, behaviour of respondent/wife was changed and she started fighting over the small issues. Respondent/wife deprived the appellant from the marital obligations. After marriage, couple started residing at Virar in joint family but behaviour of respondent turned irritating and

she used to argue with the parents of appellant. Respondent/wife also started pressurizing the appellant to live in Gwalior as she was not interested in living at Virar and she also pressurized the appellant and his family members to give her share in the property otherwise she will implicate them in dowry case. It is also stated by the appellant that two times respondent/wife terminated her pregnancy without prior intimation to the appellant or his family members.

3. Domestic incompatibility continued between the parties despite lapse of two years. As a result of domestic incompatibility, in the year 2013, respondent/wife left the matrimonial house along with gold jewellery of 250gms. and Rs.2,70,000/- and started residing at her maternal home. Behaviour of wife was not good with her husband and his family members and further she used to quarrel with the family members and she left the matrimonial house in 2013. Thereafter, in 2016 she again came at Virar along with her maternal uncle (भाजा) and stated that if her share in the property is not given then she will implicate them in false case of offence under Section 498-A of IPC. At the house of appellant at Virar, respondent/wife misbehaved with her husband and mother-in-law. Therefore, appellant/husband preferred divorce petition seeking decree of divorce on two grounds; cruelty and desertion at S.D. Basai, Thane (Maharashtra). On the application of respondent/wife, this divorce petition was transferred by the Hon'ble Supreme Court to the Family Court, Gwalior.
4. Respondent filed reply to divorce application and denied all the allegations levelled by the appellant. It is submitted that despite spending Rs.8 lac with other household articles in her marriage, appellant used to demand dowry and used to treat her inhumanely.

She has always tried to fulfill her marital duties by living in her in-laws' house, but she was expelled due to non-fulfillment of demand of dowry. It was the respondent who preferred application under Section 9 of the Act of 1955 for restitution of conjugal rights before the Family Court, Gwalior which was decided *ex parte* in favour of respondent as appellant did not turn up in the proceedings. It appears that appellant has neglected his responsibilities and not discharging his obligations as husband. It is also submitted that she had not taken away any jewellery or cash from the house of appellant and it was a false allegation. Even otherwise, she is ready and willing to live with appellant. Hence, prayed for dismissal of divorce application.

5. Proceedings started before the Family Court and after conducting trial in the matter and considering all the rival submissions of parties and the evidence produced before it, learned Family Court dismissed the divorce petition of the appellant, therefore, appellant is before this Court.
6. It is the submission of learned counsel for the appellant that the Family Court, Gwalior failed to consider the material aspects of the matter and the evidence produced before it and erred in not granting the decree of divorce in favour appellant. Respondent is living separately from appellant since 2013 without any valid reason. Respondent/wife did not fulfill her marital obligations and she was interested in the properties of his family and she loudly used to say that if her share in the property is not given to her, then she will implicate all the family members in false cases. Respondent has deserted him and deprived him of happiness of marital life. It is further submitted that two times respondent/wife got pregnant but she removed her pregnancy without intimating the appellant or his

family members and this was the mental cruelty faced by the appellant. When grandmother of appellant died, respondent did not turn up to his house and she was not interested in living with the appellant since beginning rather she was interested in obtaining property of his family. Therefore, it is submitted that under these circumstances, appellant is entitled for a decree of divorce on the grounds of cruelty and desertion.

7. On the other hand, learned counsel for respondent/wife by supporting the impugned judgment opposed the contentions of appellant and submitted that she still wants to live with appellant in her matrimonial home and wants to fulfill her duties as a wife by maintaining conjugal life. Hence, prayed for dismissal of this appeal.
8. Heard learned counsel for the parties and perused the record.
9. This is a case where appellant/husband wants decree of divorce on the ground of cruelty and desertion. The grounds of cruelty and desertion as put forth by the appellant were declined by the Family Court and the divorce petition preferred by the appellant was dismissed. It is an admitted fact that marriage of couple was performed on 24-06-2011 and since then they are not happy in their married life. Respondent/wife is living at her maternal home since 2013 as admitted by her in para 10 of her statement before the Family Court.
10. The term "cruelty" as used in Section 13(1)(i-a) of the Act, cannot be defined in given parameters and there cannot be a comprehensive definition of "cruelty" within which all kinds of cases of cruelty can be covered and each case has to be considered depending upon its own unique factual circumstances. In the case of **Gurbux Singh vs. Harminder Kaur (2010) 14 SCC 301**, the Hon'ble Apex Court

observed that the matrimonial life should be assessed as a whole and persistent ill-conduct over a fairly long of time would amount to cruelty and further held that the ill-conduct must be precedent for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, one party finds its extremely difficult to live with the other party no longer may amount to mental cruelty.

11. The Hon'ble Apex Court in the case of *V. Bhagat Vs. D. Bhagat (Mrs) (1994) 1 SCC 33* held that mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put-up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

12. So far as the legal principles with regard to "desertion" is concerned,

the Hon'ble Apex Court in *AIR 1957 SC 176 (Bipinchandra Jaisinghbai Shah Vs. Prabhavati)*, has explained that 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. 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*. [See:- *AIR 1964 SC 40 (Lachman Utamchand Kirpalani Vs. Meena alias Mota)*, (2002) 1 SCC 308 {*Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi*} to (2006) 4 SCC 558 {*Naveen Kohli Vs. Neelu Kohli*}].

13. The marriage was solemnized in the year 2011 and since 2013 parties are living separately on the small issues and fighting against each other since then. Thus, by efflux of time the hope of reunion of couple appears to be eclipsed. The concept of “*irretrievable breakdown of marriage*” has been discussed by the Hon'ble Supreme Court in the cases of *R. Srinivas Kumar V. R. Shametha*, 2019 (4) SCC 409, *Munish Kakkar Vs Nidhi Kakkar*, AIR 2020 SC 111 and

Neha Tyagi Vs Lieutenant Colonel Deepak Tyagi (2022) 3 SCC 86, and held that an irretrievable breakdown of marriage is a marriage where husband and wife have been living separately for a considerable period and there is absolutely no chance of their living together again.

14. On examining the case at the touchstone of principles of law laid down by Hon'ble Apex Court in the above-cited cases, it is clear that evidence led by appellant clearly demonstrates that after marriage between couple in the year 2011, respondent lived with appellant till 2013. Respondent present in person before this Court, submitted that she is ready to live in matrimonial fold again, but appellant is not ready to accept her. During the proceedings of this appeal, appellant offered Rs.5 lacs along with all dues of maintenance as permanent alimony to the respondent/wife.
15. The marriage was solemnized on 24-06-2011 and parties are living separately since 2013 i.e. for more than 12 years. Due to rapture of marital cord, no child was born. Matrimonial bond is completely broken and is beyond repair. This Court left with no other option, but thinks it appropriate that since relationship of both the parties must end as its continuation is causing cruelty to either of the parties, therefore, the long separation, absence of cohabitation, the complete breakdown of all meaningful bonds and existing bitterness between the two, has to be read as "cruelty". Where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation, then continuation of such marriage would only mean giving sanction to cruelty with each is inflicting on the other.
16. So far as the question of grant of one-time settlement as full and final

settlement is concerned, in matrimonial cases, the Court has to ascertain the financial capacity/status of parties depending on source of income and expenditure for determining amount of maintenance/permanent alimony/one-time settlement, this Court is left with no other option but to think it just and proper to allow one-time settlement to the tune of **Rs.5 lacs in favour of respondent** as offered by the appellant, which is payable to the respondent by appellant by way of Demand Draft or any other mode **within a period of three months from the date of receipt of copy of this judgment**. The marriage between the parties is annulled, subject to payment of full and final settlement of one-time settlement granted in favour of respondent.

17. In the conspectus of facts and circumstances of the case and the rival submissions advanced by learned counsel for the parties, this Court is of the concerned view that the marital relationship between the parties has broken down irretrievably, therefore, it deserves to be dissolved. Accordingly, the judgment passed by the Family Court is set aside and the marriage between the parties is declared to be **dissolved**. A decree be drawn accordingly.
18. Pending application(s), if any, shall stand closed.
19. Appeal stands **disposed of and allowed in above terms**.

(ANAND PATHAK)
JUDGE

(PUSHPENDRA YADAV)
JUDGE