

IN THE HIGH COURT OF JUDICATURE AT PATNA

Ram Krishna Kumar @ Nanhku Pandey

Vs.

Geeta Devi

Miscellaneous Appeal No. 95 of 2016

7 August 2025

(Hon'ble Mr. Justice P. B. Bajanthri & Hon'ble Mr. Justice S. B. Pd. Singh)

**Issue for Consideration**

1. Whether the decree for divorce rejected on the grounds of cruelty and desertion by the Family Court, requires interference?
2. Whether the impugned judgment of Principal Judge, Family Court, Patna is just, proper and sustainable/tenable in the eyes of law.

**Headnotes**

Hindu Marriage Act, 1955—Section 13—Divorce—on the grounds of cruelty and desertion—marriage of appellant was solemnized with the respondent as per Hindu rites and ceremonies—marriage was duly consummated; however, no child was born from the wedlock—divorce petition was dismissed by learned Principal Judge as the appellant has not made out his case for divorce.

**Held:** appellant-husband has failed to prove the cruel behaviour of the respondent towards him and his family members by the strength of cogent, relevant and reliable evidence, while burden of proof of cruelty rests upon the appellant-husband—ground of desertion is concerned, it is the case of the appellant that marriage of the appellant with respondent was solemnized but appellant has also not filed any petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights which further proves this fact that appellant had not taken any efforts to bring back the respondent into her matrimonial home which creates serious doubt regarding his allegation in the divorce petition—appellant-husband has failed to prove that the

respondent-wife has herself deserted the appellant husband—no grave error of law and illegality in appreciating the evidences available on the record—appeal dismissed.

**(Paras 14, 16, 19, 20)**

#### **Case Law Cited**

Samar Ghose vs. Jaya Ghose, **2007 (4) SCC 511**; Narain Ganesh Dastane vs. Sucheta Naraih Dastane, **AIR 1975, 1534**; Jagdish Singh vs. Madhuri Devi, **(2008) 10 SCC 497**—**Relied Upon.**

#### **List of Acts**

Hindu Marriage Act, 1955.

#### **List of Keywords**

Divorce; marriage; dissolution of marriage; cruelty and desertion; decree of dissolution of marriage

#### **Case Arising From**

From judgment and decree dated 19.11.2015 passed by the learned Principal Judge, Family Court, Aurangabad in Matrimonial Case No. 150 of 2014.

#### **Appearances for Parties**

**For the Appellant:** Mr. Shivendra Prasad Singh, Sr. Advocate; Mr. Purushotam Sharma, Advocate; Mr. Gaurav Kumar, Advocate; Mr. Mukund Kumar, Advocate; Mr. Kumar Sameer, Advocate.

**For the Respondent:** Mr. Parashuram Singh, Advocate.

Headnotes Prepared by Reporter: Abhas Chandra.

#### **Judgment/Order of the Hon'ble Patna High Court**

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.95 of 2016**

Ram Krishna Kumar @ Nanhku Pandey son of Satyanarayan Pandey R/o villagePost- Shams hernagar, P.S.- Daudnagar, District- Aurangabad.  
... .. Appellant/s

Versus

Geeta Devi Wife of Ran Krishan Kumar@ Nanhku Pandey, Daughter of Ram Kripal Sharma, R/o Village- Kodra, P.O.- Kodra, P.S.- Paliganj, District- Patna.  
... .. Respondent/s

**Appearance :**

For the Appellant/s : Mr.Shivendra Prasad Singh, Sr. Advocate  
Mr. Purushotam Sharma, Advocate  
Mr. Gaurav Kumar, Advocate  
Mr. Mukund Kumar, Advocate  
Mr. Kumar Sameer, Advocate  
For the Respondent/s : Mr. Parashuram Singh, Advocate

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

**Date : 07-08-2025**

Heard the parties.

2. The appellant has come up in this appeal against judgment and decree dated 19.11.2015 passed by the learned Principal Judge, Family Court, Aurangabad in Matrimonial Case No. 150 of 2014, whereby the petition filed by the appellant under Section 13 of the Hindu Marriage Act, 1955 (in short 'the 1955 Act') seeking dissolution of marriage by a decree of divorce, has been dismissed.

3. Succinctly, the marriage of appellant was



solemnized with the respondent on 04.05.1984 as per Hindu rites and ceremonies. The marriage was duly consummated; however, no child was born from the wedlock.

4. The pleaded case of the appellant in his petition filed under Section 13 Act was that the appellant was married with Geeta Devi (respondent) on 04.05.1984 according to Hindu rites and rituals but just after marriage she started quarreling for a separate house as she did not want to live in joint family. The respondent was a quarrelsome lady and she had never been a good relation either with the appellant or other in-laws family members. Further, the case of the appellant is that in order to save his matrimonial life, he started residing separately in other house with the respondent but again she started quarreling with the appellant to transfer his property in her favour. The appellant had no issue out of the wedlock, hence, he spent his money and consulted several doctors for treatment of his wife. The respondent has filed a complaint being Case No. 257 of 2013 before State Women Commission, Patna and she has also filed Daudnagar P.S. Case No. 336 of 2013 against the appellant under Sections 341,323,498(A) and



379 of the Indian Penal Code in which the appellant is on bail. The matrimonial relation between the appellant and respondent has already irretrievably broken down and there is no hope of restoration of their conjugal life. Hence, the divorce petition was filed for dissolution of marriage between the parties.

5. The respondent-wife appeared and filed her written statement and has submitted that the application filed on behalf of appellant is not maintainable and all the allegations levelled against her by the appellant are baseless and without any evidence. The respondent is a competent house wife to serve her husband properly and having good behaviour and character. The appellant is member of District Board, Sasaram and he runs a Petrol Pump and has illicit relation with other lady and when the respondent-wife made objection, she was brutally assaulted and ousted from her matrimonial house. The appellant has illicit relation with another lady without her consent. The appellant is earning Rs. 1,50,000/- per month from his all sources and respondent is residing at her *Maike* since 2013 but he has not paid a penny to the respondent for her maintenance.



The respondent had never given threat, nor ill behaved, humiliated or quarreled with any in-laws family members and all the allegations made against her are fake with a view to take divorce from her. Hence, the divorce petition is liable to be dismissed.

6. 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.

7. It is submitted by learned counsel for the appellant that the Family Court has failed to appreciate the cruelty meted out to the appellant. The respondent is a quarrelsome lady and she herself does not want to join the matrimonial relationship with the appellant. The respondent only alleges illicit relationship of the appellant with another ladies but she has not brought on record any proof to authenticate her claim. Instead, the respondent has filed a complaint being Case No. 257 of 2013 before State Women Commission, Patna and also filed Daudnagar P.S. Case No.



336 of 2013 against the appellant with false allegations only with a view to harass, humiliate and malign the social prestige of the appellant. The seriousness of the respondent-wife is apparent from the fact that during course of evidence in Divorce Case, she has left the *pairvi*, hence the case was proceeded *ex-parte*. The appellant also alleges that respondent has not filed any petition for restitution of conjugal rights. It is therefore submitted that these issues suffice to say that appellant was facing humiliation and embarrassment in the family circle and these issues would fall under mental torture and leads to cruelty at the hands of the respondent-wife.

8. It is submitted by learned counsel for the respondent-wife that learned Family Court has rightly dismissed the divorce petition filed on behalf of the appellant. All the allegations levelled against the respondent in the divorce petition is concocted, baseless and without any proof. In fact, the appellant has illicit relationship with many ladies and when she protested, she was assaulted and ousted from her matrimonial house. The appellant is earning Rs. 1,50,000/- per month from his all sources and



respondent is residing at her *Maike* since 2013 but he has not paid a penny to the respondent for her maintenance. The respondent had never given threat, nor ill behaved, humiliated or quarreled with any in-laws family members and all the allegations made against her are fake with a view to take divorce from her.

9. In view of the submissions made on behalf of the appellant and the evidences brought on record, the main points for determination in this appeal are as follows:-

*(i) Whether the appellant is entitled to the relief sought for in his petition/appeal.*

*(ii) Whether the impugned judgment of Principal Judge, Family Court, Patna is just, proper and sustainable/tenable in the eyes of law.*

10. The appellant has prayed for divorce in Matrimonial Case No. 150 of 2021 on the ground of cruelty and desertion.

11. So far as, the ground of cruelty for taking divorce is concerned, the word 'cruelty' has not been defined in specific words and language in the Hindu Marriage Act, 1955, but it is well settled position that





cruelty is such of character and conduct as cause in mind of other spouse a reasonable apprehension that it will be harmful and injurious for him to live with O.P.- respondent.

12. It is observed by the Hon'ble Apex Court in leading case of Samar Ghose vs. Jaya Ghose reported in 2007 (4) SCC 511 that a 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. More trivial irritations, quarrel, normal wear and tear of the married live which happens in day-to-day live would not be adequate for grant of divorce on the ground of mental cruelty.

13. In this context, we are tempted to quote the golden observation made by the Hon'ble Apex Court during decision in case of Narain Ganesh Dastane vs. Sucheta Naraih Dastane reported in, AIR 1975, 1534, which are as follows:-

*"One other matter which needs to be clarified is that though under Section 10(1) (b), the apprehension of the petitioner that it will be harmful or injurious to live with the*



*other party has to be reasonable, it is wrong, except in the context of such apprehension, to import the concept of a reasonable man as known to the law of negligence of judging of matrimonial relations. Spouses are undoubtedly supposed and expected to conduct their joint venture as best as they might but it is no function of a court inquiring into a charge of cruelty to philosophise on the modalities of married life. Some one may want to keep late hours of finish the day's work and some one may want to get up early for a morning round of golf. The court cannot apply to the habits or hobbies of these the test whether a reasonable man situated similarly will behave in a similar fashion. "The question whether the misconduct complained of constitutes cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an Individual under one set of circumstances may be*



*extreme cruelty under another set of circumstances". The Court has to deal, not with an ideal husband and ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to draw their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures."*

14. After going through the aforesaid facts adduced on behalf the appellant-husband, it is crystal clear that appellant-husband has failed to prove the cruel behaviour of the respondent towards him and his family members by the strength of cogent, relevant and reliable evidence, while burden of proof of cruelty rests upon the appellant-husband of this case, because, he has sought relief of divorce on the basis of cruel behaviour of the respondent towards him. Not even single incident with reference to specific date of alleged cruelty has been pleaded/urged in the plaint before the Family Court. Furthermore, alleged certain flimsy act or omission or using some threatening and harsh words may



occasionally happen in the day-to-day conjugal life of a husband and wife to retaliate the other spouse but that cannot be a justified/sustainable ground for taking divorce. Some trifling utterance or remarks or mere threatening of one spouse to other cannot be construed as such decree of cruelty, which is legally required to a decree of divorce. The austerity of temper and behaviour, petulance of manner and harshness of language may vary from man to man born and brought up in different family background, living in different standard of life, having their quality of educational qualification and their status in society in which they live.

15. Thus, considering the above entire aspects of this case and evidence adduced on behalf of both the parties, we find that appellant has failed to prove the allegation of cruelty, much less, the decree of cruel behaviour of respondent which is legally required for grant of decree of divorce under section 13 of the Hindu Marriage Act.

16. So far as ground of desertion is concerned, it is the case of the appellant that marriage of the appellant with respondent was solemnized on 04.05.1984 but there is no



issue out of the wedlock and he consulted with many doctors and spent a lot of money to have an issue with the respondent. However, at the same time, he submits that he spent 1-2 years with the respondent in his entire matrimonial life which appears to be contradictory to each other. The appellant claims that respondent is a quarrelsome lady and engaged in multiple relationship but he has not brought on record any proof to authenticate this allegation. The appellant has also not filed any petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights which further proves this fact that appellant had not taken any efforts to bring back the respondent into her matrimonial home which creates serious doubt regarding his allegation in the divorce petition. So also on the ground of desertion, the appellant is not entitled to get any decree of divorce. Thus, the appellant-husband has failed to prove that the respondent-wife has herself deserted the appellant-husband.

17. In "Jagdish Singh v. Madhuri Devi", (2008) 10 SCC 497, the Hon'ble Supreme Court while considering the scope of interference by first appellate court, observed as



under:-

*"24. It is no doubt true that the High Court was exercising power as first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a re-hearing of the main matter and the appellate court can re-appraise, re-appreciate and review the entire evidence "oral as well as documentary" and can come to its own conclusion.*

*25. At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as that of the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of*



*the trial court in appraisal of evidence is erroneous, contrary to well-established principles of law or unreasonable..."*

18. After going through the entire judgment of learned Family Court, it appears that there is no any grave error of law and illegality in appreciating the evidences available on the record.

19. Hence, we find no merit in the present appeal warranting any interference in the impugned judgment. The Family Court has rightly dismissed the matrimonial case of the appellant seeking divorce.

20. The present appeal is dismissed accordingly, affirming the impugned judgment.

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

**( S. B. Pd. Singh, J)**

**(P. B. Bajanthri, J)**

Shageer/-

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