



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

**DATED THIS THE 29<sup>TH</sup> DAY OF MARCH, 2023**

**PRESENT**

**THE HON'BLE MR. JUSTICE ALOK ARADHE**

**AND**

**THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL**

**MISCELLANEOUS FIRST APPEAL NO.4290 OF 2016 (FC)**

**BETWEEN:**

Digitally  
signed by  
RUPA V

Location:  
High Court  
of Karnataka

...APPELLANT

(BY SRI. S.G. LOKESH, ADV.,)

**AND:**

...RESPONDENT

(VIDE COURT ORDER DTD:18.07.2022 RESPONDENT  
SERVED HELD SUFFICIENT)

THIS MFA IS FILED U/S 19(1) OF FAMILY COURT ACT,  
AGAINST THE JUDGMENT AND DECREE DATED:18.04.2016  
PASSED IN M.C.NO.118/2014 ON THE FILE OF THE I  
ADDITIONAL DISTRICT & SESSIONS JUDGE, KOLAR, C/c.  
PRINCIPAL JUDGE, FAMILY COURT, KOLAR, ALLOWING THE  
PETITION FILED U/S 13(1)(ib) OF HINDU MARRIAGE ACT.

THIS APPEAL COMING ON FOR HEARING, THIS DAY,  
**ALOK ARADHE J.**, DELIVERED THE FOLLOWING:



## **JUDGMENT**

This appeal under Section 19(1) of the Family courts Act, 1984 has been filed against the judgment and decree dated 18.09.2016 passed by the Family Court by which petition filed by the respondent / husband under Section 13(1)(ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act' for short) has been allowed and the marriage between the parties has been dissolved by a decree of divorce.

2. Facts giving rise to filing of this appeal briefly stated are that the marriage between the parties was performed on 18.06.2010. Thereafter, the parties lived in their matrimonial home and on 09.06.2011, a son was born to the appellant.

3. The respondent / husband filed a petition on or about 29.10.2014 inter alia on the ground that the after five months of marriage, the appellant / wife left the matrimonial home and in para 5 to 8 of the petition,



it was pleaded that the parties are living separately for a continuous period of three years immediately preceding the date of presentation of the petition. It was also pleaded that the respondent / husband sent a notice dated 02.09.2014 (Ex.P3) asking the appellant / wife to give consent for divorce. However, the appellant /wife did not respond to the aforesaid notice. Accordingly, a decree of dissolution was sought on the ground of desertion.

4. The appellant / wife admittedly was served with notice of the proceedings and engaged a counsel. However, neither any statement of objection was filed on behalf of the appellant / wife nor any evidence was adduced.

5. The respondent / husband in order to prove the case examined himself and exhibited documents viz., Ex.P1 to Ex.P7. The family court vide judgment dated 18.04.2016 inter alia held that the



uncontroverted averments made on behalf of the respondent / husband in the petition as well as in his evidence before the court have not been controverted on behalf of the appellant / wife. It is further held that uncontroverted allegations made on behalf of the respondent / husband constitute a ground of desertion under Section 13(1)(ib) of the Act. Accordingly, the family court granted the decree of divorce. In the aforesaid factual background, this appeal has been filed.

6. Learned counsel for the appellant submitted that the appellant / wife was thrown out of the matrimonial home on 25.07.2014 and thereafter, the appellant lodged a complaint against the respondent. It is further submitted that police also advised the respondent. However, notwithstanding the advise rendered by the police, the respondent /husband did not permit the appellant to join the matrimonial home.



It is further submitted that the matter be remitted to the family court and the appellant / wife be granted opportunity to adduce evidence.

7. We have considered the submissions made by Learned counsel for the appellant and have perused the record. Admittedly, the appellant / wife was served with notice of the proceedings and had engaged a counsel. The counsel participated in the proceedings before the family court. However, neither any statement of objections was filed nor any evidence was tendered on behalf of the appellant / wife. It is trite law that if a witness is not subjected to cross examination by the other side, his testimony is deemed to have been accepted. In the absence of any rebuttal of averments made in the petition under Section 13 of the act as well as the fact that the respondent / husband was not subjected to cross -examination, the family court has rightly concluded that the appellant / wife has deserted



the respondent / husband for a continuous period of two years immediately preceding the two years of presentation of the petition. The ground for desertion therefore, has duly been proved. The finding recorded by the family court does not suffer from any infirmity warranting interference of this court in this appeal.

For the aforementioned reasons, we do not find any merit in this appeal. The same fails and is hereby dismissed.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

SS