

IN THE HIGH COURT OF JUDICATURE AT PATNA

Nishi Kant Singh @ Amit Kumar Singh

vs.

Sunita Devi

Miscellaneous Appeal No.147 of 2017

24 July, 2025

(Hon'ble Mr. Justice P.B. Bajanthri and Honourable Mr. Justice S.B.

Pd. Singh)

Issue for Consideration

Whether the long separation of 22 years between the spouses, leading to an irretrievable breakdown of the marriage, constitutes mental cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, warranting the grant of a decree of divorce. [Paras 11, 12, 15]

Headnotes

Divorce – Irretrievable Breakdown of Marriage as Cruelty – A long period of continuous separation, where the matrimonial bond is beyond repair and the marriage has become a mere legal fiction, can by itself constitute mental cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. Refusing to sever the marital tie in such a scenario shows scant regard for the feelings and emotions of the parties and perpetuates misery, thereby justifying the dissolution of marriage. [Paras 14(xv), 15, 16]

Permanent Alimony – Remand for Determination – The quantification of permanent alimony under Section 25 of the Hindu Marriage Act, 1955, requires a detailed inquiry into the income, assets, liabilities, and social status of both parties. If such an inquiry has not been conducted by the trial court, the matter must be remanded for a fresh determination based on established principles, including the disclosure of assets and liabilities by both spouses. [Paras 19, 20, 22]

Jurisdiction to Award Alimony Post-Divorce – The court's power to award permanent alimony is not extinguished by the passing of a divorce decree. An application for permanent alimony can be made subsequent to the decree of divorce, and the court continues to have jurisdiction to adjudicate such a claim. [Para 21]

Case Law Cited

Joydeep Majumdar v. Bharti Jaiswal Majumdar, **(2021) 2 RCR (Civil) 289**; Samar Ghosh v. Jaya Ghosh, **(2007) 4 SCC 511**; Rajnesh vs. Neha, **(2021) 2 SCC 324**; Aditi @ Mithi vs. Jitesh Sharma **(2023) SCC OnLine SC 1451**; Pravin Kumar Jain vs. Anju Jain, **2024 SCC OnLine SC 3678**

List of Acts

Hindu Marriage Act, 1955

List of Keywords

Divorce, Mental Cruelty, Irretrievable Breakdown of Marriage, Long Separation, Permanent Alimony, Remand, Assets and Liabilities Disclosure, Section 25 HMA, Matrimonial Bond, Decree of Dissolution

Case Arising From

Judgment and decree dated 23.12.2016 & 05.01.2017 passed by the learned Principal Judge, Family Court, Kaimur (Bhabua) in Matrimonial Case No. 26 of 2006, whereby the appellant-husband's petition for divorce was dismissed.

Appearances for Parties

For the Appellant/s : Mr. Chakravarti Singh, Advocate.

For the Respondent/s : Mr. Amarendra Kumar Singh, Advocate.

Headnotes Prepared by Reporter: - Ms. Akanksha Malviya, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.147 of 2017

Nishi Kant Singh @ Amit Kumar Singh Son of Ram Kishore Singh, Resident of Village- Marichaon, PS- Bhabhua, District- Kaimur Bhabhua, at present Bhabhua Ward No.2 Old, Ward No.25 New, P.S.- Bhabhua, District- Kaimur Bhabhua.

... .. Appellant/s

Versus

Sunita Devi wife of Nishi Kant Singh and daughter of Pyarelal Singh, Resident of Village- Marichaon, PS- Bhabhua, District- Kaimur Bhabhua, at present residing at Mahesua, P.S.- Bhabhua and Ward No.1, P.S.- Bhabhua, District- Kaimur Bhabhua.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Chakravarti Singh, Advocate
For the Respondent/s : Mr. Amarendra Kumar Singh, Advocate

CORAM: HONOURABLE MR JUSTICE P.B. BAJANTHRI
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 24-07-2025

Heard the parties.

2. The appellant has come up in this appeal against the judgment and decree dated 23.12.2016 & 05.01.2017 passed by the learned Principal Judge, Family Court, Kaimur (Bhabua) in Matrimonial Case No. 26 of 2006, whereby the petition filed by the appellant-husband under Section 13(1) of the Hindu Marriage Act, 1955 (in short 'the 1955 Act') seeking dissolution of marriage by a decree of divorce, has been dismissed and the appellant



was directed to pay arrears of interim maintenance immediately.

3. Succinctly, the marriage of appellant was solemnized with the respondent on 27th June 1988 as per Hindu rites and ceremonies. The marriage was duly consummated; and one female child namely Priyakant was born out of the wedlock.

4. The pleaded case of appellant-husband in his petition filed before the Family Court is that his marriage was performed with the respondent on 27.06.1988 in the village Mahesua according to Hindu customs and rites. Out of their wedlock a daughter namely Priyakant was born on 17.09.1992. The village of the respondent is about half kilometer away from the house of appellant where she used to visit frequently without permission of appellant and his parents. After being aggrieved by this behavior of the respondent, when appellant and his parents wanted to know the reason “why she used to visit her parents house frequently?” by which they came to know that she wants to disturb peace of the appellant’s family in the influence of her parents. Due to the



respondent's stay in her parent's house for a long time, the appellant and his family felt socially humiliated and mentally and physically terrified. When the appellant requested the respondent not to visit her parent's house frequently she started quarreling and abusing the appellant and his family members. It is further alleged that in March, 1997, the respondent took all her jewellery and left her matrimonial house. The appellant being fed up with the ill behaviour of the respondent decided not to bring her back to her matrimonial house but due to the intervention of well-wishers and relatives of both the parties, the appellant brought the respondent back to her matrimonial house on 15.07.1998 on her written undertaking (Ext-7) that she would not do anything by which the reputation of her matrimonial family would be at stake. Thereafter, the respondent started living with the appellant but somehow after lapse of two years, the respondent again started misbehaving with the appellant and other in-laws family members and did not allow the appellant to cohabit with her. Ultimately, on 01.06.2002, she left her matrimonial house at the instigation of her



parents and did not return till date. The respondent, thereafter filed Complaint Case No. 670 of 2005 against the appellant and other in-laws family members. In the aforesaid case, the appellant was incarcerated and he was released after grant of bail. The appellant, thereafter filed Matrimonial Case No. 26 of 2006 on 15.04.2006 for dissolution of marriage. The respondent is living separately from the appellant since 01.06.2002. The matrimonial relation between the appellant and respondent has already irretrievably broken down and there is no hope of restoration of their conjugal life.

5. The respondent-wife appeared and filed her written statement and contended that the instant divorce petition by the appellant is not maintainable either in fact or law. She has stated that she never used to come or go to her parent's house without the permission of the appellant and his parents and neither did her parents come to her in-law house and she has no ill-will against the appellant and his parents. She further stated that whatever work was done by the respondent was done in a decent manner and she also states that she used to go to her parents' house



only on occasion with the permission of her husband and in-laws and returned to her in-laws house soon and she never went to her parent's house independently without the permission of her husband. She also did not behave rudely with her husband and in-laws. The respondent has never behaved with the appellant in such a manner that her conduct appears suspicious, rather, the appellant used to behave with the respondent in such a manner that the respondent doubted the character of the appellant but she never expressed this fact and always looked upon her husband with respect. She has also stated that she never took any jewellery to her parent's house and all the jewellery of the respondent was in the custody of her in-laws and her in-law gave the jewellery to the sister of the appellant which was opposed by the respondent, as a result of which, her in-laws family members got angry and started saying absurd things but respondent didn't behave in such manner that the appellant and his parents got hurt. The respondent never deprived the appellant of having physical relations, rather she always stayed with him and even today she is ready to live with the appellant.



The respondent also stated appellant has performed second marriage and when she opposed then the appellant, his parents and sister of the appellant harassed the respondent a lot, behaved badly and they had an intention to kill the respondent which compelled her to take legal action. The respondent also states that she never behaved in a way that caused mental or physical pain to the appellant. Despite this fact that appellant has performed second marriage, the respondent stayed with her husband following her wife dharma and is ready to stay with him even today. The respondent also stated that the parents of the appellant are greedy people and they always keep harassing her for dowry. The respondent also stated that all the allegations made by the appellant in the divorce petition are baseless, unfounded and imaginary, which have no connection with reality. The respondent has requested that the divorce petition filed by the appellant be dismissed.

6. In order to prove his case, the appellant has produced two witnesses namely P.W. 1 Nishi Kant Singh (appellant himself) and P.W. 2 Ram Kishore Singh (father



of appellant).

7. The appellant has also brought on record some documentary evidences which are

*Ext-1 Certified copy of Bhabhua P.S.
Case No. 280 of 2006*

*Ext-2 Certified copy of evidence of
Malti Devi produced in Sessions Trial No.
132 of 2008.*

*Ext-3 Certified copy of order-sheet of
Sessions Trial No. 132 of 2008.*

*Ext-4 Certified copy of orders dated
08.09.2005 and 24.04.2006 passed in
Complaint Case No. 670 of 2005.*

*Ext-5 Certified copy of the order of Sub-
Divisional Judicial Magistrate, Bhabua
passed in Complaint Case No. 670 of 2005*

*Ext-6 Certified copy of undertaking
given in Sessions Trial No. 132 of 2008.*

*Ext-7 Certified copy of Matrimonial
Case No. 43 of 2007.*

*Ext-8 Certified copy of Maintenance
Case No. 32 of 2010*

*Ext-9 Certified copy of order passed in
Sessions Trial No. 132 of 2008.*

8. The respondent-wife has also produced two



witnesses in order to falsify the case of the appellant which are O.P.W-1 Sunita Kumari (respondent herself) and O.P.W-2 Pyare Lal Singh (father of the respondent).

9. The respondent-wife has brought on record the certified copy of order passed in Matrimonial Case No. 43 of 2007 by learned Family Court, Bhabua as Ext-1

10. After conclusion of trial, learned Principal Judge, Family Court, Aurangabad held that appellant has not made out a case for dissolution of marriage. Hence, the divorce petition was accordingly dismissed. The appellant- husband, aggrieved by the said judgment of the learned Family Court filed the instant appeal before this Court.

11. The divorce petition has been filed on the grounds of cruelty and desertion. A perusal of the Impugned judgment would show that the following acts of cruelty and desertion were considered by the Family Court, as proved:-

a) Cruelty:

(i) From oral and documentary evidence, it is evident that the couple got married about 18 years also at



the time of filing the divorce petition. The marriage took place on 27.06.1988 and they are residing separately w.e.f. 01.06.2002.

(ii) Admittedly, the parties got separated on 01.06.2002 and respondent-wife has filed Complaint Case No. 670 of 2005 and Bhabua P.S. Case No. 280 of 2006(Sessions Trial No. 132/2008) against the appellant and other in-laws family members in which the appellant's side were convicted and sent to jail.

(iii) The appellant and respondent have been living separately for about 22 years and this long separation has in fact put them in such a situation that matrimonial bond has broken down beyond repair. There are no chances of the couple living together and such a marriage is now unworkable and can be a source of great misery for the parties, if allowed to be continued.

b) Desertion:

(i) The respondent-wife left her matrimonial house on 01.06.2002 and since then the appellant and respondent are living separately. Though the respondent-wife has filed a case for restitution of conjugal rights on



07.06.2007 which was allowed on 07.06.2009 but the respondent and appellant could not restore their matrimonial relationship.

12. The following question arises for consideration before this Court: "Whether in the present situation, the divorce petition filed by the appellant on the ground of cruelty and desertion has any relevance keeping in view the facts and circumstances of the case.

13. The concept of cruelty within the meaning of Section 13 (1)(i-a) of the Hindu Marriage Act has been explained by the Hon'ble Supreme Court in case of **"Joydeep Majumdar v. Bharti Jaiswal Majumdar"**, **(2021) 2 RCR (Civil) 289**, by observing as under: -

"10. For considering dissolution of marriage at the instance of a spouse who allege mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. The degree of tolerance will vary from one couple to



another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party..."

14. In "**Samar Ghosh v. Jaya Ghosh**", (2007) 4 **SCC 511**, Hon'ble Supreme Court gave illustrative cases where inference of mental cruelty could be drawn even while emphasizing that no uniform standard can be laid down and each case will have to be decided on its own facts.

"85. 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..."

15. On the envil of the aforesaid principle of Hon'ble Apex Court when we examine the present case in the light of the evidences adduced on behalf of the parties, it becomes clear that there is long separation between the parties and the matrimonial bond is virtually beyond repair and in this circumstance, if divorce is not granted, it will not serve the sanctity of marriage. Admittedly, the appellant is paying interim maintenance per month to the respondent. The respondent has married her daughter after completing her education. The respondent herself working as Aanganbari Sevika. There is long separation of 22 years between the parties and allowing them to continue their matrimonial relationship after such a long span of time



will not be proper for both the parties.

16. In view of forgoing discussion, we conclude that appellant-husband has made a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(i-a) of the Hindu Marriage Act, 1955."

17. So far as grant of permanent alimony to the respondent-wife is concerned, learned counsel for the appellant-husband has submitted that appellant is ready to pay a sum of Rs. 7 lakhs to the respondent-wife as permanent alimony whereas the respondent-wife is not agree with Rs. 7 lakhs and she suggested for a sum of Rs. 35 lakhs as permanent alimony. Here, it is relevant to quote relevant portion of our earlier orders dated 01.05.2025 and 26.06.2025:-

01.05.2025

"2. The respondent is paying monthly maintenance from time to time. Respondent Sunita Devi is Agnanbari Sevika and she has married her daughter well and also provide higher education. The appellant has not paid any educational expenses or marriage



expenses of his daughter. Therefore, in order to give quietus to the litigation both the respective parties have agreed for one time permanent alimony settlement to the tune of Rs. 7,000,00/- (Rupees Seven Lakhs). In this regard, both the respective counsels are hereby directed to prepare a draft deed of settlement and exchange and rectify the draft deed of settlement and finalize and bring it on the next date of hearing.”

26-06-2025

“2. In the light of earlier order dated 01.05.2025, appellant - Nishi Kant Singh has brought demand draft for a sum of Rs. 3 lakhs, however, respondent - Sunita Devi is not prepared to accept for one time settlement. Today, she has turned down her earlier admission on 01.05.2025 for permanent alimony, therefore, matter is required to be adjudicated on merits.”

18. Here it is useful to refer to Section 25 of the 1955 Act, which reads thus:

"Section 25. Permanent alimony and maintenance: (1) Any Court



exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the appellant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant (the conduct of the parties and other circumstances of the case), it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent."

19. In the light of the language used in Section 25 of the 1955 Act, it is clear that claim under Section 25 of the Act has to be made on an application furnishing all details regarding his or her own income or other property. Further an opportunity has to be given to the other side to put forth his/her defence.



20. The quantum of maintenance is subjective to each case and is dependent on various circumstances and factors. The Court needs to look into factors such as income of both the parties; conduct during the subsistence of marriage; their individual social and financial status; personal expenses of each of the parties; their individual capacities and duties to maintain their dependents; the quality of life enjoyed by the wife during the subsistence of the marriage; period of marriage and such other similar factors. The grant of permanent alimony should be directed after assessing the social, financial status of both the parties and also after appreciating the burden of liabilities incurred either on husband or wife in light of Hon'ble Supreme Court decision in the case of *Rajnesh vs. Neha* reported in (2021) 2 SCC 324 read with *Aditi @ Mithi vs. Jitesh Sharma* reported in (2023) SCC OnLine SC 1451 read with *Pravin Kumar Jain vs. Anju Jain* reported in 2024 SCC OnLine SC 3678.

21. Be that as it may, Section 25 of the 1955 Act itself envisages that the wife can initiate proceedings for grant of permanent alimony even after the decree of



divorce. Therefore, the court does not become *functus officio* with the passing of the decree and continues to have jurisdiction to award alimony even thereafter.

22. Accordingly, we deem it fit and proper to remand the matter back to the learned Principal Judge, Family Court, Bhabua only with regard to decide the quantum of permanent alimony. The Court below is expected to direct the appellant-husband and respondent-wife to file details regarding their assets and liabilities in light of Hon'ble Supreme Court decision in the case of ***Rajnesh vs. Neha*** reported in ***(2021) 2 SCC 324*** read with ***Aditi @ Mithi vs. Jitesh Sharma*** reported in ***(2023) SCC OnLine SC 1451*** read with ***Pravin Kumar Jain vs. Anju Jain*** reported in ***2024 SCC OnLine SC 3678*** and after analyzing their assets and liabilities, pass appropriate order with regard to the permanent alimony within a period of three months from the date of passing of the judgment. Both parties are directed to co-operate in expeditious disposal of the above matter. In case of non-appearance of either party, proper order shall be passed in accordance with law.



23. In view of the above discussions, M.A. No.
147 of 2017 is hereby disposed of.

24. Pending I.A(s), if any, stand disposed of.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, J)

Shageer/-

AFR/NAFR	AFR
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