HC-KAR

NC: 2026:KHC:51557-DB
MFA No. 6384 of 2021

CNR: KAHC010447882021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

MISCELLANEOUS FIRST APPEAL NO. 6384/2021 (FC)

BETWEEN:

[redacted]

...APPELLANT

(BY SRI. HIREMATHAD MAHESHIAH RUDRAYYA,ADVOCATE)

AND:

[redacted]

...RESPONDENT

(SERVED)

THIS MFA FILED U/S. 19(1) FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DT.06.09.2021 PASSED IN MC NO.322/2016 ON THE FILE OF THE JUDGE, FAMILY COURT, DAVANAGERE, DISMISSING THE PETITION FILED U/S.13(1)(I-A)(I-B) OF THE HINDU MARRIAGE ACT.

Digitally signed by MALA K N
Location: HIGH COURT OF KARNATAKA

CNR: KAHC010447882021

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
AND
HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN)

This appeal is filed by the husband challenging the judgment and decree dated 06.09.2021 passed in M.C. No. 322 of 2016 by the Judge, Family Court, Davanagere (**'Trial Court'**), whereby the petition filed by him under Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 (**'the Act'**) seeking dissolution of marriage on the grounds of cruelty and desertion came to be dismissed.

2. For the sake of convenience, the parties are referred to as per their ranks before the Trial Court.

3. Briefly stated, the facts are that the marriage between the petitioner and the respondent was solemnized on 26.09.2014 at [redacted] as

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per the customs prevailing in their community. It is stated that the marriage was a love-cum-arranged marriage. A male child, [redacted] was born out of their wedlock.

4. It is the case of the petitioner that the parties led a happy matrimonial life for about one year after the marriage. It is stated that the respondent thereafter neglected her obligations towards the petitioner and his parents, frequently visited her parental home without informing him and repeatedly insisted that the petitioner establish a separate residence away from his aged parents. It is further stated that the petitioner, being the only son, was responsible for taking care of his parents and was therefore unable to accede to the respondent's demand.

5. It is further stated that, in June 2015, the respondent went to her parental home during her pregnancy and did not cooperate in performing the *Seemantha Karya* ceremony. It is alleged that she

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subsequently returned to the matrimonial home during the seventh month of her pregnancy, but again went to her parental home and delivered a male child at Nandi Hospital, Davanagere. It is stated that when the petitioner and his parents visited the hospital to see the newborn child, the respondent and her family members picked up quarrels over trivial issues and reiterated her demand for a separate residence. It is further stated that the respondent thereafter took the four-month-old child to Hyderabad without the petitioner's consent, during which period the child's health deteriorated.

6. It is stated that, despite the petitioner's efforts to convince the respondent to resume matrimonial life, she continued to insist on living separately. It is further stated that several panchayats were convened to resolve the matrimonial dispute, but they did not yield any result. It is stated that the petitioner had earlier instituted proceedings under Section 9 of the Act seeking restitution of conjugal rights, pursuant to which the matter was

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compromised and the respondent resumed cohabitation. It is alleged, however, that the respondent thereafter continued to visit her parental home on one pretext or another and, on 27.11.2016, left the matrimonial home without informing the petitioner. It is further stated that, despite the petitioner's requests, the respondent refused to return and expressed her unwillingness to continue the marital relationship. In light of the aforesaid allegations, the petitioner instituted the petition seeking dissolution of the marriage on the grounds of cruelty and desertion.

7. The respondent admits the marriage and the birth of the male child out of the wedlock, but denies the allegations of cruelty and desertion. It is her case that, at the time of the marriage, her parents had paid Rs.3,00,000/- as dowry to the petitioner. It is further stated that, during the matrimonial relationship, the petitioner repeatedly doubted her character, assaulted her over trivial issues and failed to care for her as a dutiful husband.

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8. It is stated that, despite the intervention of elders, the petitioner continued to quarrel with and assault the respondent even after the birth of the child. It is further stated that, on account of the petitioner's conduct, the respondent became depressed and was thereafter sent to her parental home by the petitioner's parents, following which neither the petitioner nor his parents visited her.

9. It is further stated that the petitioner thereafter initiated proceedings under Section 9 of the Act, pursuant to which, on the intervention of elders of the community, the parties resumed cohabitation. However, according to the respondent, there was no change in the petitioner's conduct, as he continued to assault her and suspect her character. It is stated that she tolerated such conduct for the future of the child and repeatedly requested the petitioner not to doubt her character. On the aforesaid grounds, the respondent sought dismissal of the petition.

10. On the basis of the aforestated pleadings, the Trial Court framed the following points for consideration:

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"(i) Whether the petitioner proves that after the solemnization of the marriage, the respondent has treated him with cruelty?

(ii) Whether the petitioner proves that respondent without reasonable cause has deserted him for a continuous period of not less than two years immediately preceding the presentation of this petition?

(iii) Whether the petitioner is entitled to the relief sought for?

(iv) What Order?"

11. In support of his case, the petitioner examined himself as P.W.1 and examined his sister, Smt. Vinoda, as P.W.2. He also got marked Exs.P1 to P3. The respondent examined herself as R.W.1 and examined two witnesses as R.Ws.2 and 3. On her behalf, Exs.R1 to R14 were marked.

12. Upon appreciation of the pleadings, oral evidence and documentary evidence on record, the Trial Court observed that the petitioner had failed to establish either cruelty or desertion on the part of the respondent.

13. The Trial Court considered the petitioner's allegations that the respondent insisted on establishing a separate residence, neglected household responsibilities,

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frequently visited her parental home, took the four-month-old child to Hyderabad without his consent, failed to discharge her obligations as a wife and ultimately left the matrimonial home on 27.11.2016. The Trial Court further took note of the admissions elicited from P.W.1 during cross-examination, including that the parties had been in love prior to their marriage, that he was aware of the respondent's character before the marriage and that, despite being informed during cross-examination that the respondent was willing to resume matrimonial life for the welfare of the child, he stated that she was no longer necessary in his life.

14. It was noticed that, although these allegations were sought to be corroborated through the evidence of P.W.2, she admitted during cross-examination that, while she was residing in her own matrimonial home, she had no personal knowledge of the events that transpired in the petitioner's matrimonial home and that her knowledge was

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based on what the parties had informed her over the phone.

15. The Trial Court also considered the evidence of R.W.1, wherein she denied the allegations of cruelty and deposed that it was the petitioner who doubted her character, assaulted her on trivial issues, failed to care for her and compelled her to leave the matrimonial home.

16. Upon such appreciation of the evidence, the Trial Court held that the petitioner's allegations of cruelty were vague and bald, and were not supported by cogent evidence or specific instances. It was observed that ordinary wear and tear of married life did not amount to cruelty and that cruelty is to be assessed in the context of the social behaviour of the parties and the status of women in contemporary society. The Trial Court further held that the burden of proving cruelty lies on the petitioner and that cruelty ordinarily consists of a series of

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acts spread over a period of time rather than an isolated incident.

17. In support of this conclusion, the Trial Court relied upon the decision of this Court in ***Sidda Shetty v. Rajamma*** **[2014 (4) KCCR 3337 (DB)]** to hold that mere pleadings, in the absence of supporting evidence, cannot entitle a party to a decree of divorce on the grounds of cruelty or desertion. The Trial Court also referred to ***Rajesh Haribha Patil v. Ranjana Rajesh Patil*** **[I (2015) DMC 148 (DB)]** to observe that vague and general allegations of quarrels and harassment, without material regarding specific instances, do not establish cruelty.

18. Accordingly, the Trial Court held that, apart from vague allegations that the respondent quarrelled with the petitioner and abandoned the matrimonial home, the petitioner had produced no evidence to establish cruelty.

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19. Insofar as the ground of desertion was concerned, the Trial Court took note of the admission made by R.W.1 during her cross-examination on 10.03.2021 that she had been residing at her parental house since 27.11.2016 and that there had been no cohabitation between the parties for the previous four to five years. It, however, held that such admission would not aid the petitioner, as the petition for divorce had itself been presented on 15.12.2016 and, therefore, the parties had not been living separately for a continuous period of two years immediately preceding the presentation of the petition.

20. The Trial Court observed that desertion, in essence, means the intentional forsaking and abandonment of one spouse by the other in total repudiation of the obligations of marriage, and that such abandonment must be wilful, deliberate and without reasonable cause. It further observed that desertion is a matter of inference to be drawn from the facts of each

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case and that no definite rule can be laid down as to what conduct would amount to desertion.

21. The Trial Court further held that, before a decree of divorce can be granted on the ground of desertion, the petitioner must establish both the factum of separation and *animus deserendi*. It also observed that the petitioner was required to prove that his own conduct was not such as to furnish the respondent with a reasonable cause to leave the matrimonial home.

22. Upon consideration of the pleadings and the material on record, the Trial Court found that the respondent had nowhere stated that she intended to permanently terminate cohabitation with the petitioner. On the contrary, it held that the respondent had pleaded reasonable justification for residing separately and, therefore, concluded that the ground of desertion was not proved. Accordingly, the Trial Court dismissed the petition in M.C.No.322 of 2016.

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23. Aggrieved by the impugned judgment and decree, the petitioner has preferred this appeal contending that the findings recorded by the Trial Court are contrary to the law, facts and evidence on record and are arbitrary and unsustainable. It is urged that the Trial Court failed to properly appreciate the pleadings, oral and documentary evidence and overlooked the material circumstances arising from the record.

24. We have heard the arguments of Sri.Hiremathad Maheshiah Rudrayya, learned Counsel for the appellant. Respondent served and unrepresented.

25. It is the contention of the learned counsel for the petitioner that the Trial Court mechanically dismissed the petition without properly appreciating the respondent's conduct and attitude towards the petitioner. It is submitted that the Trial Court failed to consider the respondent's insistence on residing separately, her repeated departure from the matrimonial home without

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informing the petitioner, and her conduct even after the compromise arrived at in the proceedings under Section 9 of the Act.

26. Per contra, the learned counsel for the respondent sought to justify the impugned judgment and decree and submitted that the Trial Court had, upon a proper appreciation of the pleadings, oral and documentary evidence, rightly dismissed the petition. It was submitted that the petitioner had failed to establish either cruelty or desertion within the meaning of Sections 13(1)(ia) and 13(1)(ib) of the Act and that no grounds were made out for interference with the well-reasoned judgment of the Trial Court.

27. Having heard the learned counsel appearing on both sides and on perusal of the material on record, the sole point that would arise for our consideration in this appeal is:

> "*Whether the Family Court is justified in dismissing the petition filed by the petitioner–*

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husband seeking a decree of divorce?"

28. Having given our anxious consideration to the rival submissions and upon perusal of the material on record, we find no infirmity in the appreciation of evidence or the conclusions recorded by the Trial Court. The findings are based on the pleadings, oral evidence and documentary evidence produced by both parties and do not warrant interference in this appeal.

29. Insofar as the ground of cruelty is concerned, we find ourselves in agreement with the appreciation of evidence by the Trial Court. The petitioner has failed to establish the allegations of cruelty beyond making bald and general assertions against the respondent. The oral evidence led by the petitioner did not establish any specific instances of cruelty and the documentary evidence produced by him, including the records of the proceedings instituted under Section 9 of the Act and the marriage invitation card, did not substantiate the allegations pleaded in the petition. Ordinary wear and tear and

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quarrels arising in the course of matrimonial life do not, by themselves, amount to cruelty. The Trial Court has, therefore, rightly held that the petitioner failed to discharge the burden of proving cruelty under Section 13(1)(ia) of the Act.

30. In regard to the ground of desertion, we find that the Trial Court has rightly held that the petitioner failed to establish the essential ingredients of desertion. Though the respondent admitted that she had been residing at her parental home since 27.11.2016, the petition itself was presented on 15.12.2016 and, therefore, the requirement of continuous desertion for a period of not less than two years immediately preceding the presentation of the petition was admittedly not satisfied. The Trial Court also took note of the respondent's explanation for residing separately and found that she had pleaded reasonable justification for staying at her parental home.

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31. The evidence on record also does not indicate that the respondent intended to permanently abandon the matrimonial relationship. During his cross-examination, the petitioner categorically stated that, even if the respondent was willing to return to the matrimonial home and continue the marriage, she was "not necessary" for him. Similarly, when P.W.2 was confronted with the suggestion that the respondent was willing to return and reside with the petitioner, she stated that the decision was "left to her". These admissions, read along with the respondent's consistent stand that she was willing to resume cohabitation, support the Trial Court's finding that the respondent had not evinced an intention to permanently bring cohabitation to an end.

32. We are, therefore, in agreement with the findings recorded by the Trial Court. The petitioner has failed to demonstrate any perversity, illegality or mis-appreciation of evidence warranting interference with the impugned judgment and decree.

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33. Accordingly, the appeal is ***dismissed***. The judgment and decree dated 06.09.2021 passed in M.C. No. 322 of 2016 by the Judge, Family Court, Davanagere, is hereby **confirmed**.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(H.SHANTHI BHUSHAN)
JUDGE

KNM
List No.: 1 Sl No.: 37

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