

IN THE COURT OF SENIOR CIVIL JUDGE & JMFC, BHATKAL

Dated this the 15th day of March 2018

**PRESENT: Sri. D.Raghavendra,
B.Com.,LL.B.,
Senior Civil Judge & JMFC, Bhatkal**

MC No.16/2017

**PETITIONER : SRI. SHRIKANTH VASUDEVA BHAT,
(42 Years),
S/o Vasudeva Bhat,
Koduki, Marukeri, Bhatkal**

(By – Sri. **P.S.R.**, Advocate)

-Vs-

**RESPONDENT : SMT. GEETHA,
(30 Years)
W/o Shrikanth Vasudeva Bhat,
D/o Lakshmana,
R/a Biruvali, Tabakada post,
Honnali, Kalghatgi Taluk,
Darwad District.**

(Placed Exparte)

J U D G M E N T

This is a Petition filed under Sec.13(1) (ib) of the Hindu Marriage Act 1955 r/w 151 of CPC.

2. It is the case of petitioner in brief is that, the marriage of petitioner and respondent solemnized on 15.07.2011 at the hometown of petitioner in Sri. Sashiva Shanthika Parameshwari Devasthanam Devimane, Kithre, Marukeri, Bhatkal as per Hindu customs. After marriage both petitioner and respondent were residing in the house of petitioner for a period of 3 months from the date of marriage. Out of their wedlock a child named Sindhu Bhat was born on 03.04.2012. The respondent has left his company of petitioner to her parental home for delivery of the above named child. After birth of child the petitioner came to the parental house of respondent to perform naming ceremony. Thereafter, the petitioner requested respondent to return back to the matrimonial home. But she refused to return the matrimonial home and also she refused to show daughter to the petitioner. Both petitioner and respondent have been living separately from each other for over 4 years. The attitude of the respondent shows that, she no longer has any intention to rejoin the petitioner. Even talks held by the well wishers of both family to reunion of them. As such he has filed a petition for divorce. The petitioner has taken a notice to respondent on 19.10.2016 calling upon her to consent to the divorce. The

respondent has received the same without demur and the respondent has not issued any reply to the same.

3. The petitioner has taken a notice to the respondent through court but said notice was not returned. Thereafter, petitioner taken a notice to the respondent through RPAD but same has not been served to respondent. Then, petitioner has taken a notice to respondent through "Udayavani Daily News Paper" and same was published on 08-10-2017. In spite of taking several steps for her appearance before court she has not appeared before the court. Hence, she has been placed ex-parte.

4. In order to prove case, the petitioner got examined as P.W.1 and one witness by name Parameshwara Bhat got examined as PW.2. The petitioner got produced and marked Ex.P.1 to Ex.P.7 documents.

5. I have heard arguments and perused the record. In addition to oral arguments the petitioner also filed notes of arguments. I have perused notes of arguments placed by the

petitioner. Now, the points that arise for consideration are as follows:-

POINTS

1 Whether sufficient grounds has been made-out by the petitioner to grant divorce under Sec.13(1) (ib) of Hindu Marriage Act ?

2 What order ?

6. My findings on the above points are as follows:-

Point No.1 : In the affirmative

Point No.2 : As per final order for the following

REASONS

7. **Point No.1**: The case of the petitioner is that the marriage of petitioner and respondent solemnized on 15.07.2011 at the hometown of petitioner in Sri. Sashiva Shanthika Parameshwari Devasthanam Devimane, Kithre, Marukeri, Bhatkal as per Hindu customs. After marriage both petitioner and respondent were residing in the house of petitioner for a period of 3 months from the date of marriage. Out of their wedlock a child named Sindhu Bhat was born on 03.04.2012. The respondent has left his company of petitioner to her parental home for delivery of the above named

child. After birth of child the petitioner came to the house of respondent to perform naming ceremony. Thereafter, she returned to her parental home. The petitioner requested respondent to return back to the matrimonial home. But she refused to return the matrimonial home and also she refused to show the daughter to the petitioner. Both petitioner and respondent have been living separately from each other for over 4 years. The attitude of the respondent shows that, she no longer has any intention to rejoin the petitioner. Talks held by the well wishers of both family to reunion of them also failed.

8. The petitioner filed affidavit in lieu of chief examination by reiterating petition averments and also he has examined his elder brother by name Sri. Parameshwar Vasudev Bhat as P.W.2. But the respondent has not appeared before the court to disprove the allegation of petitioner. In addition to oral evidence the petitioner has produced Invitation card of their marriage and 2 photos, to show solemnization of marriage of petitioner and respondent. All these documents are marked as Ex.P.1, P.6 and P.7. On perusal of Ex.P.1 - petitioner residing at Koduki, Marukeri, Bhatkal and the respondent residing at Sigga. Further, the petitioner produced copy of legal

notice issued to respondent through his counsel as per Ex.P.2 on 19.10.2016 to her parental house at Biruvali, Tabakada Honnalli post, Kalgatgi Taluk, Dharwad District. On perusal of Ex.P3 postal receipt the respondent has received the notice. Further, when court notice not served on respondent the petitioner also taken paper publication on 08.10.2017 and news paper marked as Ex.P.4. The petitioner also produced Adhaar card and same is marked as Ex.P.5. The oral and documentary evidence of petitioner remain unchallenged.

9. In spite of service of notice to respondent, she did not appear before the court to deny the case of petitioner. The respondent not denied the document placed by the petitioner and also she has not disproved the case of the petitioner by filing objections. There is nothing before this court to disbelieve the evidence of P.W.1 and PW.2. On perusal of record prior to institution of petition he has issued a legal notice to respondent and gave paper publication. In spite of that also the respondent did not turn-up before the court.

6. Sec. 13(1) reads as follows :-

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) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse ; or*
- (i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty; or*
- (i-b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition ; or]*
- (ii) has ceased to be a Hindu by conversion to another religion ; or*
- (iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.*

Explanation – In this clause, -

- (a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;*
- (b) the expression ‘psychopathic disorder’ means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which*

- results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or*
- (iv) has [* * *] been suffering from a virulent and incurable form of leprosy ; or*
 - (v) has [* * *] been suffering from venereal disease in a communicable form ; or*
 - (vi) has renounced the world by entering any religious order; or*
 - (vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive; [***]*

[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 expression shall be construed accordingly.]

[(1-A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground –

- (i) *that there has been no resumption of cohabitation as between the parties to the marriage for a period of (one year) or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties ; or*
- (ii) *that there has been no restitution of conjugal rights as between the parties to the marriage for a period of [one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]*

10. The petitioner relied upon Judgment reported in AIR 1991 Cal 176 in between Smt. Elokeshi Chakraborty Vs Sri. Sunil Kumar Chakraborty, wherein Hon'ble High Court of Calcutta held at para No.15 as follows :-

“ It has been established that the appellant had been staying away from the respondent for a period exceeding two years next preceding the date of filing of the suit for divorce. ”

11. The petitioner also relied upon Judgment reported in AIR 2003 Cal 321 in between Smt. Geeta Mullick Vs Bojo Gopal Mullick,

wherein Hon'ble High Court of Calcutta held at para No.11 as follows :-

“ It is well settled that ‘ Desertion’ for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without other’s consent and without reasonable cause. Desertion is not the withdrawal from a place but from the state of things. Desertion therefore means withdrawing from the matrimonial obligations that is to say not permitting or allowing and facilitating the cohabitation between the parties. It is not a single act complete in itself. It is a continuous course of conduct to be determined under the facts and circumstances of each case. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, (I) the factum of separation, and (ii) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned (I) the absence, of consent and (ii) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to from the necessary intention aforesaid (Savitri Pandey Vs Prem Chandra Pandey) ”

12. Case on hand, in the petition and affidavit filed by way of chief examination contended that their marriage solemnized on

15.07.2011 and one child born to them on 03.04.2012. The respondent went to her maternal home for delivery and thereafter she returned to house of respondent for naming ceremony of child. Thereafter she returned to her parental home. He requested her to come back to the matrimonial home but she refused to come to house of petitioner, from last 4 years respondent is residing away from the petitioner. The evidence of petitioner remain unchallenged. So, the affidavit filed by the petitioner clearly established that, the respondent deserted the petitioner from last two years. So, the ratio laid down by the Hon'ble High Court of Calcutta in the above reported judgement is aptly applicable to the case on hand. So, the petitioner has established that, without any reasonable cause the respondent deserted the petitioner and also petitioner proved essential conditions i.e., factum of separation and intension to bring cohabitation permanently to an end. Hence, there is no reasonable grounds to disbelieve the case of petitioner. In view of the citation discussed above and in the light of the present facts and circumstances of case, the point No.1 answered in the **affirmative**.

13. **Point No.2** :- For the forgoing reasons I proceed to pass the following :

:: O R D E R ::

The petition filed under Section 13(i)(ib) of the Hindu Marriage Act is hereby allowed.

Consequently, the marriage of petitioner and respondent solemnised on 15.07.2011 at Sri. Sashiva Shanthika Parameshwari Devasthanam Devimane, Kithre, Marukeri, Bhatkal is hereby dissolved by grant of divorce on account of desertion.

No order on cost.

Draw decree accordingly.

(Dictated to the stenographer directly on Computer, typed by him, corrected by me and then pronounced in the open Court, on this 15th day of March, 2018)

(Raghavendra.D)
Senior Civil Judge & JMFC, Bhatkal.

A N N E X U R E**List of witnesses examined on behalf of petitioner :**

P.W.1 : Sri. Srikanth Bhat

P.W.2 : Sri. Parameshwar Bhat

List of documents marked on behalf of petitioner :

Ex.P.1 : Marriage Invitation

- Ex.P.2 : Legal notice
Ex.P.3 : Postal Receipt
Ex.P.4 : Kannada Udayavani News Paper
Ex.P.4a : Portion of advertisement
Ex.P.5 : Adhaar Card
Ex.P.6&7 : Photos

List of witnesses examined on behalf of respondent :

- Nil -

List of documents marked on behalf of respondent :

- Nil -

Senior Civil Judge & JMFC, Bhatkal