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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 27.08.2025***Judgment delivered on:22.09.2025***

+ MAT.APP.(F.C.) 160/2022 & CM APPL.43569/2022 (Stay)

MAMTA DAS

.....Appellant

Through: Mr. Zishan Alam Siddiqui, Mr.
Akash & Ms. Amisha
Upadhyay, Advs.

versus

PUNEET DAS

.....Respondent

Through: Mr. Francis Paul, Advocate

CORAM:**HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN****SHANKAR****JUDGEMENT****HARISH VAIDYANATHAN SHANKAR J.**

1. The present appeal has been preferred under Section 19 of the Family Courts Act, 1984, read with Section 55 of the **Divorce Act, 1869¹**, by the Appellant–Wife, assailing the **Judgment and Decree dated 31.05.2022²** passed by the learned **Principal Judge, Family Court, Tis Hazari Courts (Central), Delhi³**, in IDA No. 13/2017.

2. By the Impugned Judgment, the learned Family Court allowed the divorce petition filed by the Respondent–Husband and dissolved the marriage of the parties under Section 10(1)(ix) of the Divorce Act on the ground of desertion, while simultaneously dismissing the

¹ Divorce Act

² Impugned Judgment

³ Family Court



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Counter-Claim bearing No. 01/2022⁴, instituted by the Appellant seeking restitution of conjugal rights.

BRIEF FACTS:

3. The parties were married on 26.12.2007 at Free Church, Sansad Marg, New Delhi, in accordance with Christian rites and ceremonies. The marriage was consummated, but no children were born out of wedlock.

4. After marriage, the Appellant-Wife resided in her matrimonial home with the Respondent-Husband at Christian Colony, Karol Bagh, New Delhi, along with the Respondent's family members.

5. According to the Appellant, soon after the marriage, she was subjected to hostile treatment by her in-laws. They allegedly ridiculed her, created an atmosphere of discord, and caused disharmony within the household. The Appellant's mother-in-law is stated to have humiliated her, restricted her from entering the kitchen, and generally fostered an unfriendly environment, which made her life stressful. The Respondent, despite being aware of these circumstances, is alleged to have remained a mute spectator and failed to extend support or protection.

6. In July 2008, as per the Appellant, owing to the persistent ill-treatment of the Respondent's mother, the parties shifted to a rented accommodation at Vasant Kunj, New Delhi, taken on a company lease by the Respondent. They resided there from 07.07.2008 to 11.07.2009.

⁴ Counter-Claim



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7. The Appellant contends that despite her repeated requests to start a family, the Respondent, allegedly under the influence of his mother, refused on the ground that having a child would complicate a potential divorce. This refusal continued even after medical advice regarding the Respondent's condition of *Benign Prostatic Hyperplasia*, which made conception more difficult.

8. The Appellant further alleges that the stress and hostility she endured drove her to extreme distress, culminating in a suicide attempt on 09.02.2009, when she consumed a bottle of Dettol. However, she did not lodge any formal complaint or seek legal recourse regarding the incident.

9. By July 2009, the Vasant Kunj accommodation was vacated. While the Respondent returned to his parental home, the Appellant claims that she was constrained to take shelter at her relatives' residence, as the Respondent refused to take her back to the matrimonial home.

10. On 15.07.2009, the Appellant travelled to the USA for a professional assignment. She returned to India after a few months.

11. Upon her return, the Appellant asserts that the Respondent declined to take her back to the matrimonial home and instead asked her to make independent arrangements for accommodation. She further states that she declined a subsequent overseas opportunity in March 2010 in an effort to stabilize the marital relationship. Eventually, through the intervention of family members, a compromise was reached, and the parties resumed cohabitation at the matrimonial home in Karol Bagh, Delhi, on 25.04.2010.



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12. In July 2011, the Respondent informed the Appellant about a new overseas role. In August 2011, he allegedly asked her to arrange separate accommodation to create an impression before his parents that they had separated, while assuring her that he would later join her.

13. On 01.12.2011, the Appellant shifted to a rented house with the Respondent's assistance. It is an admitted fact that the Respondent frequently visited her there and retained a spare key.

14. In May 2012, the Appellant received a lucrative job offer in Doha, Qatar, which she accepted in November 2012, relocating there. Around the same time, the Respondent also took up employment in Nigeria, where he remained until 2014.

15. According to the Appellant, she continued to maintain communication with the Respondent through emails, Viber calls, and other means. However, after 2014, there was admittedly no communication between them, and the parties continued to live in different countries.

16. In 2015, the Appellant's brother visited the Respondent to ascertain the reasons for his indifference.

17. The Appellant alleges that the Respondent conveyed his unwillingness to continue the marriage. The Respondent, however, asserts that the Appellant's brother informed him that the Appellant herself was no longer interested in continuing the marriage, and that it would be better if the parties dissolved it by mutual consent. The Respondent further claims that a draft petition for divorce by mutual consent was sent to the Appellant, but she refused to sign the same.



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18. In 2015, the Appellant initiated pre-litigation mediation proceedings before the **Delhi High Court Mediation Centre**⁵. The Respondent did not participate, contending that the Appellant herself was in Doha at that time. Consequently, the proceedings proved infructuous, and the mediation report was recorded as “non-starter”.

19. Throughout, both parties levelled numerous allegations and counter-allegations against each other on the same set of facts.

20. On 06.11.2017, the Respondent filed a divorce petition bearing IDA No. 13/2017 before the learned Family Court under Section 10(1)(ix) and (x) of the Divorce Act, seeking dissolution of marriage on the grounds of desertion and cruelty.

21. The Appellant filed her reply relying on contemporaneous communications, including emails and chats, to demonstrate her efforts to preserve the marital bond. She also filed a counter-claim seeking restitution of conjugal rights under Section 32 of the Divorce Act, which was registered as Counter-Claim No. 01/2022.

22. After considering the facts, evidence, and applicable law, the learned Family Court, by the Impugned Judgment, rejected the Respondent’s plea of cruelty but accepted the ground of desertion and granted a decree of divorce in favour of the Respondent-Husband. *Vide* the same judgment, the learned Family Court also dismissed the Appellant’s counter-claim, finding no merit therein.

23. Aggrieved by the Impugned Judgment, the Appellant has preferred the present appeal seeking to set aside the said judgment and decree. However, it is pertinent to note that no relief has been sought in respect of the dismissal of her counter-claim.

⁵ Mediation Centre



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CONTENTIONS OF THE APPELLANT:

24. Learned Counsel for the Appellant would contend that the finding of desertion recorded by the learned Family Court is wholly misconceived, for her departure from the matrimonial home on 02.12.2011 was not voluntary but occasioned by persistent hostility and humiliation inflicted by the Respondent's mother, and it was further compounded by the Respondent's own insistence that she shift to separate accommodation; hence, the learned Family Court erred in holding her guilty of desertion by overlooking the settled doctrine of *constructive desertion*.

25. It would be submitted by the learned Counsel that the Appellant was compelled to leave the matrimonial home owing to sustained cruelty and hostile conduct of her in-laws, while the Respondent remained a silent spectator, and it was the conduct of the Respondent and his family that forced her to arrange separate accommodation in 2011, which, in any event, was done with the Respondent's consent and therefore could not establish an intention on her part to abandon the marital relationship.

26. Learned Counsel would further argue that the learned Family Court erred in relying upon the Appellant's acceptance of overseas employment in Doha, Qatar, in November 2012, to infer that she had no intention of preserving the marriage, since the assignment was accepted only with the consent of the Respondent and thus could not be construed as evidence of desertion.

27. It would also be contended by the learned Counsel that the Appellant's decision to take up employment abroad was dictated by financial necessity, particularly since she had already been virtually



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expelled from the matrimonial home, and her earlier refusal of lucrative foreign assignments in order to reconcile with the Respondent clearly negated any inference of desertion.

28. Learned Counsel for the Appellant would further submit that the learned Family Court failed to properly appreciate the documentary evidence produced by the Appellant, including emails and Viber chats wherein the Respondent addressed her in affectionate terms, for these communications showed that the Appellant consistently sought to preserve the relationship and never intended to permanently sever cohabitation, while the Respondent's persistent indifference and categorical refusal to resume cohabitation, as admitted even during cross-examination, established that he alone was unwilling to continue the marital relationship; hence, the learned Family Court erred in treating such documents as inconsequential, whereas they in fact negated the existence of *animus deserendi*, which constitutes the core element of desertion.

29. Learned Counsel would also submit that the Appellant took *bonafide* steps towards reconciliation by initiating pre-litigation mediation proceedings before the Mediation Centre, and while this action demonstrated her genuine intention to preserve the marriage, the Respondent chose not to participate in the mediation, thereby displaying his unwillingness to resolve the dispute.

30. It would be further submitted by the learned Counsel that these circumstances clearly show that it was the Respondent, and not the Appellant, who intended to permanently end the marital relationship, whereas the Appellant was consistently striving to save the marriage by initiating mediation, maintaining communication with the



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Respondent for years after separation, and refusing to join him in filing a petition for divorce by mutual consent.

31. It would also be urged by the learned Counsel for the Appellant that the Respondent himself indulged in contumacious conduct by contracting a second marriage in June 2024 during the pendency of the present appeal, despite full knowledge of the *lis* and the subsistence of interim orders of this Court, and this act, according to the Appellant, disentitles him to any equitable relief and casts serious doubt on the *bonafides* of his claim.

CONTENTIONS OF THE RESPONDENT:

32. *Per contra*, learned Counsel for the Respondent would support the Impugned Judgment and submit that the learned Family Court had correctly appreciated the pleadings, evidence, and surrounding circumstances, and therefore, rightly granted the decree of divorce on the ground of desertion.

33. It would be submitted by the learned Counsel for the Respondent that the parties have not cohabited since 02.12.2011, and as the Appellant has been living separately for more than a decade, the statutory requirement of two years' continuous desertion under Section 10(1)(ix) of the Divorce Act stood fully satisfied.

34. Learned Counsel would emphasize that the Appellant voluntarily chose to shift to a separate rented accommodation on 01.12.2011 and thereafter, in 2012, accepted lucrative employment abroad, and these deliberate choices effectively brought cohabitation to an end and clearly established *animus deserendi*, i.e., her intention to permanently abandon the matrimonial relationship.



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35. It would further be contended by the learned Counsel for the Respondent that the learned Family Court rightly concluded that the Appellant's decision to accept foreign employment and settle abroad was inconsistent with any *bonafide* intention to resume marital life with the Respondent, and that acceptance of overseas employment, coupled with long-continued non-cohabitation, constituted a significant factor which, taken with contemporaneous conduct, justified the inference of *animus deserendi*.

36. Learned Counsel would also submit that the Appellant's plea of constructive desertion was unfounded, since her allegations of hostility and ill-treatment at the hands of her in-laws were general in nature and unsupported by contemporaneous complaints or independent evidence, and no material was produced to demonstrate cruelty of such a level as would legally justify her prolonged absence from the matrimonial home. He would also submit that the learned Family Court rightly noted that the Appellant had never lodged any civil or criminal complaint against the Respondent or his relatives at any stage.

37. With regard to the allegation of contracting a second marriage, learned Counsel for the Respondent would submit that the Respondent solemnised his remarriage only after obtaining a valid decree of divorce from the competent court on 31.05.2022, and therefore, the subsequent remarriage was lawful and in full conformity with Section 57 of the Divorce Act.

ANALYSIS:



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38. We have carefully considered the submissions advanced on behalf of both parties, examined the evidence adduced before the learned Family Court, and meticulously scrutinized the record of the case.

39. In the Impugned Judgment, the learned Family Court framed three principal issues for determination concerning, *namely*:

- (i). Respondent-Husband's allegation of cruelty,
- (ii). Respondent-Husband's allegation of desertion, and
- (iii). Appellant-Wife's counter-claim seeking restitution of conjugal rights.

40. The learned Family Court rejected the first and third issues, holding against the Respondent on cruelty and against the Appellant on restitution of conjugal rights, but decided the second issue relating to desertion in favour of the Respondent-Husband.

41. Since the findings of the learned Family Court on the first and third issues have not been assailed before us, the solitary question that arises for our consideration is whether the learned Family Court was correct in holding that the Respondent-Husband had successfully established the statutory ground of desertion as contemplated under Section 10(1)(ix) of the Divorce Act.

42. At the outset, it is considered appropriate to reproduce the analysis and findings of the learned Family Court on the issue of desertion as recorded in the Impugned Judgment. The relevant extract of the Impugned Judgement is set out below:

“19. After completion of the pleadings, following issues, were framed by my Ld. Predecessor on 10.12.2018: -



- (1) Whether the petitioner-husband has been subjected to cruelty by the respondent-wife as claimed in the petition, and if so, to what effect? OPP.**
- (2) Whether the respondent-wife has deserted the petitioner-husband for a continuous period of more than two years immediately preceding the presentation of the petition without reasonable cause? OPP**
- (3) Whether the respondent-wife is entitled to decree of restitution of conjugal rights as claimed by her in her counter claim? OPP**
- (4) Relief.**

EVIDENCE:

22. Petitioner-husband has tendered his affidavit in evidence as Ex.PW1/X. He has reiterated the facts as mentioned in the petition. He has also relied upon documents Ex. PW1/A and Ex. PW1/B. Ex. PW1/A is copy of marriage certificate and Ex. PW1/B is copy of pre-litigation mediation application filed by the respondent.

23. In order to rebut the claim of petitioner, respondent has tendered her affidavit in evidence which is Ex.RW1/A. She has taken the same pleas as taken by her in the written statement. She has relied upon documents Ex. RW1/1 to Ex. RW1/18 which are as follows:

1. Ex. RW1/1 (colly) are copy of e-mails.
2. Ex. RW1/2 (colly) are copy of e-mails.
3. Ex. RW1/3 is copy of email dt. 06.08.2019.
4. Ex. RW1/4 is copy of e-mail dt. 14.08.2019.
5. Ex. RW1/5 is copy of e-mail dt. 26.01.2011.
6. Ex. RW1/6 is copy of e-mail dt.12.11.2011.
7. Ex. RW1/7 is copy of e-mail
8. Ex. RW1/8 is copy of e-mail dt. 19.12.2011
9. Ex. RW1/9 and Ex. RW1/10 are copies of email dt. 12-13/01.2013 and 02.02.2012.
10. Ex. RW1/11 is copy of e-mail from February to June, 2012.
11. Ex. RW1/12 (colly) is copy of e-mail dt. 24.09.2012.
12. Ex. RW1/13 is copy of e-mail of February, 2013.
13. Ex. RW1/14 is copy of e-mail of May, 2013.
14. Ex. RW1/15 is copy of e-mail of June, 2013
15. Ex. RW1/16 is copy of e-mail of October, 2013.
16. Ex. RW1/17 is copy of e-mail of November, 2013



17. **Ex. RW1/18 is copy of detailed chat from February 2014 to November, 2014.**
18. **Ex. RW1/19 is copy of e-mail dt. 08.01.2016.**

24. I have heard oral arguments from Ld. Counsels for parties, written arguments filed by Ld. Counsel for petitioner. Ld. Counsel for respondent has relied upon following judgments:

- (1) ***Savitri Pandey vs. Prem Chandra Pandey***, in Civil appeal no. 20-21 of 1999 decided on 08.01.2022
- (2) ***Harpreet Kaur Vs. Amarjeet Singh, MAT Appeal no. 318/19 and CM Appeal no. 52860-52862/19 decided on 17.01.2020,***
- (3) ***Lavina Martin Vs. Sam Bosco Matin, Family Court appeal no. 18312008, Civil application no. 192/2009, Family Court appeal no. 183/2009 of Hon'ble Bombay High Court.***

25. I have considered the arguments advanced by Ld. Counsel for parties, written arguments filed by the petitioner, judgments relied upon by the Ld. Counsel for respondent and evidence led by parties, material on record. After considering the same my issue wise findings are as under:

ISSUE NO.2:

- (2) **Whether the respondent-wife has deserted the petitioner-husband for a continuous period of more than two years immediately preceding the presentation of the petition without reasonable cause? OPP**

28. The second ground for seeking divorce from respondent-wife as claimed by the petitioner-husband is the ground of desertion. Petitioner has claimed that the respondent-wife is living separately from him since 2011 and she had no intention to reside/cohabit with him and thus it amounts to desertion. The term "**desertion**" has been defined in the Divorce Act, 1869 in **Section 3 sub section 9** which reads as under: -

3. **Interpretation-clause:-** In this Act, unless there be something repugnant in the subject of context:--

- (1) ----
- (2) ----
- (3) ----
- (4) ----
- (5) ----
- (6) ----
- (7) ----
- (8) ----



- (9) "*desertion*" implies an abandonment against the wish of the person, charging it, and
(10) ----

29. Thus, the Act itself provides the definition of desertion which is an "*abandonment*" against the wishes of person charging it that means there should be an abandonment by the non-applicant against the petitioner who is seeking the relief on the ground of desertion.

34. From these judgments, it is clear that in order to prove the ground of desertion, petitioner has to prove *firstly*, the factum of separation, *Secondly*, the intention to bring cohabitation permanently to an end ie the intention to desert i.e. "*animus deserendi*". In order to prove "*animus deserendi*" the deserted spouse has to prove the absence of consent and the absence of any conduct on his/her part which could give reasonable cause to the other spouse for leaving the matrimonial home.

35. In nutshell, it can be considered that in order to prove the ground of desertion, petitioner has to prove *firstly*, that the parties are living separately for more than two years before the date of filing of petition and *Secondly*, petitioner has to prove that the "*intention to desert*" exist with the respondent. The intention to desert will be considered after considering the complete facts and circumstances of the case. While considering the intention to desert, the court has to necessarily see that there must not be any conduct on the part of petitioner which could give any reasonable cause to the respondent for leaving the matrimonial home or to live separately from petitioner. In other words, the petitioner should not have been guilty of facilitating the decision of desertion.

36. In the present case, parties got married on 26.12.2007. they started residing together at the matrimonial home in Karol Bagh after marriage. Admittedly in year, 2008 they shifted from Karol Bagh to Vasant Kunj and while residing in Vasant Kunj, the parties separated for the first time on 12.07.2009 ie when respondent went to some rented accommodation (or started residing with her brother) whereas petitioner came back to his parental home. Thereafter due to conciliation carried out by the family members and relatives, parties again started residing together from 25.04.2010 at the matrimonial home of respondent at Karol Bagh where both parties resided together till 01.12.2011. It is admitted case of the respondent that she left the matrimonial home on 01.12.2011 and shifted to a rented accommodation as clearly stated by her in her written statement in the preliminary objection, para (ee) , page 18. Since 02.12.2011, parties have been living separately though they have admitted that for few days petitioner had visited respondent at her tenanted premises and they have lived together.



37. This is a very strange case where neither of the party had made any allegations against each other for any matrimonial wrong. Neither petitioner had levelled any allegation of cruelty, misbehavior or mis treatment by the respondent nor respondent had levelled any allegation of harassment, torture or cruelty committed by the petitioner towards her. The only allegation levelled by the respondent is towards her mother in law and not towards any other person. It is also not the case of the respondent that the atrocities allegedly committed by the mother in law of respondent were either approved or accepted or initiated by the conduct of the petitioner. It is also not the case of the respondent that she had communicated with the petitioner about any of the wrong behaviour of her mother in law or that the petitioner had misbehaved with the respondent on such instances.

38. In order to claim relief of dissolution of marriage on the ground of desertion, as discussed above, petitioner had to prove the factum of "**desertion**" and the "**intention to desert**" on the part of respondent. In the present case, both parties had admitted that they are residing separately since 01.12.2011, although Respondent had stated that even after 01.12.2011 petitioner used to come and stay with her at her rented apartment. But in major way both parties have admitted that they are residing separately since December, 2011, except few instance of staying together, as alleged by respondent but denied by petitioner. Thus "**factum of desertion**" is proved by petitioner.

39. As regards "**animus deserendi**" ie the "**intention to desert**", on the part of respondent is concerned, Petitioner had specifically and categorically stated that Respondent is residing away from him without any reasonable cause or explanation. No reason has been attributed by Petitioner on Respondent for living separately from him. Once, it is stated by Petitioner that respondent is residing separately from him without any just/proper or even reasonable reason, onus shifts on the respondent to prove her "**reasons**" for living separately from Petitioner. It is impossible for Petitioner to prove "**absence of reason**" but it is possible for the respondent to prove the "**existence**" of any reason in her favour for living separately from petitioner. Now, I will discuss the reasons alleged by respondent for explaining living apart from petitioner.

40. Respondent has levelled three main allegations in present case, **firstly**, that her mother in law did not allow her to cook anything in the kitchen, **secondly**, mother in law did not want that the parties should have a child, **thirdly**, mother in law did not want respondent to live in the matrimonial home. Although respondent had not specifically levelled any allegation against the petitioner but she had repeatedly stated in her written statement that the petitioner had threatened her not to come to matrimonial home otherwise he will break her legs. Despite making these allegations



in the written statement no such suggestion was given to the petitioner while he was cross examined as PW-1 nor any complaint to this effect has been lodged by the respondent with the police authorities that the petitioner is not letting her live in the matrimonial home.

41. Admittedly no complaint or any proceedings has been initiated by the respondent-wife against the petitioner for not permitting the respondent to live in the matrimonial home, thus it cannot be presumed, that this was the cause, due to which respondent had started living separately. In the entire written statement it has nowhere been stated by the respondent except the above mentioned allegations as to why she had started living separately from the petitioner. Respondent has not stated anywhere that she tried to reside with the petitioner or she wanted to reside with the petitioner but petitioner did not come forward or refused to live with her. Admittedly many e-mails were exchanged between the parties, and many viber chats were exchanged between the parties. All have been accepted in the cross examination of the parties but neither any of the email, nor any of the viber chat proved by parties show/prove the reason why they were living separately from the other spouse.

42. In order to explain and understand the circumstances of parties in the present case, I will now discuss the documents relied upon by the parties, both in their evidence as well as in the cross examination of the opposite party. As the entire case of parties, specially respondent is based on the e-mails and viber chats.

43. In order to prove the case, petitioner has relied upon two documents which are as follows: -

- 1. Copy of marriage certificate Ex. PW1/A.**
- 2. Copy of pre-litigation mediation application filed by respondent Ex. PW1/B.**

44. Petitioner has further admitted the documents in his cross examination which are as under:

- 1. Ex. PW1/P1 is email dt. 24.04.2011 and 22.04.2011, in respect to job of petitioner.**
- 2. Ex. PW1/P2 is email dt. 18.12.2009 from the respondent with her travel details from US to Delhi**
- 3. Ex. PW1/P3 are the blood reports of petitioner.**
- 4. Ex. PW1/P4 is email dt. 03.10.2012, from Respondent to Petitioner containing her offer letter for Doha,**
- 5. Ex. PW1/P5 is the resume of respondent.**
- 6. Ex. PW1/P6 is the email dt. 03.10.2012, for e-visa of Respondent.**



7. Ex. Pw1/P7 is e-visa dt. 17.09.2012. for QATAR.
8. Ex. PW1/P8 is copy of email ID dt. 13.01.2012 (Also Exhibited as Ex. RW1/9).
9. Ex. PW1/P9 are the emails from respondent to petitioner ie photos of rented apartment in DOHA.
10. Ex. PW1/P10 is the mail dt. 30.06.2013, from Respondent to Petitioner about not to respond.
11. Ex. PW1/P11 is mail dt. 05.01.2014, tickets of respondent from Doha to Delhi.
12. Ex. PW1/P12 is mail dt. 13.01.2013 from respondent to Petitioner regarding tickets and hotel bookings of respondent from Doha to Dubai.

45. In order to prove the case, respondent has relied upon following documents: -

1. Ex. RW1/1 (colly) are copy of e-mails.
2. Ex. RW1/2 (colly) are copy of e-mails, between Respondent and her company.
3. Ex. RW1/3 is copy of email dt. 06.08.2009, about apartment for purchasing household articles.
4. Ex. RW1/4 is copy of e-mail dt. 14.08.2009, chat with petitioner.
5. Ex. RW1/5 is copy of e-mail dt. 26.01.2011, no allegation.
6. Ex. RW1/6 is copy of e-mail dt.12.11.2011, mail to Doctor by respondent for eye treatment of petitioner.
7. Ex. RW1/7 is copy of e-mail dt.15.11.20211 for rent of apartment by respondent.
8. Ex. RW1/8 is copy of e-mail dt. 19.12.2011 for e ticket of petitioner.
9. Ex. RW1/9 and Ex. RW1/10 are copies of e-mail dt. 12-13/01.2012 and 02.02.2012 (mails exchanged between Respondent and her company).
10. Ex. RW1/11 is copy of e-mail dt. 29.02.2012 from Petitioner to respondent-general talks about life.
11. Ex. RW1/12 (colly) is copy of e-mail dt. 17.08.2012 ie normal chat between parties about their job.
12. Ex. RW1/13 is copy of e-mail of February, 2013, ie normal chat between parties about their job.
13. Ex. RW1/14 is copy of e-mail of May, 2013, ie normal chat between parties about their job.
14. Ex. RW1/15 is copy of e-mail of June, 2013, ticket of respondent.
15. Ex. RW1/16 is copy of e-mail of October, 2013



regarding no matter.

16. Ex. RW1/17 is copy of e-mail of November, 2013 about DTH package of Doha.

17. Ex. RW1/18 is copy of detailed chat from February 2014 to November, 2014 of viber chats.

18. Ex. RW1/19 is copy of e-mail dt. 08.01.2016 from Petitioner to brother of respondent about draft of Mutual divorce.

19. Application for pre-litigation mediation moved before the Hon'ble High Court by the respondent is Ex. RW1/X1.

46. From all these documents mentioned above and relied upon by the parties, it is clear that despite living separately from each other since December, 2011, parties have been in constant communication and touch with each other till year 2013-14. There is no communication between the parties admittedly after 2014. Present petition has been filed by the petitioner on 06.11.2017. Therefore, it is clear that the present petition has been filed, more than two years, after the parties have been living separately. Though, it is the case of the parties that they are living separately since December, 2011. It is also admitted by the parties that at the rented accommodation of the respondent, petitioner used to go for few days and reside with her, therefore, it cannot be specifically pointed out since when the parties have severed all the matrimonial relations with each other but it is apparent from their communication via email and viber chats that after 2013-14 there is no communication of any nature between the parties. Also they did not reside with each other after that period, as they were living in different countries. It is also the admitted case of the respondent that the email Ex. RW1/19 was exchanged between the petitioner and brother of respondent. It is stated by the petitioner in his cross examination conducted on 06.02.2020 that brother of respondent had asked about the procedure for mutual divorce and, therefore, he had sent some draft documents to them on 08.01.2016. In the same cross examination petitioner had stated that in the year, 2014 itself it was decided that the parties will be going for mutual divorce.

47. From the above discussion, it is clear that the parties were residing separately since 2011 or at least from 2014 after which they have no communication with each other, as per the evidence. This proves the factum of desertion between the parties for more than two years prior to filing of the present petition.

48. As regards the "*intention to desert*" ie "*animus deserendi*", it is the case of petitioner that the respondent did not want to live with him since the year 2008-2009, as they had disputes and that is the reason, in 2009 parties started residing separately. In cross examination, petitioner while appearing as PW-



1, had categorically stated on 08.04.2019 that he moved out from Vasant Kunj, New Delhi because of their fights and they were separating. Thus petitioner had clearly stated that since there were fights going on between the parties, more specifically because of the fights respondent even tried to commit suicide by consuming Dettol on 09.02.2009. However, she did not visit the Doctor either on the same day or after that date nor she was taken to hospital by the petitioner. Petitioner had specifically stated in respect to the incident on 09.02.2009 that after puking (vomiting) respondent was stable and Okey and she denied visiting the hospital for treatment. It is also stated by the petitioner that she had consumed Dettol because she did not want him to go for dinner with his parents on his birthday ie on 10.02.2009. No suggestion had been given to the petitioner that this was an incorrect fact rather a suggestion was given to the petitioner that on 10.02.2009 he went for dinner with his parents and respondent could not accompany him as she was unwell. This suggestion was denied by the petitioner. Thus, from the incident of 09.02.2009, it is clear that the fights were going on between the parties and the respondent has taken action to finish her life without making any complaint to the police or to any authority regarding any ill treatment given to her by the petitioner. Even in the cross examination of petitioner there is not even a single suggestion put to the petitioner that he had ill treated the respondent or due to the misbehaviour of the petitioner, respondent had tried to end her life.

49. In the cross examination of petitioner on 09.04.2019, on the aspect of leaving Vasant Kunj flat and shifting back to Karol Bagh, petitioner had clearly stated that "*respondent left the Vasant Kunj of her own free will as she refused to join him at matrimonial home at Karol Bagh*", no suggestion was given to the petitioner that this statement of petitioner is wrong or that the Respondent had not willfully shifted to separate accommodation. Therefore, the Voluntary statement of the petitioner made in cross examination on 09.04.2019 remained unrebutted and unchallenged.

50. Further, in the cross examination on 09.04.2019, it has been stated by the petitioner that respondent left the matrimonial house in December, 2011 of her own free will. Even to this statement of petitioner no suggestion was given to the petitioner by the Ld. Counsel for the respondent that it is incorrect. The only suggestion given to the petitioner was that his mother started creating problems for the respondent and for this reason the respondent was pushed out of the Karol Bagh house by the petitioner. Suggestion was denied by the petitioner. Even no such averment has been made by the respondent in her written statement. In the preliminary objection (ee) page 18 respondent has clearly mentioned that: -

"On December 1, 2011 the respondent packed her



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clothes and essential things, the petitioner helped the respondent to keep her things in her car and the respondent moved to the rented house by herself. In this regard it is submitted that the petitioner and his parents had made it impossible for her to stay in her matrimonial house and virtually threw her out".

51. Again, though it is alleged by the respondent that it was the behaviour of the petitioner and his parents which had made it impossible for her to live in the matrimonial home but no such complaint was made by the respondent for this incident to any authority or the police or to any relative. In the next paragraph ie Preliminary objection (ff) respondent had herself admitted that the petitioner visited and stayed with her in rented accommodation several times and also kept a spare key of the apartment with him. This shows that there was no intention of living separately from the respondent in the mind of the petitioner and he was still ready to live with the respondent but no efforts were made by the respondent to live with the petitioner. It is also not the case of the respondent that she ever asked the petitioner to live with her at her accommodation or that petitioner had denied for the same. In the entire pleadings/evidence of parties, no such suggestion has been made by the respondent at any stage. Even petitioner had not stated anything specifically regarding the reason for the parties living separately except saying that respondent wanted to live separately from the petitioner. And this fact has not been denied or refuted by respondent at any stage in pleading or in evidence.

52. In the cross examination of petitioner on 09.04.2019, a question was put to the petitioner that when respondent came to know that the petitioner was shifting to Nigeria, she resigned from her job in HCL. Petitioner had denied the same and had stated that he was not informed of this fact by her. From all the e-mails relied upon by respondent, as discussed above, it is clear that no such email has been proved on record by the respondent. There is an mail sent by respondent dt. 11.10.2012, addressed to Mr. Nilesh for extension of lease of house for the period of one year. From this mail, it is clear that till October 2011-12 respondent was working with HCL Technologies and had not resigned from HCL, nor it shows that she had intentions to resign from HCL to live with petitioner at Nigeria.

53. In the written statement, respondent had specifically stated that she was having a job offer from Doha in May, 2012 and since the job was lucrative, she took up the offer and moved to Doha in November, 2012. It has nowhere been stated by the respondent in the written statement that she left HCL because of the petitioner rather as per her averments made in written statement she left the



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earlier company considering the good prospects of job and financial securities. Due to this reason she shifted to Doha in November, 2012 whereas admittedly the petitioner shifted to Nigeria in the end of year, 2012. In the entire written statement there is no mention of the date of resignation from HCL by the respondent.

54. From all the emails exchanged between the parties and the averments made in their pleadings, it is clear that both the parties were in constant communication with each other till the year 2013-14 like very good friends and not as husband and wife. However, it is admitted case of the respondent that she left the matrimonial home in year, 2011, no reason about leaving the matrimonial home has been proved or disclosed by the respondent, therefore, it cannot be inferred that respondent had left the matrimonial home due to some reasonable cause. The petitioner's intention to live with the respondent can be inferred from the fact that he used to visit the respondent at her rented accommodation and also used to pay for certain facilities at rented accommodation, as admitted by the respondent in her written statement but thereafter the respondent shifted to Doha while Petitioner was still working in Delhi. It is not the case of the respondent that she asked the petitioner to join her at Doha or that he refused to accompany her. It is the case of the respondent that she wanted to join petitioner at Nigeria, but there is nothing on record to show that she showed her willingness to Petitioner or that petitioner declined to live with her. The only allegation of the respondent is that petitioner did not inform her that he was moving to Nigeria. Even if it is believed that Petitioner did not inform her about his dates of moving to Nigeria, it would not provide any help to respondent, as she had failed to prove that she had intimated her willingness to live with petitioner at any time. Also, she had already left India after taking up job in DOHA in November, 2012.

55. It is admitted by the respondent that till October 2015 petitioner was in constant touch over phone with her though she had stated repeatedly that petitioner used to tell her not to come near his parents' house or he would break her legs. To my mind, it is impossible to believe that Petitioner, who was having regular telephonic communication and also residing with the respondent till the time she was in Delhi with her will make threats to her, not to come near the parental home of the petitioner and the other person i.e. (Respondent) will not make any complaint to the police or any authority or the court for such behaviour or even will not raise any allegation or any grievance to the petitioner himself at any point of time. Had it been intention of the petitioner to not live with the respondent, he would not have gone to reside with the respondent at the rented accommodation or had not paid for certain facilities as stated by the respondent. The allegations made by the



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respondent against the petitioner that he used to threaten her of breaking her legs appears only an allegation made in order to create a case in favour of the respondent, which has no substance in it as this suggestion was also not put to petitioner in his very long cross examination which continued for several dates. I am of the opinion that the respondent had made this single allegation against the petitioner only to create a ground for living separately from the petitioner which infact was not available to her.

56. Respondent appears to be not interested in living with the petitioner that is why she repeatedly left the matrimonial society of the petitioner in year, 2009 and then in year, 2011 without any reason, out of her own free will and thereafter left the country in year, 2012. It is not the case of the respondent that she has intimated the petitioner about her date of travel/reaching to Doha. Respondent had relied upon a mail, which is Ex. PW1/P9, that was sent on 30.01.2013 which shows the photos of apartment of respondent. But from this e-mail also, it is clear that it had been sent by Respondent after two-three months of reaching Doha, thus it does not show that, parties have mutually agreed to live apart, because of job of Respondent. As respondent did not inform the petitioner about her taking up the job at Doha. In various emails sent to the petitioner, not even a single mail has been placed or proved on record by the respondent showing that she has informed the petitioner about reaching Doha at any point of time. It is the case of the respondent that she had informed the petitioner about her travel to Doha and shared the copy of tickets and visa etc. but no such email has been placed or proved on record by the respondent. However, the respondent has relied upon one email Ex. RW1/15 dt. 26.06.2013. this mail was sent by Qatar Airways to respondent regarding her travel from Delhi to Doha on 03.07.2013. This email does not show that the details of her travel from Delhi to Doha in July, 2013 was ever communicated or shared with the petitioner. Also, it is important to mention here that it is the case of Respondent that she shifted to Doha in November, 2012. There is no mail relied or proved on record by respondent about informing petitioner about her travel to Doha in November, 2012. Again email dt.05.01.2014 Ex.PW1/P4 is in respect to travel of respondent from Doha to Delhi on 01.01.2014 which is also not the first travel of respondent from Delhi to Doha and, therefore, it can safely be inferred that it was the respondent who had left the matrimonial company of the petitioner with intention to desert him, when she had moved out of Delhi, without informing the petitioner. Even if later on she had communicated her travel plans to petitioner, it would not change the fact that respondent left the company of petitioner, by leaving Delhi, without informing him. In present case, many emails have been relied upon by respondent, some of which have been admitted by petitioner, for some contents



were not by Petitioner, but it is imperative to note that Respondent had not placed on record certificate u/s 65B of Evidence Act to prove these e-mails, as per law. Hence these e-mails are not legally proved by Respondent, in the absence of Certificate u/s 65B of Evidence Act.

57. I will now discuss the Judgments relied upon by respondent.

58. In *Savitri Pandey vs. Prem Chandra Pandey (supra)*, Hon'ble Supreme Court, while discussing the essentials of "*desertion*" has held that it was appellant-wife who had deserted the husband and had also held that appellant was not able to prove any reason for living separately. Similarly, in present case, Respondent had not been able to prove any reason why she left the matrimonial home, as early as in July, 2009 and then finally in December, 2011 and then finally leaving India in November, 2012. She had also not alleged or claimed that it was Petitioner, who had actually deserted her or that it was Petitioner-husband, who forced her to leave the conjugal company of Petitioner. Thus, this judgment is not of any help to Respondent, rather it can be read against respondent.

59. Case *Harpreet Kaur Vs. Amarjeet Singh (supra)* is also on same lines as were held in *Savitri Pandey vs. Prem Chandra Pandey case*.

60. In *Lavina Martin Vs. Sam Bosco Martin (supra)*, in this case Hon'ble High Court of Bombay had considered the entire aspect of "*desertion*" as a ground for divorce and had held that: -

"The moot question is whether the Appellant-wife had no intention of resuming cohabitation. In this regard, it is pertinent to note that the evidence of Appellant-wife indicates that she had made attempts to join matrimonial house and that the Respondent-husband had not allowed her to resume cohabitation"

61. Hence, facts of this case can also be differentiated from case in hand, as in present case, as discussed above Respondent had failed to prove that she made attempts to join the matrimonial society of Petitioner or that it was Petitioner-husband who had not allowed her to join the conjugal society of petitioner.

62. It has been proved in present case by various averments and evidence led by parties that it was respondent who left the petitioner, without reasonable cause and she never intended to resume cohabitation with him. So much so that it is admitted by Respondent that Petitioner had sent e-mail for drafts of Mutual consent divorce to her brother Mohit, but despite that she had not come forward to file petition for restitution of Conjugal rights, nor she had written any letter or e-mail to petitioner to convey her intention or willingness to join the conjugal society of petitioner.



63. From the above discussion, I am of the opinion that though the parties have not levelled any serious allegation against each other because of which neither party can be considered to be guilty of cruelty against the other party. However, petitioner has been able to prove that the respondent is living separately from him without there being any reasonable cause or reason for living separately. The allegation of the respondent that because of the behaviour of the mother in law, she went to live separately has also not been proved by her, as discussed above. Allegations of the respondent, that petitioner had threatened her for breaking her legs if she come near the parental home of the petitioner hence she lived separately is also not an acceptable allegation or reasonable ground of living separately because admittedly when respondent was residing separately in a rented accommodation, petitioner used to live with her. Also it is the case of Respondent that she had always been willing to live with Petitioner, thus this allegation could not have been the reason for living separately from him. Hence, cannot be accepted to be a justifiable cause with respondent to live away from petitioner. It is the petitioner who had come to the court for seeking the relief of desertion and has proved that the respondent is residing separately from him since year, 2011, he has also proved on record, that in the year, 2012 respondent had left the Country without informing the petitioner. She has never sent any e-mail to petitioner for communicating her intention or willingness to join the matrimonial company of the petitioner, therefore, I am of the opinion that petitioner has successfully proved that the respondent had deserted him for a period of two years prior to filing of present petition. Hence, this issue is decided in favour of the respondent.

RELIEF:

64. In view of my findings on issue no. 1 and 2, as the Issue no. 1 is decided against the petitioner and issue no.2 is decided in favour of the petitioner, the marriage of the parties is dissolved u/s 10(1)(ix) of the Divorce Act, 1869.

.....”

43. The legal position governing desertion is well settled. The learned Family Court, while deciding the issue, relied upon several authoritative pronouncements of the Hon’ble Supreme Court, including *Bipinchandra Jaisinghbhai Shah v. Prabhavati*⁶ and *Lachman Utamchand Kirpalani v. Meena*⁷, wherein the governing

⁶ AIR 1957 SC 176

⁷ AIR 1964 SC 40



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principles of desertion were considered, *albeit* in the context of the Hindu Marriage Act, 1955, which is akin to the provision of the Divorce Act.

44. The Hon'ble Supreme Court, in *Savitri Pandey v. Prem Chandra Pandey*⁸, comprehensively examined and summarised the law on desertion. The relevant excerpt of the said judgment is produced hereinbelow:

“7. No decree of divorce could be granted on the ground of desertion in the absence of pleading and proof. Learned counsel for the appellant submitted that even in the absence of specific issue, the parties had led evidence and there was sufficient material for the Family Court to return a verdict of desertion having been proved. In the light of the submissions made by the learned counsel, we have opted to examine this aspect of the matter despite the fact that there was no specific issue framed or insisted to be framed.

8. “Desertion”, for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations i.e. not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion 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. After referring to a host of authorities and the views of various authors, this Court in *Bipinchandra Jaisinghbai Shah v. Prabhavati* [AIR 1957 SC 176] held that if a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion. It further held: (AIR pp. 183-84, para 10)

“For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be

⁸ (2002) 2 SCC 73



there, namely (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively. Here a difference between the English law and the law as enacted by the Bombay Legislature may be pointed out. Whereas under the English law those essential conditions must continue throughout the course of the three years immediately preceding the institution of the suit for divorce, under the Act, the period is four years without specifying that it should immediately precede the commencement of proceedings for divorce. Whether the omission of the last clause has any practical result need not detain us, as it does not call for decision in the present case. Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an *animus deserendi*. The offence of desertion commences when the fact of separation and the *animus deserendi* coexist. But it is not necessary that they should commence at the same time. The de facto separation may have commenced without the necessary animus or it may be that the separation and the *animus deserendi* coincide in point of time; for example, when the separating spouse abandons the marital home with the intention, express or implied, of bringing cohabitation permanently to a close. The law in England has prescribed a three years' period and the Bombay Act prescribed a period of four years as a continuous period during which the two elements must subsist. Hence, if a deserting spouse takes advantage of the *locus poenitentiae* thus provided by law and decide to come back to the deserted spouse by a bona fide offer of resuming the matrimonial home with all the implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for divorce have been



commenced, desertion comes to an end and if the deserted spouse unreasonably refuses the offer, the latter may be in desertion and not the former. Hence it is necessary that during all the period that there has been a desertion, the deserted spouse must affirm the marriage and be ready and willing to resume married life on such conditions as may be reasonable. It is also well settled that in proceedings for divorce the plaintiff must prove the offence of desertion, like and other matrimonial offence, beyond all reasonable doubt. Hence, though corroboration is not required as an absolute rule of law the courts insist upon corroborative evidence, unless its absence is accounted for to the satisfaction of the court.”

9. Following the decision in *Bipinchandra case* [AIR 1957 SC 176] this Court again reiterated the legal position in *Lachman Utamchand Kirpalani v. Meena* [AIR 1964 SC 40] by holding that in its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.

10. To prove desertion in matrimonial matter it is not always necessary that one of the spouses should have left the company of the other as desertion could be proved while living under the same roof. Desertion cannot be equated with separate living by the parties to the marriage. Desertion may also be constructive which can be inferred from the attending circumstances. It has always to be kept in mind that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case.

11. There is another aspect of the matter which disentitles the appellant from seeking the relief of divorce on the ground of desertion in this case. As desertion in matrimonial cases means the withdrawal of one party from a state of things i.e. the marital status of the party, no party to the marriage can be permitted to allege desertion unless he or she admits that after the formal ceremonies



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of the marriage, the parties had recognised and discharged the common obligation of the married life which essentially requires the cohabitation between the parties for the purpose of consummating the marriage. Cohabitation by the parties is an essential of a valid marriage as the object of the marriage is to further the perpetuation of the race by permitting lawful indulgence in passions for procreation of children. In other words, there can be no desertion without previous cohabitation by the parties. The basis for this theory is built upon the recognised position of law in matrimonial matters that no one can desert who does not actively or wilfully bring to an end the existing state of cohabitation. However, such a rule is subject to just exceptions which may be found in a case on the ground of mental or physical incapacity or other peculiar circumstances of the case. However, the party seeking divorce on the ground of desertion is required to show that he or she was not taking the advantage of his or her own wrong. In the instant case the appellant herself pleaded that there had not been cohabitation between the parties after the marriage. She neither assigned any reason nor attributed the non-resumption of cohabitation to the respondent. From the pleadings and evidence led in the case, it is apparent that the appellant did not permit the respondent to have cohabitation for consummating the marriage. In the absence of cohabitation between the parties, a particular state of matrimonial position was never permitted by the appellant to come into existence. In the present case, in the absence of cohabitation and consummation of marriage, the appellant was disentitled to claim divorce on the ground of desertion.”

45. It is, therefore, a well-settled proposition of matrimonial law that the two essential constituents of desertion, *namely*, the factum of separation and the *animus deserendi*, must coexist in order to sustain a decree of divorce on this ground, and both must be proved affirmatively by the party seeking the divorce, to the stringent standard of proof beyond reasonable doubt.

46. The law, being solicitous of the sanctity and permanence of the marital bond, insists upon this heavy burden so as to preclude speculative inferences or hasty dissolution of marriage on equivocal evidence. It is equally imperative that the deserted spouse must demonstrate not only the absence of consent to the separation but also



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the absence of any conduct which, in law or equity, could provide a just and reasonable cause for the other spouse to withdraw from cohabitation.

47. In this context, desertion does not connote a mere physical severance of residence; rather, it signifies a deliberate and wilful renunciation of the essential obligations of matrimony, companionship, consortium, and cohabitation. Being incapable of direct proof, desertion is essentially a matter of inference, to be drawn from a holistic appraisal of the conduct of both parties, their circumstances, and their communications, both preceding and subsequent to the act of separation.

48. The Court must therefore exercise heightened circumspection, for desertion is a continuing state of affairs, and the *animus deserendi*, or intention to bring cohabitation permanently to an end, may be revealed not in a single act but in the cumulative tenor of behaviour over time. Any deficiency in establishing either of the twin elements, or any indication that the petitioner is seeking to take advantage of his or her own wrong, is fatal to the plea of desertion and disentitles the party from claiming relief.

49. In the present case, the learned Family Court, after a detailed analysis of the evidence and surrounding circumstances, concluded that both elements were duly satisfied, as the Appellant left the matrimonial home of her own accord and thereafter made no attempt to resume cohabitation with the Respondent despite sufficient opportunity. We shall now proceed to examine the Impugned Judgment in light of the settled legal principles governing desertion and the facts as borne out from the record.



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(a). **Factum of Separation**

50. Upon a scrutiny of the pleadings, depositions, and documents placed on record, the learned Family Court, arrived at the following, though not exhaustive, material conclusions:

- (a) The parties have been living separately since 01.12.2011, when the Wife admittedly vacated the matrimonial home and shifted to a rented accommodation.
- (b) Although the Husband, on rare occasions, visited at the Wife's rented premises, after said period, while she was residing in Delhi, such visits were sporadic, casual, and transient, and thus wholly inadequate to constitute resumption of cohabitation in law.
- (c) After 2013-2014, all forms of communication between the parties came to an end. Importantly, the Wife moved to Doha in November 2012 without even informing the Husband, while the Husband relocated to Nigeria in December 2012. The parties thereafter lived abroad in different countries and never reunited under one roof.
- (d) The Wife herself, in categorical terms, admitted in her pleadings that she voluntarily packed her belongings and left the matrimonial house on 01.12.2011. This admission lends strong corroboration to the Husband's consistent case of separation.
- (e) Accordingly, the factum of separation stood conclusively established for a period far in excess of the statutory minimum of two years before the filing of the divorce petition in 2017.



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51. On an independent appraisal of the material on record, this Court finds no reason to depart from the conclusions drawn by the learned Family Court. The evidence, both oral and documentary, leaves no manner of doubt that the parties gradually ceased to live together as husband and wife after December 2011, and that the separation continued uninterrupted.

52. The last admitted instance of cohabitation was on 02.12.2011. Even if, for the sake of argument, the Respondent's occasional visits to the Appellant's rented premises until November 2012 are taken as extending the period of cohabitation, or even if the intermittent electronic communications exchanged until 2013-2014 are given weight as evidence of continuing contact, the irrefutable fact remains that there was no resumption of cohabitation thereafter.

53. Both parties relocated abroad, the Appellant to Doha in November 2012 and the Respondent to Nigeria in December 2012, and thereafter, lived in different countries without any meaningful interaction. The earlier electronic communication ceased altogether. When the Respondent instituted the divorce petition on 06.11.2017, the statutory requirement of continuous desertion for "*two years immediately preceding the presentation of the petition*" stood satisfied many times over.

54. Between 2014 and the filing of the petition in November 2017, there is not a shred of evidence to suggest any cohabitation, reconciliation, or even substantive communication between the parties. This prolonged silence and separation, spanning well over three years, in our view, appears to be a manifestation of the mental



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state of the mind of the parties to disengage from each other completely.

55. Therefore, even reckoning the inception of the two-year statutory period from 2011, or alternatively from 2012 when the parties moved abroad, or even from 2013–2014 when communication ceased, the requirement of continuous desertion for more than two years stands fully and unambiguously satisfied prior to the filing of the divorce petition.

(b). Animus deserendi

56. On the element of *animus deserendi*, the learned Family Court, after a painstaking review of the evidence arrived at, *inter alia*, the following conclusions:

- (a) The Wife failed to establish any reasonable or lawful cause for her withdrawal from cohabitation. Her allegations against the Husband and his mother remained unsubstantiated, as she neither lodged any complaints nor produced credible evidence, nor effectively cross-examined the Husband on these allegations.
- (b) The Husband's conduct demonstrated a continuing intention to preserve the marriage, as he visited the Wife at her rented accommodation after 02.12.2011, stayed with her occasionally, and contributed towards certain facilities. In contrast, the Wife made no reciprocal effort to resume cohabitation.
- (c) The Wife's unilateral act of shifting abroad for employment in November 2012, without informing the Husband, and her failure to establish any subsequent attempt to return to



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matrimonial life, strongly point to a settled intention to permanently abandon the relationship.

- (d) Even when the Husband proposed draft documents for mutual consent divorce in 2016, the Wife neither pursued the restoration of matrimonial life nor filed any restitution of conjugal rights. Her petition for restitution was filed only after the Husband initiated divorce proceedings.
- (e) The Wife's prolonged absence, coupled with her inability to prove any *bona fide* reasons for such absence, conclusively demonstrates her intention to desert the Husband.

57. On our independent assessment of the record, both oral and documentary, we find ourselves in full agreement with the findings of the learned Family Court. The Appellant's conduct throughout is inconsistent with any genuine desire to continue or resume cohabitation.

58. It is particularly significant that despite repeated opportunities, including when the Respondent returned to India from overseas employment in 2014, the Appellant did not attempt to rejoin the matrimonial home.

59. The record further indicates that after vacating the Vasant Kunj rented accommodation in 2009, the parties did not resume stable cohabitation. Although a temporary reconciliation occurred in 2010, substantive cohabitation ended once again on 02.12.2011, when the Appellant voluntarily left the matrimonial home. She then lived separately within India for nearly a year before relocating to Doha, Qatar, in November 2012. This sequence of events supports the



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conclusion that she had no intention of resuming cohabitation despite having ample opportunity.

60. The Appellant's claim of constructive desertion, premised on alleged ill-treatment by the Respondent's mother, also lacks substantiation. References to friction and even to the reason for the suicide attempt remain uncorroborated by contemporaneous evidence such as police complaints, medical records, or credible third-party testimony. In the absence of such evidence, her allegations cannot amount to a legally justifiable cause for leaving the matrimonial home.

61. On the other hand, the Respondent's continued visits to the Appellant's rented accommodation after December 2011 significantly undermine her claim that he obstructed cohabitation. Thus, the record does not establish any act or omission on the part of the Respondent of such seriousness as would justify the Appellant's departure. Her plea of constructive desertion is therefore unsustainable.

62. The Appellant has also relied on a compilation of emails and Viber chats to suggest her willingness to preserve the marital relationship. While these communications do reflect cordiality, cordial exchanges cannot be equated with a *bona fide* attempt to restore matrimonial life. Indeed, the record makes it clear that it was the Appellant who deserted the Respondent in November 2012, without his knowledge or consent.

63. Even assuming, for argument's sake, that communications until 2014 indicated the absence of *animus deserendi* at the inception of separation, there is no evidence thereafter to suggest any effort to resume cohabitation. As held by the Hon'ble Supreme Court in ***Bipinchandra Jaisinghbhai Shah*** (*supra*), the offence of desertion



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commences when both the factum of separation and *animus deserendi* co-exist, though not necessarily from the beginning. The relevant portion of the said judgment reads as follows:

“...The offence of desertion commences when the fact of separation and the *animus deserendi* co-exist. But it is not necessary that they should commence at the same time. The *de facto* separation may have commenced without the necessary animus or it may be that the separation and the *animus deserendi* coincide in point of time; for example, when the separating spouse abandons the marital home with the intention, express or implied, of bringing cohabitation permanently to a close....”

64. By the year 2015, the Respondent had entered into discussions with the Appellant’s brother with respect to the possibility of obtaining a divorce by mutual consent. Despite this, the Appellant made no meaningful effort toward reconciliation or resumption of matrimonial life. Instead, she only chose to file a petition for restitution of conjugal rights after the Respondent had already instituted divorce proceedings, thereby revealing the reactive rather than genuine nature of her actions.

65. Similarly, the Appellant’s pre-litigation mediation application filed in 2015 does little to strengthen her case. The proceedings ended as a “*Non-Starter*” and the application itself merely expressed a general desire for amicable settlement of disputes. It fell short of demonstrating any clear or *bona fide* intention on her part to resume cohabitation and fulfill her marital obligations only. The contents of the said application are produced hereinbelow:

“ APPLICATION FOR PRE-LITIGATION MEDIATION

Respectfully submitted:

1. The applicant above named is the wife of Respondent and parties had got married on December 26, 2007 at New Delhi.



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2. Marriage was solemnized in the church as the above named parties are both Christians and subsequently the marriage Certificate dated December 31, 2007 was issued by church.
3. Due to certain matrimonial disputes the parties above named have been staying separately for almost 4 years now and the present application for pre-litigation mediation is being filed in order to resolve the persisting matrimonial dispute amicably.
4. It is submitted that the applicant is working at Doha at present and as such residing there, though she is a permanent resident of Delhi. The present application is being sent for filing before the Mediation Centre through her counsel. It is further submitted that she shall be present in Delhi in _____ for the pre-litigation mediation.
5. The permanent and correspondence address of applicant for the purposes of present application is 191, Ankur Apartment IP Extension, Delhi 110092 as her brother is staying at the said address.
6. It is therefore requested that the above named respondent be summoned for resolving the issues between the parties and settling the matter amicably.”

66. The learned Family Court, upon a detailed examination of the correspondence exchanged between the parties and their oral testimony, rightly found the Appellant’s reliance on these materials to be vague and inconclusive. On the other hand, the Court found ample and credible evidence substantiating the Respondent’s case of desertion. On that basis, it correctly rejected the Appellant’s plea of constructive desertion and proceeded to grant a decree of divorce.

CONCLUSION:

67. In view of the detailed discussion hereinabove, we find no merit in the present appeal and are not persuaded to interfere with the well-reasoned judgment of the learned Family Court. The decree of divorce granted under Section 10(1)(ix) of the Divorce Act, stands on firm legal and factual foundation and, accordingly, merits affirmation.

68. With regard to the Appellant’s allegation concerning the Respondent’s subsequent remarriage during the pendency of this



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appeal, we are of the opinion that examining the same within the present proceedings serves no purpose. The appeal has independently failed on merits, and the decree of divorce granted by the learned Family Court remains undisturbed. We also note that the Appellant has already instituted a separate petition under Section 27 of the Special Marriage Act, 1954, read with Section 7 of the Family Courts Act, 1984, bearing M.C. No. 85/2025, before the Family Court at Bengaluru, Karnataka, seeking a declaration that the Respondent's alleged second marriage is void. In light of the pendency of that petition, further, we see no reason to adjudicate upon or express any opinion on the validity of the Respondent's subsequent marriage in the present appeal.

69. Consequently, the present appeal, along with all pending applications, if any, stands dismissed.

70. The appeal, along with pending application(s), if any, is disposed of in the above terms.

71. No order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
SEPTEMBER 22, 2025/sm/ds/rn