

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.543 of 2024

CNR No. BRHC010765532024

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Natwar Nagar Khan, S/o Sri Govind Prasad Khan, Resident of Village-
Bangaon, P.S.- Bangaon, Dist- Saharsa, Bihar.

... .. Appellant/s

Versus

Nikki Kumari, Daughter of Sri Santosh Mishra, Wife of Natwar Nagar Khan,
Presently Residing in Village- Bangaon, P.S.- Bangaon, Dist- Saharsa

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Surendra Kumar Singh, Adv.
For the Respondent/s : Mr. Pramod Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RANA VIKRAM SINGH)

Date : 08-10-2026

The present miscellaneous appeal has been preferred by the appellant under section 19(i) of the Family Courts Act, 1984 against the judgment dated 06.06.2024 passed by the learned Principal Judge, Family Court, Saharsa in Divorce Case No. 26 of 2020, whereby the petition for dissolution of marriage filed by the appellant was dismissed.

2. The appellant husband instituted a Divorce Case No. 26 of 2020 on 04.12.2020, in the Court of Principal Judge, Family Court, Saharsa seeking dissolution of marriage principally on the grounds of cruelty and desertion.

3. The case of the appellant is that his marriage



with the respondent was solemnized on 21.02.2019 according to Hindu religious rites and customs at Bangaon. The parties are Hindus and their matrimonial relationship is governed by the provisions of the Hindu Marriage Act, 1955. The appellant has stated that he was working as an Assistant to Director in regional/Bhojpuri films at Mumbai. A male child, namely, Krishna Katyayan, was born out of the wedlock.

The allegation of cruelty is not an incidental allegation in the petition; rather, it constitutes one of the specific grounds on which dissolution of marriage was sought.

4. The appellant alleged that the respondent wife frequently quarreled with him and with his aged parents and used abusive and insulting language against them. It was further alleged that on certain occasions she misbehaved with and assaulted his parents. The appellant also alleged that the money which he used to provide for the maintenance of the family was being spent by the respondent upon herself and/or being given to her parents.

5. It is further stated that the respondent insisted that the appellant should live separately from his parents and pressurized him to establish a separate matrimonial household. According to the appellant, such conduct caused serious



matrimonial discord.

6. The appellant further pleaded that the respondent left the matrimonial home on 01.07.2020 along with her parents, uncle and brother taking her belongings and ornaments with her. He and his relatives made efforts to persuade her to return to the matrimonial home, but she refused to do so.

7. The father and brothers of the respondent wife misbehaved with the appellant and prevented him from meeting the minor child. The appellant further alleged that the respondent and her family insisted him to become a “*Ghar Jamai*” which he refused.

8. In order to substantiate the ground of cruelty the appellant husband has relied on paragraph nos. 4, 5, 6 and 7 of the plaint wherein a specific case, the appellant has attempted to made out, with respect to the cruelty meted to him by stating:-

- i) The respondent wife insisted upon him to stay with her at her maika;*
- ii) The respondent wife started quarreling with the parents and family members of the appellant and putting pressure for having share in the property;*
- iii) The money sent by the appellant for upkeep and maintenance of the family was spent by respondent wife at her own will without taking care of his parents.*
- iv) The wife left the matrimonial home on 01.07.2020 for her parental home alongwith*



her parents, uncle and brother and at that time she carried away all her belongings including ornaments and clothes and in-spite of best efforts of the appellant husband, he was not allowed to meet his son.

9. In order to substantiate the ground of desertion, the appellant has stated in paragraph no. 7 of the plaint that on 01.07.2020 she deserted her matrimonial home. Thereafter, in-spite of repeated and incessant efforts by the appellant, she was not ready to come back and she also blocked cell number of the appellant by putting it in blocklist.

10. The respondent wife in her written statement filed in the Court of learned Principal Judge, Family Court, Saharsa has categorically denied all the allegations of cruelty and desertion by stating that it was the appellant husband who neglected to take care of her and her son. On account of the callous and indifferent approach of the appellant husband, the respondent had to file a maintenance case in the Court of learned Principal Judge, Family Court, Saharsa vide Maintenance Case No. 34 of 2021 wherein an order was passed to make payment of Rs. 6,000/- per month from the date of filing of the application, but respondent has failed to pay any maintenance amount.



11. It has been asserted by the respondent wife that she always took good care of her parents-in-law and accorded proper respect to them, but it was the appellant husband who had greedy eyes on her property, so he pressurized, incessantly, her to demand further money from her father and on her refusal to do so, she was variously tortured.

12. It has also been stated that the appellant works as Assistant to the Director in Regional/Bhojpuri films and earns a handsome amount, but he completely and deliberately ignored her and her child and thus, failed in his duty as husband and father. At last the respondent wife has categorically stated that she has always been ready and willing to live with the appellant husband, provided he keeps her and her son with all dignity, care, affection and love and the averments made in the application filed for dissolution of marriage, is patently false and far from the truth and it is simply an outcome of a mischievous mind, who in order to make out the case, has concocted a false story by levelling frivolous allegations.

13. The learned Principal Judge, Family Court, Saharsa after having framed the issues, recorded the cross-examination of witnesses produced on behalf of the rival parties and having considered and appreciated the same vide judgment



and decree dated 06.06.2024 and 14.06.2024 respectively, dismissed the suit for dissolution of marriage, holding therein that the appellant has failed to prove the ground of cruelty and desertion.

14. Hence, the present appeal has been preferred assailing the judgment and decree dated 06.06.2024 and 14.06.2024 passed by learned Principal Judge, Family Court, Saharsa.

15. Heard rival submissions on behalf of the parties and perused the evidence and judgment which has been brought on record as well as the grounds of appeal assailing the order impugned.

16. Having given thoughtful consideration to the rival submissions, grounds and documents brought on record in support of the ground as well as the findings recorded by the learned Principal Judge, Family Court, Saharsa, we are of the considered view that the primordial and knotty issue, which requires determination, could be summed-up as follows:-

- i) Whether the appellant has been able to prove the ground of cruelty in terms of Section 13(1)(i-a).*
- ii) What would amount to cruelty, though not defined under the Section 13(1)(i-a) of the Hindu Marriage Act, but authoritative*



judicial pronouncements has set out certain parameters defining the term 'Cruelty' and whether such ingredients and parameters are satisfied in the case at hand.

iii) Whether the claim of 'Desertion', as has been raised by the appellant, is maintainable and could the wife be held to have deserted her husband in the factual conspectus of the case at hand.

Chapter IV of the Hindu Marriage Act, 1955 (in short referred to as "*Act*") contains the provisions with respect to nullity of marriage and divorce which ranges from Section 11 to 18 of the Act.

17. Section 13 specifies the grounds on which a decree for dissolution of marriage may be obtained by either party to the marriage. Section 13(1)(i-a) and 13(1)(i-b) lays down the grounds for divorce in the following words:-

"(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty"

"(i-b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition"

18. Section 13(1)(i-a) does not define what the term "cruelty" would mean. The legal concept of cruelty has varied from time to time and from society to society. In early English law, intention was considered to be an essential element of



cruelty, but in modern law it is no longer so. The modern law takes the view that the objective is to accord protection to the innocent party. **Denning, L.J** has warned that :-

“if the doors of cruelty were opened too wide, we should soon find ourselves granting divorce for incompatibility of temperament”. He further warned that “the temptation must be resisted lest we slip into a state of affairs where the institution of marriage itself is imperilled”.

19. Normal wear and tear of marital life, nagging and scolding and even incompatibility of temperament could not be bracketed within the category of cruelty. These are the normal wear and tear of matrimonial life.

20. Cruelty cannot be defined in a straight jacket formula, but it has to be measured and gathered from circumstances, situations and surroundings within which one is placed and treated accordingly. Thus, there cannot be any water tight compartment defining the term cruelty.

21. Cruelty as a concept defies definition, but it can be judged after taking into account all the facts and circumstances of the case and cannot be determined by fixed rigid formula.

22. In ***Russell vs. Russell***, reported in **(1897) AC 395**, the starting point of definition of cruelty has been given



as :-

“Conduct of such a character as to have caused danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such danger”.

23. Under the Modern Hindu law, cruelty is a ground both for judicial separation and divorce. The Marriage Law (Amendment) Act, 1976 which makes cruelty a ground for divorce, has changed the wording of the clause thus: *“respondent has treated the petitioner with cruelty”*. This change in definition of cruelty post 1976 signifies that an act or omission or conduct which constitutes cruelty as the ground for divorce or judicial separation even if it causes no apprehension of any sort in the mind of the parties.

24. In the case of ***G.V.N. Kameswara Rao vs. G. Jalili*** reported in (2002) 2 SCC 296, the Supreme Court has held that the expression cruelty has been used in relation to human conduct or human behavior. To constitute cruelty the conduct that is complained against should be grave and weighty for arriving at the conclusion that the party cannot be reasonably expected to live with the other spouse.

25. Likewise in ***Naveen Kohli vs. Neelu Kohli*** reported in (2006) 4 SCC 558, the Hon’ble Supreme Court has



observed that *“the conduct complained of should be grave and weighty. It should be such that no reasonable person shall tolerate it. It should not be ordinary wear and tear of marriage”*.

26. A conduct cannot always be called cruel. A person who complains of cruelty has to make out a specific case that a particular conduct amounts to cruelty. In ***A. Jaya Chandra vs. Aneel Kaur*** reported in ***(2005) 2 SCC 22***, the Hon’ble Supreme Court has observed that :-

“expression ‘cruelty’ has been used in relation to human conduct or human behavior to constitute cruelty. The conduct complained of should be grave and weighty for arriving at a conclusion that person/spouse cannot be reasonably expected to live with the other spouse”.

27. Cruelty has been classified into two categories :-

- a) Physical Cruelty; and
- b) Mental Cruelty.

Acts of physical violence by one spouse to another causing injury to body, limb or health or causing reasonable apprehension could be held to be cruelty. It is not necessary to prove actual danger to life, apprehension of the same is enough.



Even one or two acts of physical violence are sufficient to constitute cruelty, but not an isolated instance.

28. Whereas mental cruelty has been defined by Supreme Court in ***V. Bhagat vs. D. Bhagat*** reported in (1994) 1 SCC 337 that :-

“a conduct which inflicts upon the other party, such mental pain and sufferings as would make it not possible for that party to live with the other. In other words, mental cruelty would be of such a magnitude of such a nature that parties cannot reasonably be expected to live together”.

To judge mental cruelty, the Court has to go by *“intensity, gravity and stigmatic impact”* of cruel treatment, even if such cruel treatment is meted out once. (***Vijay Kumar Ramchandra Bhate vs. Neela Bhate***, reported in AIR 2003 SC 2462).

29. Further the mental cruelty has been defined as a state of mind and feeling which is a matter of inference and such inference has to be drawn on facts and circumstances taken cumulatively. Wilful and unjustifiable interference by ones spouse in the sphere of life of another is one species of cruelty in the same manner as rough or domineering or unnatural conduct.



30. However, outburst of temper without rancour, non-payment of interim maintenance or desertion *per se*, does not amount to cruelty. Mere domestic quarrels on account of the presence of mother-in-law in the family would also not constitute mental cruelty (*Yashoda Bai vs. Krishnamoorthy Bhimappa Katavkar* reported in *AIR 1992 Karnataka 368*). Similarly mere misbehavior with parents of husband and other relations does not amount to cruelty (*Smt. Renu vs. Sanjai Singh* reported in *2000 SCC Online All. 87*).

31. The Hon'ble Supreme Court in the matter of *Savitri Pandey Vs. Prem Chandra Pandey* reported in *(2002) 2 SCC 73*, observed in paras 6 of its judgment as under:

“6. Treating the petitioner with cruelty is a ground for divorce under Section 13(1)(i-a) of the Act. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a



reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other. In the instant case both the trial court as well as the High Court have found on facts that the wife had failed to prove the allegations of cruelty attributed to the respondent. Concurrent findings of fact arrived at by the courts cannot be disturbed by this Court in exercise of powers under Article 136 of the Constitution of India. Otherwise also the averments made in the petition and the evidence led in support thereof clearly show that the allegations, even if held to have been proved, would only show the sensitivity of the appellant with respect to the conduct of the respondent which cannot be termed more than ordinary wear and tear of the family life”.

32. In ***Samar Ghosh vs. Jaya Ghosh*** reported in ***2007 (4) SCC 511*** the Hon’ble Supreme Court has held :-

“..... 98. On proper analysis and scrutiny of the judgments of this Court and other courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of “mental cruelty” within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty. 99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost



impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

101. *No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:*

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The



feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the



acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

33. In this backdrop of the legal discussions which authoritatively define and enunciate the law with respect to



cruelty as a ground seeking dissolution of marriage, if we examine the case, at hand, in order to have succinct and punctilious analysis of the case, we come to a definitive and conclusive finding that the instant case does not come within the ambit and parameters of cruelty, so as to make it a ground for dissolution of marriage.

34. The learned Family Court considered the pleadings and evidence led by the parties and did not find the allegations made by the appellant sufficient to establish the grounds pleaded for dissolution of marriage.

35. So far as the allegation concerning money allegedly provided by the appellant to the respondent for family maintenance and allegedly diverted by her to her parents is concerned, the learned Family Court noticed the statement of the appellant in cross-examination.

36. The relevant observation of the learned Family Court, as appearing in the impugned judgment, reads:

“वादी ने अपने प्रतिपरीक्षण के पैरा-33 में कथन किया है कि वह अपनी पत्नी के बैंक खाते में अथवा मनीआर्डर से कभी पैसा नहीं दिया। वादी का कथन है कि वह अपनी पत्नी को हाथ पर पैसा देता था।”

The learned Family Court thereafter observed:

“इससे यह स्पष्ट होता है कि वादी प्रतिवादिनी के भरण-पोषण के लिए पैसा नहीं दिया है, और वादी का यह आरोप कि प्रतिवादिनी उसके द्वारा दिये गये पैसा अपने



माता-पिता को देती थी, साबित नहीं हो सका है।”

The aforesaid finding is material because one of the principal allegations relied upon by the appellant in support of his plea of cruelty was that the respondent has misused the money allegedly provided by him for the family and had given the same to her parents. The learned Family Court found that this allegation had not been established from the evidence.

37. In the present case, the appellant has undoubtedly made several allegations which, according to him, constituted cruelty. The allegations include quarreling with and abusing his aged parents, alleged misbehavior with them, alleged demand that the appellant should live separately from his parents, alleged misuse of money, leaving the matrimonial home, refusal to return despite efforts, and alleged interference by the respondent's family members in the appellant's access to the minor child. The appellant has also specifically described the respondent's conduct as constituting an “extreme degree of cruelty”.

38. However, merely because cruelty has been pleaded does not mean that the matrimonial relief necessarily follows. The pleaded acts have to be considered in the light of



the evidence available on record.

39. The learned Family Court considered the evidence and, particularly, found that the allegation concerning diversion of money by the respondent to her parents was not proved. The appellant himself stated in cross-examination that he had never deposited money in the respondent's bank account or sent money to her through money order and stated that he used to give money to her by hand. The learned Family Court therefore found the allegation regarding diversion of money to the respondent's parents to be not proved.

40. The remaining allegations regarding quarrels, alleged abuse of the appellant's parents, insistence upon separate residence and other matrimonial discord were also matters which were disputed by the respondent. The respondent, on the other hand, attributed the matrimonial discord to dowry demands and ill-treatment at the matrimonial home.

41. The respondent has further relied upon the maintenance proceeding and the order dated 07.06.2023 passed in Maintenance Case No. 34 of 2021, whereby maintenance of Rs.4,000/- per month was awarded to the wife and Rs.2,000/-



per month to the minor child, totaling Rs.6,000/- per month from 03.03.2021.

42. The existence of the said maintenance order is relevant as part of the matrimonial history between the parties. However, the said proceeding cannot by itself determine whether the appellant has established cruelty under Section 13(1)(ia) of the Hindu Marriage Act or desertion under Section 13(1)(ib) of the Hindu Marriage Act. Those grounds have to be examined on the pleadings and evidence available in the matrimonial proceeding.

43. Likewise, the pendency/existence of the criminal complaint referred to by the respondent does not, by itself, establish the respondent's allegations of cruelty unless the same are otherwise proved in accordance with law.

44. On consideration of the entire material placed before the Court, this Court finds no sufficient ground to hold that the finding of the learned Family Court regarding failure of the appellant to establish cruelty is perverse or unsupported by the record.

45. The appellant was required to establish the



ground pleaded by him through reliable evidence. The existence of matrimonial discord or strained relations, by itself, cannot dispense with the requirement of establishing the pleaded conduct constituting cruelty.

46. Thus the issue that the respondent had treated the appellant with cruelty, within the meaning of Section 13(1) (i-a) of the Hindu Marriage Act, 1955 does not appear to be established.

47. Accordingly, the finding of the learned Family Court on the plea of cruelty does not call for interference.

48. Hence, the issues so framed as issue no. (i) and (ii) have accordingly been answered in the aforesaid terms as well as negating the claim of the appellant husband seeking dissolution of marriage on the ground of cruelty. To this extent the findings recorded by learned Principal Judge, Family Court, Saharsa does not warrant any interference by this Court.

49. Now coming to the issue of “*Desertion*”, the term which has been laid down under Section 13(1)(i-b) as one of the grounds for dissolution of marriage in the following terms:-



“(i-b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition”

50. *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”.

51. To constitute a ground for judicial separation or divorce, desertion must be for the entire statutory period of two years, preceding the date of presentation of the petition. It has been said that desertion is a continuing offence; it is an inchoate offence. This means that once desertion begins, it continues day after day till it is brought to an end by the act or conduct of the deserting party.

52. It also means that the offence of desertion is not complete even if the period of two years is complete. It may still be brought to an end by any act or conduct of the deserting spouse. It becomes a complete offence only when the deserted spouse files a petition for a matrimonial relief. But before filing



the petition, if the respondent or the petitioner does something which brings desertion to an end, petition cannot be maintained.

53. In *Pramod Purshottam Patkar vs. Smt. Vasundhara Pramod Patkar* reported in *AIR 1987 Bom 75*, it was held that desertion commenced from the date the wife gave a notice of not returning to the matrimonial home.

54. Desertion as a ground for matrimonial relief differs from other grounds, such as adultery or cruelty, in that the offence founded on the cause of action of desertion is not complete until the petition seeking relief is filed. Desertion is a continuing offence.

55. This character and quality of desertion makes it possible to bring the state of desertion to an end by some act or conduct on the part of deserting spouse. It may be emphasized that the state of desertion may be put to an end not merely before the statutory period has run out, but also at any time, before the presentation of the petition.

56. Desertion may come to an end in the following ways:

- (a) Resumption of cohabitation.
- (b) Resumption of marital intercourse.
- (c) Supervening animus revertendi, or offer of



reconciliation.

a) Resumption of cohabitation :- If parties resume cohabitation, at any time before the presentation of petition, the desertion comes to an end. Resumption of cohabitation must be by mutual consent of both parties and it should imply complete reconciliation. Thus, if the deserting spouse comes and stays in the matrimonial home for a couple of days without intending to reconcile or resume cohabitation, it does not terminate desertion. The desertion would come to an end only when he or she goes to the matrimonial home mentally prepared to resume cohabitation. In a simple language, it means living together as husband and wife. If parties start living together, it is enough to establish resumption of cohabitation. It is necessary to prove that marital intercourse was also resumed.

The fact that wife came to live for one night in the matrimonial home on husband's mother's death does not terminate desertion.

b) Resumption of marital intercourse :- Resumption of marital intercourse is an important aspect of resumption of cohabitation. Sometimes resumption of marital intercourse may terminate desertion. If resumption of marital intercourse was a step towards the resumption of cohabitation, it



will terminate desertion even if the deserted spouse backs out. But, desertion cannot be put to an end by casual acts of intercourse.

c) *Supervening animus revertendi or offer of reconciliation* :- If the party in desertion expresses an intention to return, this would amount to termination of desertion. Animus revertendi means intention to return. Suppose, the deserting spouse wants to terminate desertion by expressing a desire to resume cohabitation, but the deserted spouse prevents the coming back of the deserting spouse. In such a case desertion comes to an end, and it may be that from that time onward it is the deserted spouse who becomes a deserter. In fact, this was what happened in ***Bipinchandra Jaisinghbai vs. Prabhavati*** reported in ***AIR 1957 SC 176***. The wife through her mother-in-law expressed a desire to come back to the matrimonial home, but the husband prevented her coming by sending a telegram.

57. Thus in order to establish the ground of desertion as envisaged under Section 13(1)(i-b) of Hindu Marriage Act coupled with explanation appended thereto, it is required to establish that the deserting spouse has segregated his/her marital relationship with deserted spouse, without any just and reasonable cause as much as is staying separately for



continuous period of not less than 2 years, immediately preceding the presentation of divorce petition. Thus, as per law, it is required to be established by the deserted spouse that:-

(i) deserting spouse is living separately continuously for more than a period of two years and

(ii) the intention of deserting spouse has been to bring the marital relationship/cohabitation, to an end permanently i.e. animus deserendi.

58. In support of such legal requirement, judgment of Hon'ble Supreme Court delivered in case of **Dr.(Mrs.) Malathi Ravi Vs. Dr. B.V. Ravi** reported in **(2014) 7 SCC 640** held that:-

“18. To appreciate the rivalised submissions raised at the Bar, we have carefully perused the petition and the evidence adduced by the parties and the judgment of the Family Court and that of the High Court. The plea that was raised for grant of divorce was under Section 13(1)(i-b) of the Act. It provides for grant of divorce on the ground of desertion for a continuous period of not less than two years immediately preceding the presentation of the petition. The aforesaid provision stipulates that a husband or wife would be entitled to a dissolution of marriage by decree of divorce if the other party has deserted the party seeking the divorce for a continuous period of not less than two years immediately preceding the presentation of the petition. Desertion, as a ground for divorce, was inserted in Section 13 by Act 68 of 1976. Prior to the amendment it was only a ground for judicial



separation.”

59. Thus the statutory requirement is that the respondent must have deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.

60. In the present case, according to the appellant's own pleading, the respondent left the matrimonial home on 01.07.2020, whereas the divorce petition was instituted on 04.12.2020.

61. Thus, even accepting the appellant's pleaded date of separation for the purpose of examining this ground, the statutory period of two years had not elapsed on the date of presentation of the divorce petition.

62. The expression “more than two years” occurring in Ground No. 4 of the memorandum of appeal cannot override the specific factual dates pleaded by the appellant himself.

63. Consequently, the statutory requirement for a decree of divorce on the ground of desertion was not satisfied.

64. Thus, issue no. (iii) as framed in paragraph no.



16 is answered in the negative.

65. On an overall consideration of the pleadings, evidence and findings recorded by the learned Family Court and the precedents of Hon'ble Supreme Court, this Court finds that though the appellant had specifically pleaded cruelty as well as desertion for dissolution for marriage, but has miserably failed to prove the same and as such the conclusion of the learned Family Court, dismissing the divorce case of appellant does not warrant any interference.

66. Thus the findings recorded by the learned Principal Judge, Family Court, Saharsa, therefore, do as not suffer from any such infirmity as would warrant appellate interference.

67. Accordingly, the present Miscellaneous Appeal is dismissed.

68. The judgment and decree dated 06.06.2024 and 14.06.2024 respectively passed by the learned Principal Judge, Family Court, Saharsa in Divorce Case No. 26 of 2020, are hereby affirmed.



69. There shall be no order as to costs.

70. All pending interlocutory application(s), if any, stands disposed off.

71. Let the lower court records, if received, be transmitted back to the court concerned forthwith.

(Rana Vikram Singh, J)

Bibek Chaudhuri, J : I agree

(Bibek Chaudhuri, J)

Supratim/-

AFR/NAFR	AFR
CAV DATE	28.09.2026
Uploading Date	08.10.2026
Transmission Date	NA

