

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 21<sup>ST</sup> DAY OF APRIL, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE JAYANT BANERJI**

**AND**

**THE HON'BLE MR. JUSTICE RAJESH RAI K**

**MISCELLANEOUS FIRST APPEAL NO. 8319 OF 2017 (FC)**

**BETWEEN:**

SRI MADHUSUDHAN K  
AGED ABOUT 41 YEARS  
S/O LATE L KUNHAMBU NAIR  
NO.218/1, 7<sup>TH</sup> CROSS  
1<sup>ST</sup> MAIN ROAD, CHAMARAJPET  
BANGALORE-560 018.

...APPELLANT

(BY SRI. RAGHAVENDRA K, ADVOCATE)

**AND:**

SMT. RESHMA P  
AGED ABOUT 33 YEARS  
W/O MADHUSUDHAN K  
R/AT MURUGAN NIVAS, NO.31, 18<sup>TH</sup> CROSS,  
18<sup>TH</sup> MAIN, VEIGNESHWARA LAYOUT  
HOYSALANAGAR  
BANGALORE-560 016.

...RESPONDENT

(BY SRI SANDEEP A, ADVOCATE FOR  
SRI. B.J. MAHESH, ADVOCATE)

THIS MFA IS FILED UNDER SECTION 19(1) OF FAMILY COURT ACT, AGAINST THE JUDGEMENT AND DECREE DATED 14.09.2017 PASSED IN M.C.NO.4859 OF 2013 ON THE FILE OF THE IV ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BENGALURU, DISMISSING THE PETITION FILED UNDER SECTION 13(1)(ia),(ib) OF THE HINDU MARRIAGE ACT 1955, FOR DISSOLUTION OF MARRIAGE.



THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT ON 26.03.2026 COMING ON FOR PRONOUNCEMENT THIS DAY, **RAJESH RAI K, J.**, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI  
and  
HON'BLE MR. JUSTICE RAJESH RAI K

**CAV JUDGMENT**

(PER: HON'BLE MR. JUSTICE RAJESH RAI K)

This appeal is preferred by the husband challenging the judgment and decree dated 14.09.2017 passed in M.C. No. 4859/2013 by the Court of the IV Additional Principal Judge, Family Court, Bengaluru, whereby the petition filed by the appellant/husband under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 came to be dismissed, while the counterclaim filed by the respondent under Section 9 of the said Act came to be allowed.

2. The briefly stated facts of the case are:

The marriage between the appellant and the respondent was solemnized on 07.06.2010 at Payyanur in accordance with Hindu rites and customs prevailing in the community, both parties being natives of Kerala. The marriage was duly registered before the competent Registrar of Marriages. Following the marriage, the parties cohabited in the matrimonial home for a period of approximately six months.

Thereafter, the respondent-wife proceeded to her parental home at Payyanur, Kerala, for delivery.

3. It is the case of the appellant that subsequent to the birth of the child, the respondent failed to return to the matrimonial home at Bengaluru. It is further alleged that the respondent neither permitted the appellant to see the child nor disclosed the name of the child to him. The appellant has also averred that the respondent's conduct was marked by erratic, arrogant, and abnormal behaviour, which, according to him, caused severe disruption to his life as well as to the lives of his family members.

4. The appellant would contend that the respondent, without any reasonable cause, withdrew from his society, and that such conduct has resulted in an irretrievable breakdown of the marital relationship between the parties. It is further stated that in or about December 2010, the respondent deserted the conjugal company of the appellant, thereby constituting desertion in law. In view of the aforesaid circumstances, the appellant has sought the grant of a decree of divorce.

5. The respondent-wife contested the petition by filing her statement of objections, wherein she denied the allegations

of cruelty and desertion as asserted by the appellant. She also preferred a counterclaim. In the said counterclaim, it is averred that, from the date of marriage, she discharged her duties as a devoted wife and extended love and affection towards the appellant and his family members, and that there was neither fault nor deficiency on her part requiring any rectification.

6. It is her specific case that the appellant, with an ulterior motive to contract another marriage, began neglecting her. It is stated that after the marriage, in July 2010, she joined the matrimonial home at Bengaluru, where she and the appellant resided on the first floor along with her mother-in-law, while the ground floor was occupied by the appellant's elder brother. The respondent has alleged that her mother-in-law expressed dissatisfaction with the marriage, stating that she had desired her son to marry a girl from America so that the family could relocate there.

7. The respondent has further averred that she was not conversant with the Kannada language and that the appellant and his mother would make fun of her by conversing in Kannada. She states that she conceived in July 2010 and that, upon learning of her pregnancy, the appellant insisted

that she undergo an abortion. However, when she proceeded to her parental home at Payyanur for delivery, there existed no differences between them at that point of time.

8. It is further contended that thereafter the appellant and his family members showed no interest in her. Though the appellant had assured that he would be present at the time of delivery, he failed to honour the same and visited her only after the birth of the child, and that too briefly for about 10 to 15 minutes. The respondent asserts that she intended to return to the matrimonial home within three months of childbirth; however, the appellant and his family members asked her to remain at her parental home for eight months, during which period the appellant neither visited her nor responded to her calls.

9. The respondent has further stated that on 10.11.2013, she returned to the matrimonial home along with the child, but the appellant and his mother refused to receive them on the pretext that the presence of the appellant's elder brother was necessary. Consequently, she was sent back to her parental home along with the child. It is further averred that, even after a lapse of one year, when she made another attempt

to join the matrimonial home, the appellant again failed to accept her. It is also alleged that the appellant's elder brother, who is a Police Inspector, supported the appellant and his mother in their conduct.

10. On these grounds, the respondent would contend that it was the appellant who deserted her without any fault on her part. Accordingly, she has prayed for dismissal of the petition filed by the appellant and for allowing her counterclaim.

11. Upon such consideration and assessment of the material on record, the Family Court, by its impugned judgment and decree dated 14.09.2017, dismissed the petition filed by the appellant-husband seeking dissolution of marriage and, at the same time, allowed the counterclaim preferred by the respondent-wife for restitution of conjugal rights. Aggrieved by the said judgment and decree, the appellant-husband has preferred the present appeal.

12. Heard learned counsel for the appellant and Sri. Sandeep A., learned counsel appearing on behalf of Sri. B.J. Mahesh, learned counsel for the respondent.

13. The learned counsel appearing for the appellant-husband would vehemently contend that the impugned

judgment is vitiated by perversity and illegality, inasmuch as the Family Court has failed to properly appreciate the evidence available on record. It is urged that, from the very inception of the marriage, the relationship between the parties remained strained, and that the respondent–wife, without any justifiable cause, withdrew from the company of the appellant and continued to reside at her parental home, despite the appellant having made earnest efforts to bring her and the child back to the matrimonial home. It is further contended that the essential ingredients of Section 13(1)(ib) of the Hindu Marriage Act, 1955, relating to desertion, stand fully satisfied in the present case; however, the said aspect has not been duly considered or appreciated by the Family Court.

14. The learned counsel for the appellant–husband would further contend that the testimonies of PW.1 to PW.3 clearly establish that, from the very inception of the marriage, the conduct of the respondent was abnormal and erratic. It is urged that the respondent’s physical and mental behaviour created suspicion in the minds of the appellant and his family members, giving rise to an apprehension that she might indulge in criminal or dangerous activities.

15. It is further submitted that the respondent's sudden withdrawal from the conjugal company of the appellant, without any reasonable cause, caused severe mental agony to him. Placing reliance on Ex.P3-complaint lodged by the respondent's sister-in-law, Deepthi, against her husband (the respondent's brother) and others, including the respondent herein, it is contended that the allegations contained therein lend support to the appellant's case regarding the respondent's erratic and irrational behaviour.

16. The learned counsel would also contend that the marriage between the parties has irretrievably broken down, inasmuch as they have been living separately since the year 2011. It is urged that there exists no possibility of reconciliation, and that the marital relationship has become a mere deadwood. In such circumstances, it is submitted that the Family Court ought to have allowed the petition for dissolution of marriage and dismissed the counterclaim filed by the respondent.

17. *Per contra*, the learned counsel appearing for the respondent-wife supports the impugned judgment and contends that, ever since the date of marriage, she has

discharged her duties as a devoted wife towards the appellant. Notwithstanding the alleged humiliation by the appellant and his mother purportedly remarked that had the appellant married a girl from America, the family would have relocated there. Despite, respondent endeavoured to maintain the marital relationship to the best of her ability.

18. It is contended that, upon conceiving, although the appellant insisted upon an abortion, the respondent persevered in managing the appellant and his family for the welfare of the child. Accordingly, after six months of pregnancy, she proceeded to her parental home for delivery. Thereafter, it is contended that the appellant completely deserted her without inquiring into her health or well-being. Following the birth of the child, the appellant allegedly failed to show any love or affection toward either the respondent or the child, and instead made false allegations that the respondent and her parents had failed to invite him and his family to the child's 28th-day naming ceremony.

19. According to the learned counsel for the respondent, she has always been willing to return to the matrimonial home along with the child and to lead a

harmonious marital life with the appellant. It is further submitted that the appellant, motivated by an ulterior intention to marry another woman, has refused to continue the marital relationship. In these circumstances, it is submitted that the Family Court rightly dismissed the appellant's petition and allowed the counterclaim filed by the respondent. Accordingly, it is prayed that the present appeal be dismissed.

20. Having heard the learned counsel for both parties and upon perusal of the material on record, the sole point that arises for our consideration in this appeal is:

*Whether the Family Court was justified in dismissing the petition filed by the appellant-husband seeking a decree of divorce and in allowing the counterclaim filed by the respondent-wife for restitution of conjugal rights?*

21. As is evident from the records, the marriage between the appellant and the respondent was solemnized on 07.06.2010, and a female child, namely Tanmayee, was born from the wedlock, who is presently about 15 years of age. Although the appellant contends that, from the inception of the marriage, the respondent failed to discharge her matrimonial

obligations and subjected him and his family members to mental cruelty, the appellant has failed to place any documentary evidence or reliable testimony before the Family Court to substantiate such allegations.

22. The appellant's allegation that the respondent's behaviour was erratic, irrational, and abnormal is not substantiated by any material evidence, saves for the self-serving statements of PW.1. No specific instances or corroborative evidence have been placed before the Family Court to support these omnibus allegations.

23. Although PW.1 contented that the respondent left his company and continued to reside at her parental home even after the birth of the child, the evidence on record does not support this claim. In his cross-examination, PW.1 admitted that the respondent left the matrimonial home during the seventh month of her pregnancy and that her return to her parental home for delivery was in accordance with customary practice. He further acknowledged that he did not accompany the respondent nor visit her until delivery.

24. PW.1 also admitted that the respondent's parents had invited him and his family to the cradle ceremony, which

he and his family did not attend. Significantly, he conceded that after 12.03.2011, following the birth of the child, he never visited the respondent or the child to bring them back to the matrimonial home. He acknowledged that, as per customary practice, it is the duty of the husband and his family to visit the wife's parental home to bring her back to the matrimonial home.

25. PW.1 further admitted that in November 2012, the respondent and the child returned to the matrimonial home accompanied by her parents; however, it was stated that the respondent did not seek permission to stay permanently but came only for discussion. These admissions substantially weaken the appellant's claim of desertion or erratic behaviour on the part of the respondent.

26. From the foregoing evidence, it is categorically established that the respondent was always willing and ready to return to the matrimonial home; however, the appellant actively resisted her from rejoining him.

27. It is pertinent to mention at this juncture that the email correspondence between the appellant and the respondent, marked as Ex.R1, clearly demonstrates that upon

confirmation of the respondent's pregnancy, the appellant advised her to undergo an abortion, which she refused. This fact is further admitted by the appellant in his cross-examination. This circumstance reinforces the conclusion that the respondent neither committed any act of mental cruelty against the appellant nor deserted his company.

28. The learned counsel for the appellant placed significant reliance on the evidence of PW.2 and PW.3, who are neighbours and reiterated the version of the appellant-PW.1 in their testimony. However, on careful scrutiny, it is evident that both witnesses stated they had no personal knowledge of the family affairs of the appellant and respondent. PW.2 specifically deposed that her evidence was based on the statements of the appellant's mother. Consequently, it is apparent that both PW.2 and PW.3 are hearsay witnesses, and their testimonies cannot be accorded any significant credence.

29. On perusal of the evidence of the respondent-RW.1, she has categorically deposed that, ever since the date of marriage, she neither committed any act of cruelty nor deserted the appellant. According to her, the appellant's mother was primarily responsible for the separation between

herself and the appellant, allegedly with the intention of facilitating the appellant's second marriage. Although RW.1 was cross-examined at length, nothing material was elicited to discredit her version or to support the appellant's contentions. In her cross-examination, she specifically stated that after the delivery of the child, she came to Bengaluru and stayed at her cousin's residence at Bengaluru, from where she sent several messages and emails to the appellant regarding her intention to return to matrimonial home. This evidence of RW.1 is further corroborated by the admission of PW.1 in his cross-examination, wherein he acknowledged that, despite her presence in Bengaluru, he failed to permit her and the child to rejoin the matrimonial home.

30. Upon careful examination of the evidence discussed hereinabove, it is evident that the separation between the appellant and the respondent was not attributable to the respondent, but rather to the conduct of the appellant. Notwithstanding the separation, the respondent has consistently demonstrated readiness and willingness to resume cohabitation in the matrimonial home along with the child. In such circumstances, the mere fact of prolonged separation

cannot be construed as constituting an irretrievable breakdown of the marital relationship beyond repair.

31. In the present case, in light of the respondent's willingness to rejoin the matrimonial home, the Family Court has rightly allowed the counterclaim for restitution of conjugal rights while dismissing the petition for divorce, particularly taking into consideration that the grant of divorce would have an adverse impact on the welfare of the child.

32. In view of the foregoing, on careful scrutiny of entire evidence and documents on record afresh, in our considered view, the Family Court was justified in dismissing the appellant's petition for divorce and in allowing the respondent's counterclaim for restitution of conjugal rights. Accordingly, we answer the point raised above in the affirmative and consequently, the appeal stands ***dismissed***.

**SD/-  
(JAYANT BANERJI)  
JUDGE**

**SD/-  
(RAJESH RAI K)  
JUDGE**

PKS/K