

RESERVED ON : 05.02.2026

PRONOUNCED ON : 10.02.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

MISCELLANEOUS FIRST APPEAL NO. 918 OF 2021 (FC)

BETWEEN:

[REDACTED]

...APPELLANT

(BY SRI. K S GANESHA.,ADVOCATE)

AND:

[REDACTED]

...RESPONDENT

(VIDE ORDER DATED: 07.06.2024

SMT. ARCHANA K.M. APPOINTED AS AMICUS CURIAE)

THIS MFA IS FILED U/S 19(1) OF FAMILY COURTS ACT AGAINST THE JUDGMENT AND DECREE DATED 27.01.2020 PASSED IN MC NO.45/2019 ON THE FILE OF THE C/C PRL. JUDGE FAMILY COURT, CHIKAMAGALURU, DISMISSING THE PETITION FILED UNDER SECTION 13(1)(b) OF THE HINDU MARRIAGE ACT.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT IS DELIVERED/ PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

This appeal under Section 19(1) of the Family Courts Act, 1984 by the husband, calling in question the judgment and decree dated 27.01.2020 in MC.No.45/2019 passed by the Principal Judge, Family Court, Chikkamagaluru. The Family Court by the impugned order dismissed the petition filed by the husband under Section 13(1(b) of Hindu Marriage Act, 1955 ('HM Act' for short), seeking divorce on the ground of desertion.

2. The parties are referred to as per their rankings before the trial Court.

3. A brief factual matrix leading to filing of the present petition are as under:

As per petitioner-husband:

4. The petitioner and respondent are husband and wife. Their marriage was solemnized on 04.12.2011 at Barageramma Kalyana Mantapa, Chitradurga as per Hindu rites and customs. After the marriage respondent joined the petitioner in her matrimonial home and lived happily till March 2015. From the wedlock, they are blessed with a female child. The respondent, subsequent to birth of the child, without there being any reason, started visiting her parental house very often and was not returning, which made the petitioner to go to her place and bring her back.

5. When the petitioner joined his work at Hassan, the respondent insisted for separate house and the petitioner has arranged for a separate house at Hassan. They lived a cordial life for few days. The respondent

during the stay contacted one Mohan and both of them exchanged mobile calls and started to meet frequently. When the petitioner learnt about the exchange of messages on mobile phone, he queried with the respondent and she apologized for her act and promised to discontinue her relationship with the said Mohan. Though he has written a letter to her sister Thejasvini with regard to the aforesaid acts, the respondent prevented him from posting the said letter. However, the matter reached the family members of respondent and the family members of the respondent convinced the petitioner stating that they would correct the respondent. But, instead of advising the respondent, they threatened petitioner of filing a criminal case against him.

6. The respondent left the matrimonial home in the month of April, 2015, when her extra marital relationship has been discovered by the petitioner. Thereafter the respondent has filed a criminal case against the petitioner for the offences punishable under Section 498A of Indian Penal Code, 1860 ('IPC' for short) and

Section 3 and 4 of Dowry Prohibition Act, 1961 ('DP Act' for short). A Crime registered and subsequent to investigation, the Police filed charge sheet which came to be numbered as C.C.No.873/2016. The Criminal case after trial ended in acquittal.

7. The petitioner at the earlier point of time filed a petition for divorce. The respondent after receiving notice, expressed her willingness for divorce and requested to file a joint petition. However, the respondent changed her mind and expressed her willingness to continue marital tie with the petitioner, accordingly the petitioner got the petition filed earlier dismissed, as not pressed. However the respondent subsequent to dismissal of the earlier petition did not respond properly and started continuously inflicting mental torture on the petitioner, by avoiding to reunite as per her assurance and failed to perform her marital obligation. All the requests by the petitioner for reunion went in vain. In this regard, the petitioner filed a petition before the Deputy Superintendent of Police, Hassan on 15.04.2015, to conduct a conciliation to reunite

the family. However, the respondent did not respond to the calls by Spandana Center, Hassan and informed that she would deal with matter in the Court.

8. Ultimately, the petitioner issued legal notice on 22.04.2015 calling upon the respondent to come and join the marital life. The respondent, despite service of notice, neither replied nor complied with the demand made in the notice. Having left with no other alternative, the petitioner husband filed petition under Section 13(1)(b) of HM Act for dissolution of marriage on the ground of desertion.

9. On service of notice, respondent remained absent and placed ex-parte.

10. The Family Court framed three points for consideration, amongst three, first point is with respect to proof of desertion by the wife for a continuous period of 2 years and second one is the entitlement of petitioner for divorce.

11. The petitioner in order to prove his case examined himself as PW-1 and one witness by name

Mahesh as PW-2. He has produced totally 18 documents and got marked the same as Exs.P1 to P18.

12. The trial Court after perusing the pleading and the material placed before it proceeded to answer both the first and second points for consideration in negative and against the petitioner and dismissed the petition recording its reasons especially in paragraph Nos.14, 17, 18 and 19 of its judgment.

13. The trial Court has held that despite the respondent has been placed ex-parte, the petitioner has failed to prove the ingredients of Section 13(1)(b) for dissolution of marriage on the ground of desertion. The trial Court further held that though the petitioner has taken a specific contention that the respondent was having extra marital relationship with someone else, however, failed to produce any proof to that effect. Underscoring these reason the trial Court dismissed the petition. It is this Judgment and Decree passed by the trial Court is called in question by the husband in this appeal.

14. Though the notice is ordered in this appeal, the wife remained absent. This Court on 07.06.2024, considering the fact that the appeal is filed against dismissal of petition for divorce, appointed Smt.Archana.K.M. as Amicus Curiae to assist the Court on behalf of the respondent.

15. Sri.K.S.Ganesh, learned counsel appearing for the petitioner reiterating the averments stated in the petition, submits that there is no co-habitation between the petitioner and the respondent for considerable period of time since 2015. There is no possibility of reunion and the marriage has been irrevocably/irretrievably broken down between the parties. He further submits that the trial Court only on the account that in the last two lines of examination-in-chief of PW-2, as there is mention that the petition is filed for restitution of conjugal rights, declined to entertain the petition. He further submits that the petitioner has proved the desertion by producing the judgment of acquittal in the criminal case and other documents marked in the case. In these circumstances,

the trial Court ought to have considered these aspects of the matter and granted the decree of divorce as sought in the petition.

16. In contrast, Smt. Archana, learned Amicus Curiae appointed for the respondent, with all vehemence submits that though the petition is filed under Section 13(1)(b) of HM Act, but the contentions made before the trial Court are of cruelty. The trial Court after considering the entire material placed before it especially at paragraph Nos. 14, 17, 18 and 19 clearly held that mere acquittal in the criminal case for the failure of the prosecution to prove the case will not enure to the benefit of petitioner to seek decree of divorce on the ground of desertion.

17. She further stressed on paragraph No. 17 and submits that the trial Court in the said paragraph has stated that the petitioner has failed to prove the allegation of extra marital relationship by cogent evidence and the trial Court rightly observed that mere accusation of relationship with some other person itself is a mental torture and cruelty and a sufficient reason for the wife to

live apart. She further states that, the trial Court in Paragraph No.19 has observed that, the petitioner has contended that the respondent has not supported the case of the prosecution in C.C.No.873/2016, however, no material evidence on record has been produced to rule out the possibility of settlement outside the Court between couples, simultaneously in M.C.No.69/2015 and C.C.No.873/2016, prompting the respondent to turn hostile to the prosecution case in C.C.No.873/2016, at the instance of PW.1 himself. The Trial Court further observed that the petitioner has not assigned any convincing reason for getting his petition in M.C.No.69/2015 dismissed as not pressed. On this the Trial Court has formed an opinion that the petitioner has failed to prove that the respondent herself has willfully deserted him without any reason.

18. She further states that the trial Court considering these facts has come to a right conclusion that, the absence of wife from contesting the case cannot be counted as an exception for the petitioner to seek divorce on his self-serving statements, without

substantially proving the ingredients contained in Section 13(1)(b) of HM Act, especially the explanation provided for the said provision even under the preponderance of probabilities. With this learned Amicus Curiae submits that the appellant has not made out any case to interfere with the Judgment and Decree passed by the Trial Court and sought to dismiss the appeal.

19. It is trite that mere living separately for considerable period of time may not amount to desertion. What is important to be proved is the animus for separate living attributable on the party/spouse living apart. Though the respondent has been placed ex-parte, there is no cogent evidence placed by petitioner to substantiate his claim of desertion by the respondent. The trial Court in paragraph No.17 has clearly stated that despite taking the contention that the respondent is having extra marital relationship, but the petitioner has failed to prove the same by leading substantial evidence and by producing substantial proof in line with such statement and further observed that the allegation of extra marital relationship

without proof would operate as mental cruelty and perhaps this may be the reason for the wife to live apart.

20. We find force in the arguments advanced by Smt.Archana that, the desertion in the absence of animus with the spouse living apart for considerable years in the case on hand since 2015, will not be termed as desertion within the meaning stated under Section 13(1)(b) of HM Act. The explanation appended to the said provision is very specific and clear that desertion means a party to the marriage living apart without there being any reasonable cause and without consent or against the wish of other spouse. As rightly held by the trial Court, there is nothing on record in proof of such animus with the respondent to live apart depriving the petitioner of marital happiness.

21. It is trite that burden is always on the party who approaches the Court for the relief sought in his case and not on the weakness of other side. The party litigant has to prove his case on the strength of his own by substantial evidence to discharge the onus cast on him, irrespective of the question whether the other side has

contested the case or not. A party who has approached the Court has to establish his case on his own, otherwise he is not entitled for any relief sought in his petition. In the case on hand as rightly observed by the trial Court, mere accusation of relationship with some other person itself is a mental cruelty and perhaps is the reasonable cause for the wife to live apart.

22. We find that the trial Court having considered the entire material placed before it dismissed the petition, on the failure of the petitioner-husband to prove the ingredients of desertion a ground for dissolution of marriage, with valid reasons. Accordingly, we find no reason to take a contrary view than the one taken by the trial Court.

23. For the forgoing reasons, this appeal fails and resultantly is **dismissed**.

We place on record our appreciation for the able assistance rendered by Smt. Archana. K.M, learned Amicus Curiae appointed to represent respondent. We

direct the Karnataka State Legal Services to pay a sum of Rs.10,000/- as legal remuneration for the legal assistance rendered by her in the present case.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

RR