(2025) 12 SC CK 0023

Supreme Court

Case No: Civil Appeal No. 5167 Of 2012

Nayan Bhowmick	APPELLANT
Vs	
Aparna Chakraborty	RESPONDENT

Date of Decision: Dec. 15, 2025

Acts Referred:

- Constitution of India, 1950- Article 142, 142(1)
- Hindu Marriage Act, 1955- Section 13(1)(ia), 13(1)(ib), 23(1)

Hon'ble Judges: Manmohan, J; Joymalya Bagchi, J

Bench: Division Bench

Advocate: Arvind Kumar Gupta, Bikas Kar Gupta, Azim H. Laskar, Chandra Bhushan Prasad, Nilkamal Chaubey

Final Decision: Allowed

Judgement

Manmohan, J

1. The present Appeal has been filed challenging the judgment dated 13th April 2011 passed by the Gauhati High Court (Shillong Bench), whereby the appeal filed by the Respondent-wife was allowed and the judgment and decree dated 9th March 2010 dissolving the marriage on the ground of desertion by the Respondent-wife passed by the Additional Deputy Commissioner (Judicial), Shillong was set aside.

FACTUAL BACKGROUND

2. Briefly stated, the relevant facts are that the marriage between Appellant and Respondent was solemnized according to Hindu rites and rituals on 04th August 2000 at Shillong. The parties knew each other prior to their marriage as they had been working together since 1992 as Development Officers under Life Insurance Corporation of India Ltd..

3. According to the Respondent-wife, though the Appellant-husband knew the nature of Respondents duty and responsibility in their office even before their

marriage, yet the Appellant and his family members demanded the Respondent give up her job ignoring the fact that she had to financially look after her old and ailing mother, her brother and other dependents. It is the Respondent-wifes case that due to the continuous ill-treatment meted out by the Appellant and his family, Respondent-wife was compelled to leave her matrimonial home in 2001.

4. In 2003, Appellant-husband instituted a suit for divorce before the Additional Deputy Commissioner (Judicial), Shillong for dissolution of the marriage under Section 13(1)(i-b) of the Hindu Marriage Act, 1955 (the Act). However, the suit was dismissed by the learned Additional Deputy Commissioner (J), Shillong as premature vide judgment dated 18th May 2006.

5. The Appellant preferred RFA No. 9(SH) of 2006 before the High Court challenging the judgment dated 18th May 2006, but the same was withdrawn by the Appellant vide order dated 22nd November 2007 with liberty to file a fresh suit.

6. The suit being MAT Divorce Suit No.13(T) of 2007, underlying the present proceedings was filed by the Appellant-husband on 29th November 2007 under Section 13(i)(i-a))(i-b) of the Act contending that the Respondent had deserted the Appellant-husband with wilful intent of not returning to the matrimonial home.

7. The Additional Dy. Commissioner, Shillong vide judgment dated 9th March 2010 dissolved the marriage observing that Appellant-husband has been able to prove his case under Section 13(1)(i-b) of the Act namely desertion.

8. The Respondent-wife feeling aggrieved by the judgment and decree dated 9th March 2010 filed a First Appeal being RFA No. (SH) 1 of 2010 before the High Court. Vide judgment dated 13th April 2011, High Court allowed the appeal filed by Respondent-wife observing that there was no intent to permanently forsake and abandon the Appellant-husband. The High Court in paragraph 6 and

7 of the impugned judgment dated 13th April 2011 has held as under :

6. The question which falls for consideration in this appeal is whether there is an intentional permanent forsaking and abandonment of one spouse by the other without the other's consent and without reasonable cause? It is a well settled proposition of law that in proceedings for divorce the plaintiff must prove the offence of desertion, like and other matrimonial offence, beyond all reasonable doubt [see Bipinchandra Saisinhbhai (supra)]. In my opinion, the respondent is unable to clinchingly establish that the appellant has deserted him. The evidence led by him are absolutely insufficient to prove desertion. According to his evidence, after the appellant deserted his house, he along with his family members and some of his friends tried to patch up their differences in which she had proposed that if he would not keep his mother with him, then and then only she could come back to him, which he refused to oblige. This evidence of the respondent, who examined himself as PW 7, is

conspicuous by the absence of details such as the date, time and place when such reconciliation attempt was made by him. If the appellant had made her return to her matrimonial home conditional upon the abandonment by the respondent of his mother as alleged by him, this could amount to an unreasonable refusal on the part of the appellant to go back to her husband. But none of the six witnesses examined by him corroborated him on this point. Desertion is matter of inference to be drawn from the facts and circumstances of each case. Not an iota of evidence has been adduced by the respondent to show the attempt made by him for reconciliation with the appellant. On the contrary, he appears to be quite content in the appellant leaving his house on 29-11-2001 after a month of the death of his father and did not return. All that he did was to send a letter to her on 12-11-2002 i.e. one year after she left his house. The contents of this letter, which is at Annexure I, is undisputed, are not only revealing but also make an interesting reading. In the first place, the letter did not mention anything about the many attempts allegedly made by him for reconciliation. Secondly, his statements that "I know you might dislike so many things of our family at the time of you left my house. You might dislike my stand also" corroborate the case of the appellant that she had been forced to leave her matrimonial house as he and his family wanted her to confine herself as a housewife and to give up her job. Assuming that this part of the contents of the letter was a sincere attempt on his part to reconciliate with her also, the last sentence seems to convey the idea that the letter, in substance, is an ultimatum. In my judgment, this cannot be construed to be a sincere attempt on the part of the respondent to welcome her back to her matrimonial home: this is merely eyewash. On the contrary, it is difficult to believe that a husband longing for the return of his wife to him in his right mind could send such a letter, which is an ultimatum in nature. Therefore, the absence of reconciliatory attempt by him for almost a year and the contents of the aforesaid letter lead me to one and one conclusion, i.e., there is no intentional permanent forsaking and abandonment of the respondent by the appellant and that there is sufficient evidence of conduct on the part of the respondent and his family giving reasonable cause to her for leaving her matrimonial home. There is evidence to show that the appellant continues to affirm her marriage and is ready and willing to resume her married life with the respondent. The respondent is, on the other hand, trying to take advantage of his own wrong or disability for the purpose of the relief contemplated under Section 23(1) of the Act. As observed by the Apex Court in Savitri Pandey (supra), no party can be allowed to carve out the grounds for destroying the family which is the basic unit of the society. The foundation of the family rests on the institution of a legal and valid marriage. Approach of the court should be preserve the sanctity of marriage and be reluctant to dissolve the marriage on the asking of one of the parties.

7. .That apart, even if it is assumed for the sake of argument that this Court also has the power "conflicting decisions are galore in this behalf" I cannot lose sight of the proven conduct of the respondent in rushing to the Court on earlier occasion without waiting for the expiry of the minimum period of two years prescribed by Section 13(l)(i-b) of the Act, which was rightly withdrawn by him later on, a conduct which lends credence to the contention of the appellant that he has never been serious about welcoming her back to this house. He is thus demonstrably interested only in creating a hostile atmosphere at home to discourage the return of the appellant to his house and then take advantage of his own wrong to obtain a decree of divorce by falsely projecting that she has deserted him .

9. The present appeal has been filed by the Appellant-husband challenging the judgment dated 13th April 2011 passed by High Court in RFA No. (SH) 1 of 2010.

SUBMISSION ON BEHALF OF APPELLANT-HUSBAND

10. Learned counsel for the Appellant-husband submitted that the parties are living separately since 29th November 2001 and there is no possibility of reconciliation despite sincere efforts. He contended that the marriage between the parties has irretrievably broken down which is evident from the fact that both the parties are working as Development Officers in Life Insurance Corporation of India Ltd in the same branch but they do not interact with each other.

11. He further stated that the Respondent-wife had categorically admitted in her cross-examination that she had received two letters dated 12th November 2002 and 2nd December 2002 whereby the Appellant-husband had requested the Respondent-wife to join the matrimonial home, but despite the receipt of the said letters, Respondent-wife did not reply to any of them and continued to stay with her parents which further proves that Respondent-wife has no inclination to join the matrimonial home.

12. He further contented that in the facts and circumstances of the case, the ingredients of desertion i.e. (i) the factum of separation (ii) intent to bring cohabitation to an end, were proved which had been rightly appreciated by the Trial Court while granting a decree of divorce.

SUBMISSION ON BEHALF OF RESPONDENT-WIFE

13. Per contra, learned counsel for the Respondent-wife submitted that Respondent-wife did not leave the matrimonial home with intent to desert the Appellant-husband. He stated that Respondent-wife was forced to leave her matrimonial home because of constant abuse and humiliation by Appellant-husband and his family members.

14. He stated that the Respondent-wife had categorically informed the Appellant-husband about her responsibility towards her family. However, after

marriage, the Appellant-husband in league with other members of his family had started pressurizing her to resign from her job on the specious plea that Appellant-husbands father did not like a working woman. Respondent-wife could not agree to the same as that would have rendered her parental family destitute.

15. He further stated that the letters dated 12th November 2002 and 2nd December 2002 are nothing but an eye-wash as no sincere effort had been made by the Appellant-husband to resume matrimonial life with the Respondent-wife.

16. He submitted that the rush and hurry shown by the Appellant-husband in filing a divorce suit in 2003 clearly indicated his intent to bring about an end to the matrimonial relationship.

17. He placed reliance on the judgment of this Court in **Savitri Pandey vs. Prem Chandra Pandey, (2002) 2 SCC 73** wherein it has been held as under:-

17. The marriage between the parties cannot be dissolved only on the averments made by one of the parties that as the marriage between them has broken down, no useful purpose would be served to keep it alive .

18. He further placed reliance on the judgment of this Court **in Prabhavathi @ Prabhamani vs. Lakshmeesha M.C. [Civil Appeal No. 8790/2024]** wherein it has been held as under :-

6. . The boggy of irretrievable breaking down of marriage cannot be used to the advantage of a party who is solely responsible for tearing down the marital relationship.

19. He lastly submitted that the Respondent-wife continues to affirm her marriage and is ready and willing to resume her matrimonial life with Appellant-husband.

REASONING

IN THE PRESENT CASE THERE IS LONG PERIOD OF SEPARATION WITHOUT ANY HOPE FOR RECONCILIATION

20. Having heard the learned counsel for the parties, the admitted position that emerges is that matrimonial litigation between the parties commenced within two (2) years of marriage i.e. 2003 and has been pending for last twenty-two (22) years.

21. It is pertinent to mention that the parties have been living separately for twenty-four (24) years and there is no child from the wedlock. Despite repeated efforts by Courts, there has been no reconciliation between the parties. At the stage of admission of appeal, this Court had referred the parties to mediation vide order dated 26th March 2012. However, mediation was unsuccessful which is evident from the Mediation report dated 10th April 2012. No efforts have been made since then, by either of the parties, to reconcile their matrimonial differences.

22. In a multitude of cases, this Court has had the opportunity to deal with situations where parties have been living separately for a considerable time and it has been consistently held that long period of separation without any hope for reconciliation amounts to cruelty to both the parties.

23. A coordinate bench of this Court in the case of **Rakesh Raman vs. Kavita [(2023) 17 SCC 433],** has observed that where the parties have been living separately for the past twenty-five (25) years, marriage is only on paper and such relationship must be taken to have broken down irretrievably long back. It was further observed that such a marriage spells cruelty to both the parties and is therefore a ground for dissolution of marriage under Section 13(1)(i-a) of the Act. The observations of the coordinate bench of the Court are squarely applicable to the facts of the present case, as even in the case at hand, the parties have been living separately for better part of their lives i.e. twenty-four (24) years without any hope for reconciliation.

THE SPOUSES STRONGLY HELD VIEWS AND THEIR REFUSAL TO ACCOMMODATE EACH OTHER AMOUNTS TO CRUELTY TO ONE ANOTHER

24. In the case at hand, spouses have strongly held views with regard to the approach towards matrimonial life and they have refused to accommodate each other for a long period of time. Consequently, their conduct amounts to cruelty to each other. This Court is of the view that in matrimonial matters involving two individuals, it is not for the society or for the Court to sit in judgment over which spouses approach is correct or not. It is their strongly held views and their refusal to accommodate each other that amounts to cruelty to one another.

25. A three-Judge Bench of this Court in the case of **Naveen Kohli v. Neelu Kohli (2006) 4 SCC 558** has observed that an unworkable marriage, which has ceased to be effective, is futile and bound to be a source of great misery to the parties. It was further observed that where there has been a long period of continuous separation, it can fairly be surmised that the matrimonial bond is beyond repair and in such cases, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of parties.

26. Another three-Judge Bench of this Court in the case of **Samar Ghosh vs. Jaya Ghosh (2007) 4 SCC 511** observed that where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. Marriage becomes a legal fiction supported by a legal tie and refusal to sever such a tie does not serve the sanctity of marriage, but may lead to mental cruelty.

27. Further, the judgment of this Court in **Prabhamani (supra)** relied on by the learned counsel for Respondent-wife is not applicable to the present matter as it is not a case where the boggy of irretrievable breakdown of marriage is being used by the Appellant-husband. Also, the order of this Court dated 14th November 2025 in **Dr. Anita vs. Indresh Gopal Kohli, Civil Appeal No. 13616/2025** (i.e. after

reservation of the judgment in the present case) offers no assistance to the Respondent-wife as in the present case, there is cogent evidence that the parties have refused to cohabit with each other due to a fundamental difference in their approach towards matrimonial life.

THE POWER TO DO COMPLETE JUSTICE UNDER ARTICLE 142(1) IS NOT FETTERED BY THE DOCTRINE OF FAULT AND BLAME

28. In any event, this Court in exercise of power to do complete justice under Article 142(1) of the Constitution of India has the discretion to dissolve the marriage on the ground of irretrievable breakdown.

29. A constitution Bench of this Court in **Shilpa Sailesh vs. Varun Sreenivasan, (2023) 14 SCC 231** has held that the power to do complete justice is not fettered by the doctrine of fault and blame, applicable to petitions for divorce under Section 13(1)(i-a) of the Hindu Marriage Act. While dealing with the power to grant divorce under Article 142(1) of the Constitution of India inspite of the other spouse opposing the prayer, this Court has held as under:-

52. An unworkable marriage, which has ceased to be effective, is futile and bound to be a source of greater misery for the parties. The law of divorce built predominantly on assigning fault fails to serve broken marriages. Under the fault theory, guilt has to be proven, and therefore, the courts have to be presented with concrete instances of adverse human behaviour, thereby maligning the institution of marriage. Public interest demands that the marriage status should, as far as possible, be maintained, but where the marriage has been wrecked beyond the hope of salvage, public interest lies in recognising the real fact. No spouse can be compelled to resume life with a consort, and as such, nothing is gained by keeping the parties tied forever to a marriage which has, in fact, ceased to exist.

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56. We have referred to the judgment in Owens [Owens v. Owens, 2018 AC 899 : (2018) 3 WLR 634 : 2018 UKSC 41 (SC)], which applies the then law in England and Wales, not as a precedent, but to highlight that even two perfectly gentle and pleasant individuals having incompatible and clashing personalities can have a miserable and morose married life. In such cases, fault theory in the pure form requiring apportionment of guilt and blame, is a difficult, if not an impossible task, whereas in practical reality the situation is appalling and unnerving. The marriage is irretrievably broken down and dead. We would not read the provisions of the Hindu Marriage Act, their underlying intent, and any fundamental specific issue of public policy, as barring this Court from dissolving a broken and shattered marriage in exercise of the constitutional power under Article 142(1) of the Constitution of India. If at all, the underlying fundamental issues of public policy, as explained in the judgments of V. Bhagat

[V. Bhagat v. D. Bhagat, (1994) 1 SCC 337] , Ashok Hurra [Ashok Hurra v. Rupa Bipin Zaveri, (1997) 4 SCC 226], and Naveen Kohli [Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558] , support the view that it would be in the best interest of all, including the individuals involved, to give legality, in the form of formal divorce, to a dead marriage, otherwise the litigation(s), resultant sufferance, misery and torment shall continue.

57. Therefore, apportioning blame and greater fault may not be the rule to resolve and adjudicate the dispute in rare and exceptional matrimonial cases, as the rules of evidence under the Evidence Act are rules of procedure. When the life-like situation is known indubitably, the essence and objective behind section 13(1)(i-a) of the Hindu Marriage Act that no spouse should be subjected to mental cruelty and live in misery and pain is established ..

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76. This Court, in exercise of power under Article 142(1) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do complete justice to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified

(emphasis supplied)

30. It is pertinent to mention that the judgment in **Savitri Pandey** (supra), has been read down by this Court in **Shilpa Sailesh** (supra) in the context of the power of this Court under Article 142 of the Constitution of India to do complete justice.

31. Further, a coordinate bench of this Court in **Pradeep Bhardwaj v. Priya (2025) SCC OnLine SC 1436** exercised its power under Article 142 of the Constitution to dissolve the marriage between the parties while observing that due to complete detachment and the prolonged estrangement, there has been an irretrievable breakdown of the marital bond which cannot be mended by any means. It was further observed that the institution of marriage is rooted in dignity, mutual respect and shared companionship, and when these foundational aspects are irreparably lost, forcing a couple to remain legally bound serves no purpose.

32. In another case of **Kumari Rekha v. Shambhu Saran Paswan (2025) SCC OnLine SC 1032**, this Court observed that non-availability of grounds for dissolution of Hindu marriage is not a bar for this Court to exercise its powers under Article 142 of the Constitution especially when the Court is satisfied that it is a case of irretrievable breakdown of marriage.

THERE IS NO SANCTITY LEFT IN THE MARRIAGE AND RAPPROCHEMENT IS NOT IN THE REALM OF POSSIBILITY

33. This Court is conscious of the view that approach of the Courts should be to preserve the sanctity of marriage and the Court should be reluctant to dissolve the marriage at the mere asking of one of the parties. But, in the present case, the parties have lived separately for far too long a period of time and there is no sanctity left in the marriage. Also, rapprochement is not in the realm of possibility. Grant of divorce in the present proceedings would not have a devastating effect on any third party, as there are no children from the wedlock.

34. This Court is also of the view that pendency of matrimonial litigation for a long duration only leads to perpetuity of marriage on paper. It is in the best interest of parties and the society if ties are severed between parties in cases where litigation has been pending for a considerably long period of time. Consequently, this Court is of the opinion that no useful purpose shall be served by keeping the matrimonial litigation pending in Court without granting relief to the parties.

RELIEF

35. Consequently, this Court is of the view that marriage between the parties has irretrievably broken down and, therefore, in exercise of its power under Article 142 of the Constitution of India dissolves the marriage between the parties. Accordingly, the order of the Additional Deputy Commissioner (Judicial) Shillong, insofar as, it grants a decree of divorce to the parties is upheld and the impugned order of the High Court is set aside. With the aforesaid observations, the appeal stands allowed.