HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Miscellaneous Appeal No. 1211/2023

Laxmilal S/o Shri Rooplal, Aged About 53 Years, Reisdent Of Lava Sardargarh, Police Station Aemat, District Rajsamand.

----Appellant

Versus

Parwati W/o Laxmilal, Aged About 53 Years, Resident Of Beawar Chungi Naka, Asind, Tehsil Asind, District Bhilwara.

----Respondent

For Appellant(s)	:	Mr. Vikram Sharma
For Respondent(s)	:	Mr. Manish Patel

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SANDEEP SHAH

Order

Reportable

12/05/2026

Per: Arun Monga, J.

1. Appeal herein is directed against the judgment and decree dated 24.05.2023 passed by the learned Family Court, Rajsamand whereby the petition of the appellant filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'HMA') seeking dissolution of marriage was dismissed.

2. Brief facts of the case are that the The appellant-husband and the respondent-wife were married on 05.05.1992 at Village Badnore, District Bhilwara, according to Hindu rites and ceremonies. Two sons were born from the wedlock. After marriage, the parties resided together as husband and wife.

2.1. According to the appellant, disputes arose between the parties due to differences in temperament and the respondent's desire to live separately from the appellant's family. The respondent, who was

employed as a teacher, was transferred in the year 1997 to Jhadol, Tehsil Raipur, District Bhilwara, where she started residing separately with the children. The appellant alleged that despite efforts made by him and his relatives to restore cohabitation, the respondent refused to resume matrimonial life with him.

2.2. The appellant further stated that he entered into a "nata marriage" with a woman named Krishna in the year 1997, allegedly with the consent of the respondent. Thereafter, the respondent lodged a criminal complaint against the appellant and Krishna, which was registered as Criminal Case No. 594/1997 and was subsequently compromised.

2.3. Alleging cruelty and desertion by the respondent for a prolonged period, the appellant then filed a petition for dissolution of marriage before the Family Court, Rajsamand.

2.4. The respondent, in her reply, denied consenting to second marriage or any such relationship. She alleged that the appellant had deserted her after developing an illicit relationship with Krishna. He even used his influence to get her transferred to Jhadol.

2.5 The learned Family Court, Rajsamand, vide judgment and decree dated 24.05.2023, dismissed the divorce petition filed by the appellant.

3. Hence, this instant appeal.

4. Learned counsel for the appellant submitted that the respondent had lodged a false criminal complaint under Sections 498A, 406, 494 and 323 IPC against the appellant and his family members, pursuant to which FIR No. 268/2021 was registered at Police Station Asind. However, after investigation, the police submitted a final report dated 21.12.2021 finding the allegations to be false, and the protest petition

filed by the respondent was also dismissed by the learned Judicial Magistrate, Asind vide order dated 14.02.2023.

4.1 Learned counsel for the appellant contends that the parties have been living separately for more than 27 years and all efforts at reconciliation have failed, resulting in complete breakdown of the matrimonial relationship.

4.2 Learned counsel for the appellant submits that the respondent was aware of the appellant's marriage with Krishna in the year 1997 and, in such circumstances, continuance of the dead matrimonial relationship serves no purpose and amounts to mental cruelty to the appellant.

4.3 Learned counsel for the appellant lastly submits that the learned Family Court failed to appreciate that false criminal proceedings against a spouse amount to mental cruelty and wrongly ignored the admitted long separation between the parties while dismissing the divorce petition.

5. Per contra, learned Counsel for the respondent vehemently opposes the appeal. He contends that the impugned judgment does not call for any interference by this Court. He submits that the impugned judgment is based on due appreciation of the cogent evidence and sound reasoning accorded thereof and therefore the appeal be dismissed.

6. Heard learned counsel for the parties and perused the judgment under challenge including the record of the learned family court which was requisitioned.

7. Before we proceed further, it would be appropriate to refer to the impugned order so as to know what transpired on the mind of the

learned Family Court Judge. The relevant portion thereof has been reproduced herein below (translated in English):

"9. Thus, the petitioner Laxmilal has stated that his marriage with the non-petitioner Parvati took place on 05.05.1992 at Village Badnor, District Bhilwara according to Hindu customs, which fact has also been accepted by the non-petitioner in her evidence. A copy of the family card has been submitted on record by Laxmilal, in which Parvati's name is recorded as wife. Exhibit 2, a copy of the insurance certificate of the State Insurance Department, Government of Rajasthan, has been presented, in which wife Parvati is shown to be nominated. Besides this, criminal cases have also been filed between the parties at the police station, based on the final investigation reports of which, it is also evident that the parties are husband and wife. Therefore, upon examination of the evidence, it is proved that the petitioner Laxmilal is married to the non-petitioner Parvati and both are husband and wife.

10. Now, as regards the petitioner Laxmilal's statement that after the marriage, the non-petitioner subjected him to physical and mental cruelty and has been depriving and abandoning him from discharging marital life for more than 25 years without any reasonable cause, although in this regard, the petitioner Laxmilal has stated in his statements that after the marriage, the non-petitioner used to fight and quarrel with him and his family members over petty matters, and used to abuse him, but no fact has been brought on record in evidence regarding what kind of abuse the non-petitioner used to do and how she used to fight and quarrel.

11. As far as the petitioner's claim that the non-petitioner used to put excessive pressure on him to live separately from his family is concerned, it is noteworthy here that both the petitioner and the non-petitioner are in government service. In the year 1997, the petitioner was also working as a teacher, his posting was at Bhil Mangra, Amet, and the non-petitioner's government job was at Zhol, Tehsil Raipur. In such a situation, due to government service, both the parties were posted at different places, so the petitioner's claim that the non-petitioner used to pressure him to live separately from the family and used to fight and quarrel is not acceptable. A dispute arose upon performing the relationship marriage. Although the petitioner claims that the non-petitioner gave consent for the second marriage, but in view of the legal provisions, the petitioner's statement is not acceptable that he had consent for the second marriage for the second marriage was given by the non-petitioner. Even if such consent was given, it has no meaning; in Hindu culture, it is contrary to social order and such consent does not give the petitioner the right to perform a marriage with another woman without obtaining a divorce from his wedded wife. The non-petitioner's evidence only states that in the year 1997, her husband Laxmilal married a second woman named Krishna, due to which a dispute arose between them. Therefore, no person can take advantage of their own fault, because the petitioner, while his wedded wife Parvati was alive, performed a second relationship marriage with a woman named Krishna. Therefore, the petitioner's claim that the non-petitioner abandoned him for 25 years without any reasonable cause and subjected him to physical and mental cruelty is not acceptable

in any manner; rather, from the petitioner's own statement that it became known that he performed a second marriage with a woman named Krishna in the year 1997, while his wedded wife was alive, the non-petitioner had a reasonable cause to separate from the petitioner, because upon the petitioner performing a second marriage with a woman named Krishna, he created such circumstances before the non-petitioner, due to which the non-petitioner refused to live with the petitioner. The fact that she did not come to live with the petitioner to discharge marital life without any reasonable cause is not acceptable.

12. AW-1 Laxmilal has clearly admitted in his cross-examination that in his Aadhaar card, his wife's name is recorded as Krishna devi, and he has one son and two daughters from Krishna devi, from which it is evident that the petitioner Laxmilal left his wedded wife Parvati and has kept Krishna devi as his wife and is living with her, which is the petitioner's own fault. For his own fault, no relief can be granted to him by the Court. In such a situation, the petitioner's argument that the non-petitioner harassed him by registering a case against him, and therefore he is entitled to get a decree of divorce, is also not acceptable."

(emphasis is ours)

8. Having given careful consideration to the matter, we find ourselves in complete agreement with the view taken by the learned Family Court. The findings returned by it are based on the evidence which are reflective of the fact that appellant husband was the erring party. He, therefore, cannot claim advantage of his own wrong doing. Having considered the matter in it's entirety, we are of the view that the learned Family Court rightly dismissed the petition. The reasoning of the Family Court is not only legally sound but reflects a careful and sensitive appreciation of the facts. Our reasons for arriving at the same conclusion are also elaborated hereinafter.

9. At the very outset, we are constrained to record our deep disquiet at the imprudence with which the appellant has conducted himself throughout these proceedings, both before Family Court and this Court. A man who openly proclaims a second marriage during the subsistence of a lawfully solemnized first marriage, who reduces his legally wedded wife to a state of abandonment and reduces the sanctity of matrimonial law to a mere inconvenience, and who then has the boldness to

approach Court of law with hands soiled by his own matrimonial wrongs, such a man must first be reminded of foundational and non-negotiable principle of matrimonial jurisprudence before we advert to deal with his grievance arising from the judgment under challenge.

10. The appellant must know, that principle of matrimonial jurisprudence is that a decree of divorce is not a matter of right under Hindu Marriage Act, 1956. It is an equitable relief, granted by a Court of conscience, to a party who approaches it with clean hands and a legitimate grievance. A party who has himself inflicted the matrimonial wrong, who has by deliberate and conscious conduct engineered the very circumstances of which he now complains, forfeits his moral and legal standing to seek the Court's indulgence. He cannot be permitted to light a fire and then seek compensation for the burns. To quote the age old maxim, *"he who comes into equity must come with clean hands".*

11. The facts of the present case, speak with a clarity that requires no embellishment. The appellant Laxmilal, during the continued and subsistence of his lawful marriage with the respondent Smt. Parvati, a marriage never dissolved by any decree of any Court of competent jurisdiction, performed a second marriage with one Ms. Krishna in the year 1997. Unable to justify this act under any provision of the Hindu Marriage Act, 1955, which unambiguously prohibits bigamy under Section 5(i) and renders such a marriage void ab initio under Section 11, the appellant sought refuge in the convenient camouflage of a local custom of *'nata marriage'*. We are not persuaded, and record our unequivocal finding, that the invocation of nata in the present circumstances is nothing but a transparent attempt to launder a void and statutorily prohibited second marriage through the garb of custom.

A custom which cannot override the express mandate of a Parliamentary enactment i.e. Hindu Marriage Act.

12. After naata the appellant has been cohabiting with Krishna as his de facto wife. He has fathered three children with her. He went so far as to inscribe her name as his wife in his Aadhaar card, a public official document, thereby proclaiming to the world, with remarkable brazenness, a domestic arrangement built entirely upon the wreckage of his lawful marriage. The respondent Smt. Parvati, his legally wedded wife, was in the meanwhile left without the comfort of a husband, without the protection of a matrimonial home, and without the dignity that the law of this country solemnly promises to every married woman.

12. It is against this backdrop, and only against this backdrop, that the appellant's divorce petition and the instant appeal, founded upon allegations of cruelty and desertion attributed entirely to the respondent, falls for our consideration.

13. We are confronted with a portrait of matrimonial misconduct that is as brazen as it is legally untenable. Here stands a husband who deserted his lawful wife in every dimension that the word desertion encompasses, emotionally, physically, domestically, and morally. Here stands a man who, having effectively expelled his wife from his matrimonial life and replaced her with another woman, now invokes the machinery of law not to correct a wrong but to complete one, to obtain, through judicial imprimatur, the formal legitimisation of an abandonment that he had already accomplished in fact. He seeks, in effect, to have this Court crown his bigamy with a divorce.

14. We have no hesitation in saying that such an approach is not merely legally unsustainable, it is an affront to the foundational values that the Hindu Marriage Act, 1955 enacted to protect, and an affront to

the constitutional guarantee of equality and dignity that every married woman in this country is entitled to hold as her inviolable right. It cannot be countenanced. It shall not be countenanced. A Court of law is not an instrument available to a wrongdoer to consecrate his wrong. The appellant, having made his choice in 1997 with open eyes and without legal authority, must bear its consequences, and those consequences cannot, in law or in conscience, be visited upon the respondent.

15. The appellant has sought to present the chronology of events in a manner that places the respondent's conduct as the cause of the matrimonial breakdown, and his second marriage as a reluctant consequence of her behaviour. However, we find that the true chronology, fairly read, tells a very different story. Let us see how.

16. By the appellant's own admission, the second marriage with Krishna took place in 1997, barely five years after the marriage with Parvati was solemnised. The respondent was, at this time, a working woman, a mother of two young children, posted at a different location due to the requirements of her government service. Whatever domestic tensions may have existed in the first five years of the marriage, they were plainly not of a nature that would justify, in law or in morality, the petitioner's decision to marry another woman while the first marriage subsisted and even still subsisting.

17. The appellant's contention that the respondent gave her consent to the second marriage deserves, and receives, an outright short shrift by us. In the first place, there is no credible evidence of any such consent. But even if such consent were assumed to have been given, perhaps extracted under pressure, perhaps born of resignation or despair, it would be entirely without legal consequence. Under the Hindu Marriage

Act, 1955, a marriage solemnised during the lifetime of a spouse is void by operation of law under Section 11 read with Section 5(i). No consent of the existing spouse can validate such a marriage, because the prohibition is a matter of public policy and statutory mandate, not merely a private right capable of waiver. The appellant's attempt to hide behind an alleged consent of the respondent to justify his bigamous union must therefore be unequivocally rejected.

18. The inescapable conclusion is that it was the appellant's second marriage, an unlawful act, committed in defiance of both law and the sanctity of his existing marriage, that was the true and proximate cause of the matrimonial breakdown. The respondent's subsequent conduct, her refusal to cohabit with the appellant, her complaints to the police, her resistance to reconciliation, all flow directly and naturally from this pivotal event. A wrongdoer cannot manufacture a cause of action by first committing a wrong and then pointing to the injured party's reaction to that wrong as the basis for relief.

19. Having established that the appellant's second marriage was the decisive event in the breakdown of the matrimonial relationship, it follows necessarily that the respondent had ample and reasonable cause for every subsequent act of which the appellant complains.

20. Cruelty, as a ground for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955, must be of such a nature and degree as to cause a reasonable apprehension in the mind of the aggrieved spouse that it would be harmful or injurious to continue living with the other party. It is well settled that not every quarrel, not every harsh word, not every domestic disagreement will rise to the level of legal cruelty. The conduct complained of must be assessed in its totality, having

regard to the background of the parties, their social standing, their temperament, and the cumulative effect of the acts alleged.

21. In the present case, pertinently, the appellant's own narrative, read carefully, reveals that whatever discord existed in the matrimonial home was not unprovoked on his part. The household tensions, the disputes over joint family living, and the eventual breakdown of cohabitation all find their immediate cause in the petitioner's decision to contract a second marriage. To characterise the respondent’s reaction to this profound betrayal as cruelty towards the appellant would be to turn the law upon its head.

22. Desertion, as a ground for divorce, connotes the permanent forsaking and abandonment of one spouse by the other without reasonable cause and without the consent of the other. It has two essential elements, the factum of separation, and the animus deserendi, that is, the intention to desert permanently. Both must co-exist, and the burden of proving both lies upon the person who alleges desertion.

23. In the present case, the appellant has sought to portray the respondent’s residence at Zhol, and subsequently at Badnor and Asind, as desertion. We are unable to accept that characterisation for reasons that are both factual and legal.

24. As a matter of fact, both parties are government employees, teachers in government service. Their respective postings were at different locations. The appellant was posted at Bhil Mangra, Amet, while the respondent was posted at Zhol, Tehsil Raipur. In the context of government service, particularly in Rajasthan where postings are frequently in rural and geographically dispersed locations, it is not uncommon, indeed, it is often unavoidable, for spouses employed in government service to reside at different places. The mere fact of

separate residence, arising from the exigencies of government posting, cannot by itself be elevated to the status of desertion.

25. More fundamentally, the question of animus deserendi, the intention to permanently abandon the matrimonial relationship, must be assessed against the entirety of the circumstances. The respondent, as the evidence shows, was not passively withdrawing from the marriage out of indifference. She was responding, as any reasonable woman would, to the extraordinary provocation of her husband's second marriage. Her refusal to return to cohabitation with a man who had taken another wife, who was living with that other woman, and who had fathered children with her, cannot be characterised as an absence of bona fide intention to discharge matrimonial duties. It was, on the contrary, an entirely understandable and legally justifiable response to the petitioner's conduct. Where a spouse's departure from the matrimonial home is occasioned by the other spouse's wrongful conduct, the departure is not desertion in law, it is constructive desertion by the wrongdoer.

26. Arguendo, it the respondent who refused to cohabit with appellant, it seems reasonable, for no wife can be expected to share her matrimonial home with a husband who has taken another woman as his wife and is living with her openly. Her complaints to the police and the courts, reasonable, for a wife who has been deserted and wronged is not only entitled but may feel compelled to seek the protection of the law. Her categorical refusal to recognise the marriage as subsisting for practical purposes, reasonable, for the appellant himself had, by his conduct and by the entry in his Aadhaar card, publicly disowned her as his wife and substituted another woman in her place.

27. The filing of the dowry harassment case in 2021, upon which the appellant places special reliance, must also be viewed in this context. No doubt, the final investigation report found the complaint to be false. However, the mere fact that an investigation report was filed against the appellant complaint does not, by itself, transform the complaint into an act of cruelty against him. A police investigation that does not result in a charge-sheet is not necessarily the equivalent of a false and malicious complaint. More importantly, even if the complaint were found to have been made without adequate basis, the appellant, who had himself performed an unlawful second marriage and had thereafter lived openly with the second wife, cannot be heard to complain that the first wife's complaints constitute cruelty towards him.

28. For all the foregoing reasons, the appellant's failure to prove cruelty with particularity; the objective explanation for the parties' separate residences; the decisive and unlawful nature of the appellant's second marriage; the resulting reasonable cause available to the non-petitioner for all her subsequent conduct; and the appellant’s own admissions in cross-examination; this Court is firmly of the view that the learned Family Court was entirely correct in returning the finding against the appellant. The appellant Laxmilal has failed to establish either cruelty or desertion without reasonable cause on the part of the respondent Smt. Parvati. He is thus not entitled to a decree of dissolution of marriage on the grounds pleaded. The appeal, insofar as it challenges the findings returned by the learned Family Court, must fail.

29. Accordingly, the appeal stands dismissed.

30. All pending applications stand disposed off.

EPILOGUE

31. Before we part, we feel compelled to share our views on a matter that goes beyond the dispute between the parties before us. One that touches the society at large. We are referring to the custom of "*Nata" marriage*. On this custom, our sentiments are best captured by borrowing a quote from a published article, viz[1].: ***"Custom must walk hand in hand with conscience, and tradition must bow to justice."***

32. No discussion of Nata marriage can commence or be complete without taking note of its impact on women. For, it is the women who bear heaviest burden of this custom. The conflict between Nata and the Hindu Marriage Act, 1955, implicitly voices a concern for gender justice that is constitutionally mandated. In practice, Nata arrangements disproportionately harm women. The first wife, who has obtained no divorce and whose marriage remains legally subsisting, is left in a state of abandoned limbo, deserted in fact but still a wife in law, unable to remarry without exposing herself to social and sometimes legal consequences. The woman in the Nata relationship, meanwhile, enjoys no formal legal status, she has no recognized matrimonial rights, her children may face questions of legitimacy, and she has no enforceable claims to maintenance, inheritance, or matrimonial property under the formal legal framework.

33. The legal recognition of Nata as a valid defense would therefore institutionalize the vulnerability of two sets of women simultaneously i.e. the deserted first wife and the unprotected Nata partner. This outcome is irreconcilable with the constitutional guarantees of equality under Article 14 read with Article 15, and the directive principles under Article 39 that mandate equal rights for men and women.

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[1] "Understanding customary laws in India" by Ms. Anushka Sharma, Law Graduate from Jaipur National University.

34. Specifically, our research reveals that, this 'Nata' marriage custom is prevalent in certain communities of Rajasthan, where a person enters into a second matrimonial union without formally dissolving the first marriage through the legal process of divorce. But such a custom cannot be and shall not be accorded legal recognition as a valid defense to the charge of bigamy, it would render the Hindu Marriage Act, 1955, a solemn enactment of Parliament, meaningless, absurd, and virtually repealed by judicial tolerance of custom.

35. Those who seek to justify Nata as a legally defensible custom may take refuge, if at all, in Section 29(2) of the Hindu Marriage Act, which states that nothing in the Act shall affect any right recognized by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage. However, this argument, is deeply flawed. Section 29(2) is a saving clause, not a license for unlimited customary override of the Act. It speaks narrowly of customs relating to the *dissolution* of marriage i.e. customary divorce and not of customs permitting remarriage while the first marriage subsists. Nata does not even pretend to dissolve the first marriage. It simply bypasses it. The saving clause cannot, therefore, be stretched to cover a practice that flagrantly violates Section 5(i) by creating a second marriage over an existing, legally intact one.

36. If Nata is accepted as a valid defense against bigamy, the logical consequence is devastating to the entire scheme of the Hindu Marriage Act. The Act's provisions would remain on the statute book as empty letters, stripped of all operative content and reduce the Rule of law to absurdity.

37. In the final analysis, the Hindu Marriage Act, 1955, governs Hindu marriages on the basis of monogamy, equality, and legal accountability.

The Nata custom, where a second marriage is entered into without divorcing the first spouse, directly contradicts the foundational provisions of the Act and cannot be accorded legal recognition. Nata, as a form of customary marriage, must therefore be unequivocally disapproved of by society, condemned and thrown out altogether from the bounds of acceptable practice.

38. Disposed of with these observations.

(SANDEEP SHAH),J **(ARUN MONGA),J**

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