

IN THE HIGH COURT OF JUDICATURE AT PATNA
Shri Santosh Kumar Jha

v

Smt. Bandana Kumari
Miscellaneous Appeal No. 223 of 2015
20 September 2024

(Honourable Mr. Justice P. B. Bajanthri & Honourable Mr. Justice Alok Kumar)

Issue for Consideration

Whether the appellant established cruelty and/or desertion as grounds for divorce under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955.

Headnotes

Ground of desertion as sought by the appellant is neither tenable nor sustainable in the light of the fact that on 20.05.2011 the respondent left the matrimonial home and the divorce petition was filed on 05.06.2012. (Para 17)

The statutory requirement for the ground of desertion is not less than two years and the appellant has filed the present case on the ground of desertion without lapse of statutory period of two years. (Para 22)

There is nothing on record which suggests that respondent got the pregnancy terminated at her own will and she is responsible for causing miscarriage. Not a single doctor has been examined that pregnancy has been terminated at the best of respondent, so the question / allegation of termination of pregnancy at the will of respondent is totally without any material information. (Para 22)

Appellant himself has not shown the positive attitude towards his wife for providing her separate accommodation. (Para 23)

The appellant has also not shown his positive attitude to secure the visitation right of his minor girl. (Para 23)

Wife/respondent without any inhibition clearly asserted her readiness and willingness to rejoin matrimonial company of husband/appellant to lead blissful matrimonial life which cannot be a ground of cruelty. (Para 23)

Appeal is dismissed. (Para 26)

Case Law Cited

Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511; Shri Rakesh Raman v. Smt. Kavita, 2023 SCC OnLine SC 497; K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226; V. Bhagat v. D. Bhagat,

(1994) 1 SCC 337; Shobha Rani v. Madhukar Reddi, (1988) 1 SCC 105; Bipin Chandra Jaisinghbhai Shah v. Prabhavati, AIR 1957 SC 176 ;Lachman Utamchand Kirpalani v. Meena alias Mota, AIR 1964 SC 40; Debananda Tamuli v. Kakumoni Katakya, (2022) 5 SCC 459; Adhyatma Bhattar Alwar v. Adhyatma Bhattar Sri Devi, AIR 2002 SC 88S

List of Acts

Hindu Marriage Act, 1955 ,Section 13(1)(ia) – Cruelty; Section 13(1)(ib) – Desertion; Section 9 – Restitution of Conjugal Rights

List of Keywords

Divorce; Cruelty; Desertion; Hindu Marriage Act; Mental Agony; Matrimonial Obligations ; Conjugal Rights;Visitation Rights ; Constructive Desertion; Evidence and Burden of Proof

Case Arising From

Appeal against the judgment and decree dated 19.05.2015 and 27.05.2015 respectively, passed by the learned Principal Judge, Family Court, Darbhanga in Matrimonial Case No. 73 of 2013 / H.M.A. No. 253 of 2012.

Appearances for Parties

For the Appellant: Ms. Shama Sinha, Advocate
For the Respondent: Mr. Sameer Ranjan, Advocate

Headnotes prepared by:
Amit Kumar Mallick, Advocate.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.223 of 2015

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Shri Santosh Kumar Jha S/o Shri Binoda Nand Jha aged about 42 years R/o 51/2, Block-A, Indra Prakash Colony, Burari, Delhi.

... .. Appellant/s

Versus

Smt. Bandana Kumari W/O Shri Santosh Kumar Jha, D/O Shri Harikesh Jha, R/o Rai Saheb Pokhar Near Labour office Laheria Sarai, Darbhanga, Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms.Shama Sinha, Adv.
For the Respondent/s : Mr.Sameer Ranjan, Adv.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 20-08-2024

The present appeal has been directed against the impugned judgment dated 19.05.2015 and decree dated 27.05.2015 passed by learned Principal Judge, Family Court, Darbhanga in Matrimonial Case No. 73 of 2013, H.M.A. No. 253 of 2012, whereby and whereunder the matrimonial case filed by the appellant for dissolution of marriage with the respondent has been dismissed.

2. It is worth to mention that initially, matrimonial case was filed before the Family Court, Rohini, Delhi but on the petition of respondent it was transferred by the Hon'ble Supreme Court to the Principal Judge, Family Court, Darbhanga vide its order dated 11.02.2013 in Transfer Petition



(Civil) No. 1453 of 2012 for trial and expeditious disposal.

3. Briefly stated facts of the appellant's case is that both parties solemnized marriage on 19.11.2003 at Darbhanga according to Hindu Customs and Rites. It is averred that on 17.11.2004 a girl child was born at Darbhanga out of the aforesaid wedlock. It is claimed by the appellant that respondent is an ambitious lady as she has affinity with her father who is the professor in Lalit Narayan Mishra University, Darbhanga and the respondent tried to prove that she is the ideal child of her father and since the date of inception of marriage, respondent has shown rigid and adamant approach and she has non-compromising attitude towards the appellant. The appellant has stated that he entered into relationship just on account of educational background of family of respondent but the respondent did not support the appellant as she is taking care of her father and mother in comparison to appellant. It is claimed by the appellant that appellant brought the respondent to Delhi in April, 2004 but in the month of July, 2004 father of the respondent came and brought her back to Darbhanga. It is further claimed by the appellant that respondent did not agree to return to her matrimonial home from July, 2004 to January, 2008 and during the said period she did not join her matrimonial



home at Delhi and deserted the appellant completely. It is averred that in the month of January, 2008 respondent came to Delhi on the condition that appellant shall make a separate accommodation for the respondent and respondent joined the matrimonial home and stayed till July, 2008 with the appellant and she became pregnant. In July, 2008 she was taken by her father to her parental house and pregnancy of respondent was terminated without knowledge of the appellant. It is also averred by the appellant that respondent was brought back to Delhi in the month of January, 2009 and again she became pregnant and she went to Darbhanga against the wishes of appellant in the month of May, 2009 on the pretext of appearing in some exams and again her pregnancy was aborted without giving any intimation to the appellant and the said conduct of the respondent gave shock and mental cruelty to the appellant. It is also claimed by the appellant that in the month of September 2010, appellant met with an accident and he was living separately and there was nobody to take care of him but respondent did not join the company of the appellant despite being persuasion made by the appellant. It is also claimed that the respondent joined the appellant in January, 2011 and again she became pregnant and respondent went to Dr. Amita Dhawan



(Gyneacologist) for routine check up who confirmed the pregnancy of about nine weeks on 21.04.2011 and again on the pretext of visiting her parents, respondent went to her parents house and left Delhi on 20.05.2011 and after reaching her parents house, respondent aborted her pregnancy against the wishes of the appellant. It is further claimed that appellant reached Darbhanga, which is also native place of appellant and he approached the respondent at her parents' house but the respondent flatly refused to join the company of the appellant and she did not accompany the appellant, even after a return Railway ticket was arranged for her. Despite persuasion made by the appellant, all the efforts became futile. It is claimed that respondent is determined to desert the appellant and it has been alleged that the attitude of the respondent clearly indicates that she is not willing to join her husband's matrimonial house rather she is staying at her parental house. It has been claimed that cruel and neglecting behaviour of the respondent caused mental agony to the appellant and said attitude has humiliated the appellant in the eyes of relatives and friends. It has been asserted that appellant has not condoned the act of cruelty and desertion of the respondent and the constant harassment by the respondent subjected the appellant to extreme cruelty, rendering



all the appellant's efforts futile.

4. Pursuant to the notice, both parties appeared and Court has taken effort for amicable settlement between both the parties but of no avail.

5. Respondent had filed written statement. She admitted the factum of marriage as well as birth of a female child and she denied all the allegations made against her. She has stated that respondent was carrying pregnancy and she was under treatment of lady doctor and she was advised to take complete rest but she was compelled by the appellant to attend Grih Pravesh at Delhi and ignoring the advice of the doctor, she attended Grih Pravesh. She has stated that during critical condition respondent was compelled by her in laws including the appellant-husband to do all domestic work including washing of clothes of all family members followed by taunt. Respondent was brought back to her parents' house at Darbhanga where she gave birth to a female child on 17.11.2004 in the clinic of Dr. Shail Kumari as previous doctor was not available at Darbhanga and the child was born by caesarean operation and all the cost was paid by the respondent's father. Except birth of female child on 17.11.2004, the other averment of the appellant is denied by the respondent. It has been asserted



by the respondent that respondent insisted to pursue her study in Delhi but appellant was not ready to do so rather he began to press to stop her further study and respondent could not understand the behavioral change and she continued to live with the appellant. During pregnancy she came to her parents' house at Darbhanga. Respondent has further claimed that despite purchase of house in Sant Nagar at Delhi, the appellant did not shift his residence and purchased house and remained stayed in the house situated at Indraprasth Colony at Delhi and the statement made in para-3 regarding residence of the appellant and the respondent is not denied. The respondent has stated that appellant and his family member did not treat well with the respondent and respondent spent such miserable life for some months with expectation of behavioral change of appellant and his family members and respondent requested the appellant to drop the respondent at her parents house along with the child, when no change of behaviour was witnessed and the respondent was threatened to live as a maid/servant in the family of the appellant and she was dropped at her parental house and she got her child admitted in local public school for her proper study. It is alleged that due to intervention and pressure from the appellant, his family members and relatives, the respondent's



father observing that there was no tradition of remarriage within the Brahmin Family, agreed to allow the respondent and her child to move to Delhi. Consequently, the respondent and her child relocated to Delhi. Since 2009 respondent faced cruel behaviour of the appellant and his family members and she tolerated all the behaviour for better future. It has been stated that during the period of stay at Darbhanga, entire expenses was incurred by the father of the respondent and the appellant had not spent single penny and appellant gave threatening to the respondent and her father to allow the respondent along with child to go to Delhi, otherwise appellant will bring divorce case and respondent was brought back along with her child in January, 2011 and established happy conjugal life with the appellant and respondent again became pregnant in the month of February, 2011 and she was checked up by Dr. Amita Dhawan Sahdev on 23.04.2011 and pregnancy of respondent was confirmed and medicines were prescribed and bed rest was suggested. Neither appellant nor family member provided medical aid rather they forced the respondent to do hard domestic work, culminating into abortion at New Delhi. The respondent has stated that appellant intends to break the relationship with respondent, seeking reason, either one pretext



or another as the appellant is a lawyer and respondent has submitted that the averment made by the appellant in divorce petition is totally false and fabricated, except admitted in the written statement.

6. Learned counsel for the appellant submitted that judgment and decree passed by the concerned court is bad in law as well as on facts as same is based on assumption, surmises and conjectures. Learned counsel further submitted that concerned court has committed serious error of law in not appreciating the fact that between April 2004 to May 2011 respondent joined the company of appellant thrice after certain intervals and during all the three times, her visit at Delhi, she conceived but every time she returned to Darbhanga against the will of the appellant and got her pregnancy terminated there and the willful termination of pregnancy has caused immense pain and mental torture to the appellant and completely shattered the appellant. The appellant met with an accident in September, 2010 but respondent did not join the appellant causing shock and mental agony to the appellant. Learned counsel further submitted that in May, 2011 respondent left the matrimonial home without any reason and she never intended to stay with her husband and the finding of the family court is



erroneous, perverse and same is liable to be set aside.

7. Learned counsel for the appellant has placed reliance on the judgment of Hon'ble Supreme Court in the case of ***Samar Ghosh v. Jaya Ghosh*** reported in (2007) 4 SCC 511 in which the Hon'ble Supreme Court has observed that unilateral refusal of one spouse to co-habit without any reasonable cause constitutes mental cruelty. On the issue of cruelty, learned counsel has also cited the judgment of ***Shri Rakesh Raman vs. Smt. Kavita*** reported in 2023 SCC OnLine SC 497. Learned counsel has also cited the judgment of Hon'ble Supreme Court in ***K. Srinivas Rao v. D.A. Deepa*** reported in (2013) 5 SCC 226 in which the Hon'ble Supreme Court has held that false accusations and defamatory statements by one spouse against the other amounts to mental cruelty. Learned counsel has also cited the decision of ***V. Bhagat v. D. Bhagat*** reported in (1994) 1 SCC 337 in which the Hon'ble Supreme Court has held that baseless allegations constitute mental cruelty. Learned counsel also cited judgment of ***Shobha Rani v. Madhukar Reddi*** reported in (1988) 1 SCC, 105 in which it has been held that condonation is conditional and if the acts of cruelty continue, the initial condonation stands revoked.

8. In the light of aforesaid judgments, learned



counsel for the appellant submitted that the appellant has made out a case on the ground of cruelty. She has submitted that ground of desertion has not been pressed so, there is no reason to seek divorce on the ground of desertion and present matrimonial case is not on the issue of desertion as same has not been pressed in the court of Principal Judge, Family Court, Darbhanga also.

9. Learned counsel for the respondent submitted that appellant has filed petition for dissolution of marriage under Section 13(1) (ia) & (ib) of the Hindu Marriage Act, 1955 as amended upto date for grant of divorce. He further submitted that from perusal of the divorce petition, it is crystal clear that appellant has sought divorce on the ground of cruelty and desertion but the appellant's counsel has stated that desertion is not a ground for divorce in the present divorce petition as the same ground has not been pressed during the course of argument before the Principal Judge, Family Court. The divorce petition is quite vague and there is no specific date, time and place referred by the appellant which constitutes cruelty. Learned counsel for the respondent submitted that appellant has made allegation that when he met with an accident in September, 2010, the respondent did not join him but the said



allegation is merely based on conjectures as no document regarding his treatment has been produced in the Family court. Appellant has specifically referred one specific date where it is mentioned that on 20.05.2011 she left the matrimonial home without any reason and since then she was adamant not to join the appellant. Except the said date, the appellant has not mentioned any solitary circumstance which constitutes cruelty with regard to time, place and occurrence and even the allegation made on particular date i.e. 20.05.2011, which is just a bald statement. He further submitted that there is nothing on record which goes to tell that appellant has taken efforts and the said efforts were not reciprocated by the respondent-wife rather the appellant has left respondent at her father's house. He further submitted that appellant has submitted written argument in which it has been specifically mentioned that respondent visited Delhi after great persuasion on the condition that two rooms would be constructed as per her desire but during course of evidence appellant has not made any statement in support of the bald statement made in the plaint. He further submitted that in rejoinder of written statement the appellant has only reiterated the version of plaint. The contention of learned counsel for the appellant that she has not pressed the ground of desertion but



the divorce petition is filed also on the ground of desertion. The appellant cannot overcome the statutory period which is mandatorily required under Section 13 (1) (ib) of the Hindu Marriage Act, 1955 and the counsel of appellant has cleverly taken a plea that the ground of desertion has not been raised during the course of argument in trial court. The statutory period cannot be overcome by shirking from the responsibility, by not pressing the ground of desertion. As per the claim of appellant-husband, respondent has left the matrimonial home in May, 2011 and divorce petition is filed on 05.06.2012, on that score, the statutory period has not been elapsed for the purpose of seeking divorce on the ground of desertion. The appellant has asserted himself that respondent has joined the matrimonial home between the year 2008 to 2011 as per verbatim of assertion made in the plaint of divorce. Except on May, 2011 which is a unilateral statement of appellant, which is not supported by any cogent evidence, that appellant has taken best efforts to bring back his wife. The respondent is ready to join her husband as same is revealed from the written statement and the evidence adduced by the respondent and her father. In this way, appellant himself has not proved the allegation of cruelty against the respondent. It is admitted fact that respondent joined



the matrimonial home at Delhi rather appellant left the respondent at her father's house, escaping from the responsibility to maintain his wife and child. The allegation made in the plaint is merely a vague and bald statement which has no basis to prove the allegation of cruelty.

10. From the side of appellant, three witnesses have been examined. AW-1/Santosh Kumar Jha is appellant himself, AW-2/Sanjay Kumar Jha is brother of the appellant and AW-3 is Bachchaji Thakur. The appellant has also relied upon certain documents which are as follows:-

Ext.1-Transfer petition bearing No. 1453 of 2012.

Ext. 2-RTI reply dated 30.07.2012.

Ext. 2/1-RTI reply dated 23.08.2012.

Ext.3- Certificate issued by Dr. Amita Dhawan Sahdev dated 16.10.2013.

On behalf of respondent, two witnesses have been examined. OPW-1/Bandana Kumari is respondent herself and OPW-2/Rishikesh Jha is father of the respondent. The respondent has relied upon report of ultra sound of respondent which was done in Sharma Ultrasonographic Services dated 31.07.2008, which stands marked as Ext.A.

11. In the light of given facts and circumstances of the case, the question arises:-



whether the appellant has proved the case on the ground of cruelty as well as desertion in the light of given evidence and the materials available on record or not ?

12. It is necessary to analyze the evidence adduced by AW-1/Santosh Kumar Jha who is appellant himself. In his evidence, he has asserted the factum of petition and during course of examination he has stated that girl child took birth on 17.11.2004 and the respondent has not fulfilled the matrimonial obligation on account of her inclination towards her father. The appellant has admitted that the respondent deliberately neglected and deserted the appellant finally on 20.05.2011 with an intention not to join the company of the appellant and during the period between 2008 to 2011 respondent became pregnant thrice and she got her pregnancy terminated without the consent of the appellant.

13. From the evidence adduced by the AW-1/appellant it is crystal clear that both parties resumed conjugal life up to May, 2011 as same is admitted in the pleading of the appellant as well as evidence adduced during trial. The appellant himself has pleaded that respondent came to Delhi on the condition that appellant shall make a separate accommodation but the said pleading of the appellant has not found place during



the course of evidence adduced by the appellant. It is also crystal clear from the evidence of appellant that both parties joined matrimonial life up to May, 2011 and one daughter took birth out of the aforesaid wedlock and since May, 2011 the respondent did not return to her matrimonial home. From perusal of the material available on record, there is nothing to show that appellant has made any effort to bring back his wife, though, in his pleading he has asserted that he has arranged return ticket to Delhi for taking back his wife/respondent but nothing is found that appellant/husband has made arrangement to take his wife to matrimonial home and even he has not sought visitation right for his minor daughter who is in custody of the respondent.

14. AW-2 and AW-3 have also reiterated the version of AW-1.

15. OPW-1 is respondent herself. She has reiterated the factum of marriage and birth of a female child who lived under the care and protection of respondent. She further stated that appellant went Delhi, leaving her alone during the period of pregnancy. She has reiterated the version that she joined her matrimonial home. She has stated that in 2011 she conceived and she was pressurized for domestic work as a



result of which she suffered abortion. She has stated that neither she nor her daughter was being maintained by the appellant and she was totally dependent on her parents and appellant had left her alone. She has stated that appellant wanted to escape from the responsibilities of respondent and left her at her father's house. She has stated that she used to go to Delhi rather appellant left her at Darbhanga. She denied all the allegations made against her by the appellant. She has denied the suggestion that she did not want to live with her husband.

16. OPW-2 has also reiterated the version of OPW-1. It has been specifically stated that the respondent is always ready to lead conjugal life with full dignity.

17. From perusal of the record, it is crystal clear that ground of desertion as sought by the appellant is neither tenable nor sustainable in the light of the fact that on 20.05.2011 the respondent left the matrimonial home and the divorce petition was filed on 05.06.2012.

18. In order to prove desertion, relevant Section is 13(1)(1-b) of the Hindu Marriage Act, 1955 which reads as under:-

13. Divorce-(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition



presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

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

Explanation- In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

19. When we are referring the ground of desertion, we find that there are two kinds of desertion:-

(i) actual desertion and (ii) constructive desertion.

In the case of desertion, it is settled by the Hon'ble Supreme Court through judicial pronouncement and it has been interpreted that (what could be said to be "Desertion" in the divorce proceedings filed under Section 13 of the Hindu Marriage Act, 1955). The expression "Desertion" has come up under the judicial scrutiny of Hon'ble Supreme Court in ***BipinChandra JaiSinghBai Shah vs. Prabhavati*** (AIR 1957 SC 176) which was considered in the case of ***Lachman***



UtamChand Kirpalani vs. Meena alias Mota (AIR 1964 SC 40). In ***BipinChandra JaiSinghBai Shah*** (*supra*) it has been held that if a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion. The Hon'ble Supreme Court collating the observations made in the earlier decisions, stated its view as under:-

“Collating the aforesaid observations, the view of this Court may be stated thus: Heavy burden lies upon a petitioner who seeks divorce on the ground of desertion to prove four essential conditions, namely, (1) the factum of separation; (2) animus deserendi; (3) absence of his or her consent; and (4) absence of his or her conduct giving reasonable cause to the deserting spouse to leave the matrimonial home.”

20. The Hon'ble Supreme Court in the case of ***Debananda Tamuli vs. Kakumoni Katakya*** reported in (2022) 5 SCC 459 at para 8 held as under:-

8. The reasons for a dispute between husband and wife are always very complex. Every matrimonial dispute is different from another. Whether a case of desertion is established or not will depend on the peculiar facts of each case. It is a matter of drawing an inference based on the facts brought on record by way of evidence.



21. The Supreme Court in the case of ***Adhyatma Bhattar Alwar v. Adhyatma Bhattar Sri Devi*** reported in AIR 2002 SC 88 has observed as under:-

"The clause lays down the rule that desertion to amount to a matrimonial offence must be for a continuous period of not less than two years immediately preceding the presentation of the petition. This clause has to be read with the Explanation. The Explanation has widened the definition of desertion to include 'wilful neglect of the petitioning spouse by the respondent. It states that to amount to a matrimonial offence desertion must be without reasonable cause and without the consent or against the wish of the petitioner. From the Explanation it is abundantly clear that the legislature intended to give to the expression a wide import which includes wilful neglect of the petitioner by the other party to the marriage, therefore, for the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly, no elements are essential so far as the deserted spouse is concerned: (1) absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively and their continuance throughout the statutory period."

22. The appellant has asserted the ground of



desertion in his pleading besides the ground of cruelty. During course of argument, the counsel of the appellant has stated that said ground has not been pressed earlier but the question is that when appellant has asserted the ground of desertion in his pleadings and in his evidence then it is settled law that no one can go beyond the pleadings. The statutory requirement for the ground of desertion is not less than two years and the appellant has filed the present case on the ground of desertion without lapse of statutory period of two years. In this way, it is crystal clear that appellant is very hasty in his approach to seek divorce either at one pretext or another. The said ground of appellant is neither tenable nor sustainable in the light of the facts and circumstances of the case. From perusal of the record, it transpires that both parties one or another occasion resided together and fulfilled the matrimonial obligation upto May, 2011 but appellant has made allegation that the respondent during course of leading matrimonial life conceived thrice in the year 2008, 2009 and 2011 and there is nothing on record which suggests that respondent got the pregnancy terminated at her own will and she is responsible for causing miscarriage. Not a single doctor has been examined that pregnancy has been terminated at the best of respondent, so the question / allegation



of termination of pregnancy at the will of respondent is totally without any material information.

23. Non-cooperative attitude of the husband can be witnessed from his own asserted fact that he has stated during pleading that respondent put precondition to join the appellant if separate accommodation is provided to her but during adducing evidence in trial court, no whispering has been made regarding the statement asserted in the pleading. In this way, the appellant himself has not shown the positive attitude towards his wife for providing her separate accommodation. The appellant himself has asserted in his pleading that he has made arrangement for returning ticket to secure arrival of respondent to matrimonial home but during course of adducing evidence, no document has been produced which goes to show that appellant made an arrangement to secure arrival of his wife/respondent at her matrimonial home. The appellant has also not shown his positive attitude to secure the visitation right of his minor girl. From perusal of the record, it also transpires that appellant has used his legal acumen to escape away from the liability of maintaining his wife and daughter by hurriedly filing divorce petition without waiting the statutory period for invoking the ground of desertion. On the other hand, the



respondent has denied the allegation that she left her husband permanently with an intention not to join rather she denied the suggestion of not joining her husband company and from perusal of the record it also transpires that she is ready to join her husband and on earlier occasion also the respondent has joined the company of the appellant and she has never left her husband rather husband has left her at Darbhanga along with child. On the basis of material available on record, it is clear that appellant has not proved regarding the efforts that has been taken by him to bring his wife back at the matrimonial home rather he has made bald statement that he tried his best to bring his wife back. It is the case of the appellant that between the year 2008 to 2011 respondent/wife visited Delhi and each time during her stay, she became pregnant and the relation between husband and wife clearly denotes that they are living their own conjugal life and appellant made allegation but this allegation has no meaning at all when he himself admitted that respondent joined matrimonial life and during course of normal conjugal life both have enjoyed married life and the allegation of cruelty as alleged by the appellant is without having any basis. On the basis of material available on record, it is crystal clear that appellant-husband has not taken effort even to file application



under Section 9 of Hindu Marriage Act for restitution of conjugal right and even he has not taken care for his child as he has not sought any visitation right so that he can see his minor child. From the perusal of the pleading and evidence of the appellant, it is crystal clear that he has made a calculative device to frame allegations in order to suit the divorce proceedings. In other words, he himself has not taken any effort to bring back his wife. From the material available on record, it is clear that the wife/respondent without any inhibition clearly asserted her readiness and willingness to rejoin matrimonial company of husband/appellant to lead blissful matrimonial life which cannot be a ground of cruelty.

24. Learned counsel for the appellant cited the judgments on the ground of cruelty, as discussed above, but the facts and circumstances of the present case is totally different from the cases cited by the counsel of the appellant and the said referred cases do not help the appellant in the present case as appellant himself has not taken care of his wife/respondent and child. He has filed petition under Section 13(1)(ia) & (ib) of the Hindu Marriage Act, 1955 for dissolution of marriage on the ground of cruelty and desertion. The appellant's hasty approach can be witnessed when he has taken shelter of desertion for the



purpose of divorce wherein statutory period of two years has not been elapsed. When it is found by the counsel of the appellant that statutory period is not over, then learned counsel jumped to take the shelter of cruelty by citing the cases, as mentioned above but the cases of cruelty, as cited, are totally different from the facts and circumstances of the present case as respondent joined the company of the appellant rather appellant failed to bring his wife back and left her alone at her father's house with her daughter and the effort as pleaded by the appellant in his pleading is totally bald statement as appellant has failed to prove the effort which has taken by him to bring his wife back. In the pleading, the appellant's allegation are totally vague as not a solitary circumstance is mentioned with the specific date and time for constituting the act of cruelty. From the perusal of pleading of the appellant, it is found that appellant has not made any specific date, time and place of occurrence in the allegation made against the respondent/wife to show that she has committed act of cruelty rather appellant has stated very vague statement that between the year 2008 to 2011 respondent has joined the appellant and she conceived thrice and she got aborted her pregnancy without consent of the appellant but there is nothing on record to show that pregnancy was



terminated at the behest of respondent. One thing is quite clear that respondent has joined the matrimonial home and from the pleading of respondent, it is crystal clear that she is willing to join the appellant and she has denied that she left the matrimonial home rather appellant left her at her father's house. Besides the aforesaid act of husband/appellant, there is nothing on record to show that he has taken any effort to settle the matrimonial dispute. Even his pleading of separate accommodation as per desire of respondent, does not find any place in the evidence of the appellant. In this way, pleading of the appellant is totally vague and same is merely a bald statement having no basis.

25. In the light of aforesaid facts and circumstances of the case, contention of learned counsel for the appellant is neither tenable nor sustainable in the light of given evidence and material available on record.

26. On all counts keeping in view the discussions made in the foregoing paragraphs, we find that there is no merit in the present appeal warranting any interference in the impugned judgment. The Principal Judge, Family Court, Darbhanga has rightly dismissed the matrimonial case of the appellant seeking divorce. The present appeal is dismissed



accordingly, affirming the impugned judgment and decree.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
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