

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.494 of 2025

CNR No. BRHC010618352025

Manoj Kumar Jha Son of Late Tarakant Jha, Permanent Resident of Village- Bhrampur, P.O. and P.S.- Bihpur (Naugachia), District- Bhagalpur (Bihar), at present Near Radha Babu (Rtd. Post Master), Bumphar Chowk, Gangjala, P.O. and District- Bhagalpur (Bihar).

.. ... Appellant/s

Versus

Rani Devi Wife of Sri Manoj Kumar Jha, Resident of Village- Bhrampur, P.O. and P.S.- Bihpur (Naugachia), District- Bhagalpur (Bihar).

... ... Respondent/s

Appearance :

For the Appellant/s : Mr. Bhola Kumar
For the Respondent/s : Mr. Anupa Nand Jha

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

8 26-10-2026 This is an appeal under Section 19(1) of the Family Courts Act, challenging an order dated 25th April 2025 passed in Misc. Case No. 14 of 2015 by the learned Principal Judge, Family Court, Bhagalpur, allowing an application under Order IX Rule 13 of the CPC by setting aside the ex parte judgment of divorce and restoring the suit for contested hearing. It is pertinent to mention that, under the general law of the CPC, an appeal is maintainable under the provision of Order XLIII Rule 1, sub-Rule (d), against an order under Rule 13 of Order IX rejecting an application (in a case open to appeal for an order to



set aside a decree passed ex parte). However, the Family Courts Act, 1984, being a special Act, confers the right upon the appellant to file an appeal even against any order passed by the Family Court in a matrimonial proceeding, except the orders which have been accepted under sub-sections (2) to (4) of Section 19.

2. Therefore, we entertained the appeal as maintainable.

3. It is submitted by the learned counsels for both parties that the husband and wife have been living separately for a long period of 23 years and that there has been no conjugal relationship between the parties during the past 23 years. The husband and the wife also do not want to reside in association with each other.

4. *Sine-qua-non* for seeking dissolution of marriage on the ground of desertion is *Animus Deserendi*, a latin legal phrase, which means the intention to desert or permanently bring cohabitation and marital life to an end. But, this *animus deserendi* comes to an end the moment *animus revertendi* comes into play, a latin legal phrase, which means “with the intention to return” or “offer of reconciliation”.

5. Therefore, in the present case, both the ingredients



of desertion, namely, the factum of separation and the intention to bring cohabitation permanently to an end (*animus deserendi*), are present in the instant case. There is only *animus deserendi* with no *animus revertendi*, meaning thereby the parties have virtually terminated their relationship for the past 23 years, in which there is no scope of any *animus revertendi*. Thus, in view of such circumstances, we have no other alternative but to hold that both parties have deserted their respective spouses for the last 23 years. Therefore, on the ground of long and uninterrupted desertion, the petitioner/appellant is entitled to get a decree for divorce.

6. Now, the question that falls for adjudication is the amount of permanent alimony to which the wife is entitled, because it is submitted by the learned Advocate for the appellant that the wife/respondent does not have any source of income. In reply thereto, the learned Advocate for the appellant submits that the wife/respondent, who had been residing in the house of the appellant, has left the house and resides separately in another accommodation. The appellant is ready to transfer the entire household property to his wife towards alimony.

7. The learned Advocate on behalf of the respondent/wife has accepted the offer on behalf of the



respondent. In view of such circumstances, we pass the decree of dissolution of marriage by divorce in favour of the appellant.

8. The appellant is directed to execute the appropriate instrument for transferring his household properties in favour of the respondent within 8 weeks from the date of this order.

9. The learned counsel for both parties are directed to advise their respective clients to take appropriate steps for the transfer of the household property of the appellant in favor of the respondent within the stipulated time, and the said transfer shall amount to a full and final settlement towards permanent alimony.

10. With the aforesaid order, the instant appeal is disposed of.

(Bibek Chaudhuri, J)

(Rana Vikram Singh, J)

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