

RESERVED ON : 17.04.2026

PRONOUNCED ON : 10.07.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

MISCELLANEOUS FIRST APPEAL NO. 5567 OF 2024 (FC)

C/W

WRIT PETITION NO. 21524 OF 2024 (GM-FC)

IN MFA No. 5567/2024

BETWEEN:



...APPELLANT

**(BY SRI. I. THARANATH POOJARY, SENIOR COUNSEL FOR
SRI. JAYASIMHA K P., ADVOCATE)**

AND:

...RESPONDENT

(BY SRI. RAMAKRISHNAIAH C., ADVOCATE)

THIS MFA IS FILED UNDER SECTION 19(1) OF FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DATED:03.07.2024 PASSED IN M.C.NO. 5481/2021 ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, BENGALURU, DISMISSING THE PETITION FILED UNDER SECTION 13(1)(ia) AND (ib) OF THE HINDU MARRIAGE ACT. 1955.

IN WP NO. 21524/2024

BETWEEN:

...PETITIONER

(BY SRI. I.THARANATH POOJARY, SENIOR COUNSEL FOR
SRI. JAYASIMHA K P, ADVOCATE)

AND:

1.

2.

YELAHANKA MAIN ROAD,
DODDABALLAPURA -561 203.

...RESPONDENTS

(BY SRI. RAMAKRISHNAIAH C., ADVOCATE FOR R1 & R2)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH ANNEXURE-'A' THE ORDERS ON I.A. NO.2 APPLICATION UNDER SECTION 125(1) OF Cr.P.C. DATED:13.06.2024 PASSED BY THE LEARNED PRINCIPAL JUDGE, FAMILY COURT AT BENGALURU IN CRL.MISC.NO.138/2023 BY ALLOWING THIS WRIT PETITION. GRANT AN INTERIM ORDER TO STAY ANNEXURE-'A' THE ORDERS ON I.A.NO.2 APPLICATION UNDER SECTION 125(1) OF Cr.P.C AT DATED:13.06.2024 PASSED BY THE LEARNED PRINCIPAL JUDGE, FAMILY COURT AT BENGALURU IN CRL.MISC.NO. 138/2023 IN THE ABOVE CASE.

THIS MISCELLANEOUS FIRST APPEAL AND WRIT PETITION, HAVING BEEN HEARD AND RESERVED AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

This Miscellaneous First Appeal has been filed under Section 19(1) of the Family Courts Act, 1984, by the petitioner-husband in M.C.No.5481/2021, calling in

question the Judgment and Decree dated 03.07.2024 passed by the Principal Judge, Family Court, Bengaluru¹.

2. The Family Court by means of the impugned Judgment and Decree, dismissed the petition filed by the husband under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955², for dissolution of marriage on the ground of both Cruelty and Desertion.

3. The connected Writ Petition is filed against the order passed by the Family Court on I.A.No.2 in CrI.Misc.No.138/2023, wherein the Family Court having considered the income and family status, directed the petitioner- husband to pay Rs.20,000/- per month to both wife and child from the date of application i.e., from 25.01.2023 till disposal of the petition. The petitioner - husband has assailed the order of interim maintenance granted by the Family Court in the present Writ Petition.

4. The parties are referred to as per their ranking before the Family Court.

¹ the Family Court, for short

² the Act of 1955, for short

5. Facts in brief leading to file the present appeal are as under:

5.1 The petitioner and the respondent are husband and wife. Their marriage was solemnized on 22.02.2009 at Sri Harsha Mahal, Magadi Main Road, Bengaluru as per Hindu customs and rites. They were blessed with a male child by name Arjun Gowda, who was 10 years old at the time of filing of the petition seeking divorce.

5.2 It was the claim of the petitioner before the Family Court that the respondent after marriage led irresponsible life. Without any reason, she used to express that she wants to return to parental home and will not continue to lead the marital life. The respondent abandoned the petitioner and stayed away from the matrimonial home without discharging her responsibilities as a wife. However, she was going on making allegations, insults, abuses against the petitioner and his family members. Though the petitioner on several occasions, made all efforts to

bring the respondent back to the matrimonial home, but all his efforts went in vain due to reluctance of the wife. The respondent - wife used to spread useless rumors against the petitioner husband. She had issued legal notice making allegations that the petitioner and his mother were demanding dowry, which was suitably replied.

5.3 The respondent - wife is not residing with the petitioner - husband and there is no cohabitation since several years. Even she has blocked the number of the petitioner which he used to communicate with the respondent through the number of his son. All his efforts to reconcile were not fruitful. The respondent has different ideas, habits, tastes and thoughts and so being completely of different temperament and nature, which increased the incompatibility resulting in marital discord. The respondent is living apart since 09 years prior to filing of the petition. This attitude and conduct of the respondent - wife made the husband

left with no other alternative to file the present petition seeking divorce on the ground of both Cruelty as well as Desertion.

5.4 Upon issuance of notice, the respondent - wife appeared through her advocate and filed statement of objections admitting the relationship as husband and wife, date of marriage and birth of male child. However, denied all other averments made in the petition. It is the specific contention of the respondent that it is the petitioner - husband who is causing cruelty on her. He was frequently manhandling and abusing her, however she swallowed all cruelty with fond hope that, he may mend his behavior in future and so also to safeguard the interest of the family.

5.5 It was her specific contention that, the petitioner - husband is in illicit relationship and that is the reason for her to live apart. The petitioner - husband has harassed her both physically and mentally. It is the petitioner - husband who is responsible for the

marital discord, due to his behavioral conduct and continued extra marital affair with other woman, which made her to live apart and sought to dismiss the petition.

5.6 The Family Court after completion of pleadings, framed following points for consideration.

- 1) *Whether the petitioner proves that after the marriage he was treated with cruelty by the respondent?*
- 2) *Whether the petitioner proves that the respondent deserted the petitioner for a continuous period of not less than two years immediately preceding presentation of the present petition?*
- 3) *What order?*

5.7 In support of his case, the petitioner - husband examined himself as PW.1 and got marked Marriage Invitation Card & a Photograph as Ex.P1 and P2. The respondent - wife in order to prove her case, examined herself as RW.1 and got marked 14 documents as Ex.R1 to R14, wherein 05 photographs have been confronted to PW.1 during his cross-examination.

5.8 The Family Court upon consideration of the pleadings, evidence both oral and documentary and arguments, answered Point Nos.1 and 2 i.e., on cruelty and desertion in the Negative and against the petitioner - husband and proceeded to dismiss the petition.

5.9 The Family Court has held that the photographs produced by the respondent - wife to contend that the petitioner - husband has married one Sowmya and from their relation, a male child is born by name . The photographs produced clearly shows that the petitioner - husband celebrating birthday of and also participated in other family functions along with ^ and

1. The Family Court further observed that in the initial cross-examination, the petitioner husband has admitted that the woman found in the photograph that is, was his friend, but in the further cross-examination, he has denied the identity of the very same woman appeared in the

photographs along with him. It was also observed by the Family Court that, it was the contention of the petitioner - husband that he and his mother have filed a suit against _____ and other 42 TV channels from uploading the photographs in social media. The Family Court has held that these photographs are not created by the respondent - wife, but they are uploaded in the social media from the account of _____ and _____. The Family Court accordingly held that, there is no explanation offered by the husband with regard to the photographs produced by the respondent - wife with respect to said _____ and _____, who were found along with him in the said photographs. The Family Court reasoned its findings that mere filing of the suit against _____ and other 42 TV channels is not sufficient to discard the above photographs produced by the respondent from the social media.

5.10 The Family Court further held that father of the petitioner has gifted landed property in the name of

minor son born to the petitioner and the respondent and he used to visit the parental home of the respondent - wife to verify the welfare of the child as well as the respondent. This, the Family Court has found to state that, if there was any failure on the part of the respondent to lead life in matrimonial home, then there was no occasion for the father-in-law to visit her parental home to verify welfare of the child as well as the respondent. It was also observed by the Family Court that, the grandfather i.e., the father-in-law of the respondent - wife gifted landed property in favor of the son of the respondent and made the respondent as administrator, but not the petitioner. As such, the Family Court has held that the evidence led by the respondent - wife is more probable under the preponderance of probabilities, than the one led by the petitioner - husband. Accordingly, concluded that the petitioner - husband has failed to prove the cruelty against wife as alleged

in the petition and answered point No.1 in the Negative.

5.11 So far as point No.2 is concerned, the Family Court has observed that the petitioner - husband has failed to prove willful desertion on the part of the wife as she is having reasonable cause since he is having relationship with some other woman and even begotten a son as a result of such relationship. Having considered these aspects of the matter, the Family Court answered Point No.2 the ground of desertion in the Negative and against the petitioner - husband and consequently, dismissed the petition. It is this Judgment and Decree passed by the Family Court is called in question in this appeal by the petitioner - husband.

6. As stated above, the Writ Petition is filed calling in question the interim maintenance granted by the Family Court in CrI.Misc.No.138/2023, while allowing I.A.No.2 filed for interim maintenance.

7. Since the Judgment in the Miscellaneous First Appeal has a bearing on the interim maintenance awarded in the petition, the Writ Petition would be answered after the decision in the matrimonial case.

8. Heard, Sri.I.Tharanath Poojary, learned Senior counsel assisted by Sri.Jayasimha.K.P, learned counsel appearing for the petitioner-husband and Sri.Ramakrishnaiah.C, learned counsel appearing for the respondent - wife.

9. Sri.I.Tharanath Poojary, learned Senior counsel with all vehemence submits that the respondent - wife from the initial period subsequent to marriage, behaving irrationally not respecting the petitioner and she is responsible for the marital discord and she is living apart since 09 years, without any reasonable cause. As such, the marriage between them has been irretrievably broken down. The Family Court has failed to consider this aspect of the matter at least to grant divorce on the ground of desertion. In support of his contentions, learned Senior counsel placed reliance on the following decisions:

- (i) *NAYAN BHOWMICK VS. APARNA CHAKRABORTY*³ - Paragraphs 21, 24, 25, 26, 33 and 34.
- (ii) *RAKESH RAMAN VS. KAVITA*⁴.
- (iii) *SMT.ROHINI KUMARI VS. NARENDRA SINGH*⁵
- Paragraphs 4, 5 and 6.
- (iv) *SAMAR GOSH VS. JAYA GOSH*⁶.
- (v) *DR.(MRS.) MALATHI RAVI, M.D. VS, DR.B.V.RAVI, M.D*⁷.
- (vi) *RINKU BAHETI VS. SANDESH SHARDA*⁸.

10. Learned Senior counsel stressed more on the Judgment of **SAMAR GOSH** supra, to contend that in case the marriage has ceased to exist in substance and in reality, there is no reason for denying divorce, then the parties alone can decide whether their mutual relationship provides the fulfillment which they seek. He further contended that divorce should be seen as a solution and an escape route out of a difficult situation. Such divorce is

³ 2025 SCC OnLine SC 2798

⁴ (2023) 17 SCC 433

⁵ 1972 (1) SCC 1

⁶ (2007) 4 SCC 511

⁷ CIVIL APPEAL NO.5862/2014

⁸ (2025) 3 SCC 686

unconcerned with the wrongs of the past, but is concerned with bringing the parties and the children to terms with the new situation and development by working out the most satisfactory basis upon which they may regulate their relationship in the changed circumstances.

11. Learned Senior counsel further stressed on Paragraph No.95 of the said judgment to contend that, once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down and if the Court finds that the relationship is broken down beyond reparable terms, then they should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties. With this, he sought to allow the appeal, while setting aside the Judgment and Decree passed by the Family Court and consequently, allow the petition and dissolve the marriage

at least on the ground of desertion, if not on the ground of cruelty.

12. In contrast, Sri.Ramakrishnaiah.C, learned counsel appearing for the respondent - wife, submits that, the Family Court has come to the conclusion that the reason for living apart is the conduct and character of the petitioner -husband. It is his illicit relationship, which finds place in the photographs produced which were uploaded in the social media of said woman and child, and this act of the husband is greater misery caused to the wife and cruelty upon her. With this he sought to dismiss the appeal.

13. We having considered the rival submission, perused the appeal paper and the Trial Court record.

14. Any exception to the Judgment and Decree passed by the Family Court by allowing the appeal and granting divorce would amount to rewarding premium to the wrong doer, which is not the object of Law which has been engrafted in Section 13 of the Act of 1955.

15. The petitioner-husband with only two documents that is, the Marriage Invitation Card and photograph has miserably failed to prove the allegation of cruelty against the wife.

16. The explanation provided to the word "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 willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly'. What fall out from the above explanation provided to the word "Desertion" as contemplated under Section 13(1)(ib) is there must be a willful neglect and living apart without any reasonable cause on the part of the spouse against another spouse, who is complaining the same before the Court. In the case on hand, the Family Court has reasoned its finding that living apart of the respondent wife is with a reasonable cause, because of the relationship of the husband with another woman.

17. We find it very hard to accept the contention of learned Senior counsel Sri.I.Tharanath Poojary, to comprehend his submissions that separation between the parties continued for a sufficient length of time should be considered as breaking down of the marriage beyond repair. On the contrary, the facts and circumstances of the present case indicate otherwise. There is reasonable cause for the respondent-wife to live apart. Any exception to the Judgment and Decree passed by the Family Court would amount to rewarding premium to the wrong doer, besides amounting to applying salt to the injury, without there being any fault found against the wife, as she is living apart with a reasonable cause. In that view of the matter, we find no infirmities in the Judgment and Decree passed by the Family Court in dismissing the petition. We hold that the appeal sans merits and is accordingly, ***dismissed.***

18. So far as the Writ Petition is concerned, it is filed calling in question the order on I.A.No.2 granting interim maintenance. For the reasons stated afore, we find

no exception to the order passed by the Family Court granting interim maintenance of Rs.20,000/- per month looking at the status of the respondent, even according to his own admission in the cross-examination in M.C.No.5481/2021 that, he is maintaining a Mercedes Benz car, though he has contended that he is paying installment to the said Car. For a person who could maintain Mercedes Benz Car, to pay Rs.20,000/- per month cannot be termed as excessive and since the matter is pending consideration, we without expressing anything on the interim maintenance granted, as respondent wife is not in appeal seeking enhancement of the same, **dismiss** the Writ Petition, confirming the order, directing the petitioner - husband to pay a sum of Rs.20,000/- every month to the respondent - wife and child without fail. The respondent - wife is at a liberty to file Execution Petition seeking recovery of the amount, in the event the petitioner - husband fails to deposit the amount, in accordance with the law.

19. The Family Court is directed to dispose of the Crl.Misc.No.138/2023 seeking maintenance pending before it as expeditiously as possible, if not disposed earlier to this order.

20. Given the facts and circumstances of the case, no order as to costs.

21. In view of dismissal of appeal and the Writ Petition, pending interlocutory applications, if any, stand disposed of.

Sd/-
(JAYANT BANERJI)
JUDGE

Sd/-
(T.M.NADAF)
JUDGE

TKN