

2025.PHHC:049221-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**FAO-1852-2025 (O&M)**

**Date of decision:- 24.03.2025**

RAJVIR KAUR

.....Appellant

Versus

SURJAN SINGH

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH  
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present:- Mr. Rishabh Wadhwa, Advocate for the appellant.

**SUDHIR SINGH, J.**

Challenge in the present appeal is to the judgment and decree dated 06.02.2025 passed by learned Principal Judge, Family Court, Fatehgarh Sahib (for short the 'Family Court'), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the respondent-husband, was allowed and the marriage between the parties was dissolved by a decree of divorce on the ground of desertion.

2. The aforesaid petition had been filed by the respondent-husband, *inter alia*, pleading therein that his marriage with the appellant-wife was solemnized on 18.05.1997, according to Sikh rites and out of the said wedlock four children were born, who were residing with him. It was further asserted that the appellant-wife was a

cruel lady and she would always pick up issues with the respondent-husband and his family members. She used to insult him without any reason, besides using abusive language against him and his family members. She had also threatened him for a false implication in a criminal case. She used to leave the matrimonial home without any reason and finally on 12.03.2012, she left the matrimonial home while taking along with her gold ornaments and other valuables. She had also lodged FIR No.18 at Police Station Sirhind, under Sections 406/498-A IPC, but the said criminal proceedings had resulted into the acquittal of the respondent-husband and his family members. The petition under Section 125 Cr.P.C. and the one under Section 9 of the Act filed by her, were also dismissed by the Courts. Terming the aforesaid acts of the appellant-wife as cruelty and desertion, a decree of divorce had been sought for.

3. Upon notice, the appellant-wife entered appearance and filed her written statement, admitting the factum of marriage and birth of the children. However, it was alleged that sufficient dowry was given at the time of marriage, but despite that, the respondent-husband and his family members continued raising demands of dowry. She had been pressurized to bring a car and cash amount of Rs.5,00,000/- from her parents and when she had expressed her inability to meet the said illegal demands, she had been given merciless beatings by the respondent-husband and on one occasion, she was admitted in Sagar Hospital, Banur by her brother. The Panchayat convened in this regard did not yield any result and rather, she had been treated as a maid or slave in the matrimonial house. On 09.01.2013, the respondent-

husband and his family members gave her beatings and turned her out of the matrimonial home and upon a telephone call made by her, her brother came from Nabha and took her with him to Village Jalbehri Dhummi. She had lodged the aforesaid FIR due to the atrocious acts of the respondent-husband and his family members. The allegations of her leaving the matrimonial home on 12.03.2012, were denied.

4. On the pleadings of the parties, the learned Family Court framed the following issues:-

- “1. Whether the petitioner was subjected to cruelty by Rajbir Kaur as alleged in the divorce petition? OPP
2. Whether the respondent has deserted the petitioner without any justification? OPP
3. Whether the petitioner has concealed the true and material facts from the Court, if so, its effect? OPR
4. Relief.”

5. In evidence, the respondent-husband appeared as PW-1 and had also examined PW2-Prabhjot Kaur, besides tendering documents Ex.P1 to Ex.P5 and Mark-A. On the other hand, the appellant-wife examined herself as RW3 and had also examined RW1-Mohinder Kaur; RW2-Harbhajan Kaur and RW4-Ranjit Singh.

6. The learned Family Court, after taking into consideration the rival contentions and evidence on record, allowed the petition filed by the respondent-husband, as noticed above.

7. Learned counsel for the appellant-wife has vehemently argued that the burden to prove the factum of leaving the matrimonial home by the appellant-wife was on the respondent-husband, but he failed to discharge such burden and no evidence was produced on record to prove such circumstances. It is further argued that RW1-Mohinder Kaur stated in her cross-examination that the appellant-wife was living separately with the consent of the respondent-husband, but the said fact was totally lost sight of by the learned Family Court. It is further argued that the learned Family Court has utterly ignored the fact that the appellant-wife was always ready and willing to join the company of her husband, but it was the respondent-husband and his family members, who did not allow the rehabilitation of the appellant-wife. It is further argued that the finding of the learned Family Court that there had been desertion for a continuous period of two years preceding the filing of the divorce petition, is not tenable as 40 days prior to the filing of the divorce petition i.e., on 08.11.2017, the appellant-wife visited the matrimonial home, but the respondent-husband and his family members did not allow to rehabilitate her. It was further argued that the learned Family Court has also not taken into consideration that the appellant-wife had filed a petition under Section 9 of the Act for restitution of conjugal rights, which though was dismissed by the learned trial Court, but an appeal there-against is yet pending in this Court.

8. We have heard the learned counsel for the appellant-wife and have also gone through the impugned judgment and decree.

9. The only question that arises for consideration by this Court is whether the impugned judgment and decree passed by learned Family Court, requires any interference.

10. The learned Family Court on the basis of the evidence led by the parties has found that the allegations as regards the cruelty could not be proved by the respondent-husband, and accordingly, decided the issue regarding cruelty against him. However, the divorce petition was allowed on the ground of desertion. While returning finding under Issue No.2, it was found that it stood proved on record that the parties had been living separately since 2013. It was further found that the appellant-wife herself appeared as RW3 and in her cross-examination, she admitted that she had been residing separately since the year 2013. Another witness RW1-Mohinder Kaur, examined by the appellant-wife, had also deposed that the parties had been living separately since 2013. It was further found that the appellant-wife had failed to explain as to why she had been residing separately from her husband since 2013. The relevant finding of the learned Family Court would read as under:-

“ 16.           xx           xx           xx

So although learned counsel for the respondent stated that petitioner had not explained the circumstances and the situation under which respondent left the matrimonial home on 12.03.2012, but from the perusal of the statements of the witnesses and the documents placed on the

file, it is clear that respondent left the matrimonial home on 12.03.2012. So to prove her version, respondent Rajbir Kaur herself stepped into the witness box as RW3. In the cross examination dated 26.02.2024, she admitted that “she is residing separately since the year 2013.” Respondent had also examined RW1-Mohinder Kaur, who stated in the cross examination dated 11.11.2022 that “it is correct both the parties are residing separately since 2013.” She further stated that Rajbir Kaur is residing separately with the free wish of Surjan Singh. So from the perusal of the statement of the respondent, it is clear that she is residing separately since the year 2013. So respondent had failed to explain as to why she left the house of the petitioner at her own. Secondly learned counsel for the respondent stated that petitioner failed to explain any date, month and year on which, panchayats were convened for rehabilitation. He further stated that similarly petitioner failed to disclose the name of any person, who was member of the panchayat. He further stated that petitioner failed to disclose these facts, but it is clear that petitioner had filed the present petition for divorce on the ground of desertion and it has been proved that respondent

had deserted the petitioner in the year 2012. So if the petitioner failed to disclose any date, month or year and name of person, then it does not mean that desertion by the respondent is valid. Learned counsel for the respondent stated that respondent convened a panchayat in the year 2017. In this respect, he pointed out the cross examination of PW1 dated 05.11.2019 where PW1 admitted that “it is correct that on 08.11.2017, Rajbir Kaur came to their house.” He further stated that this fact proves that respondent made the efforts, but it is clear that although petitioner had admitted that on 18.11.2017, respondent came to his village, but it is clear that respondent failed to explain as to why she left the matrimonial home and why earlier she had not made any efforts regarding the rehabilitation. So from the abovesaid discussion, it is clear that marriage of the parties was solemnized on 18.05.1997 and thereafter, both the parties cohabited together as husband and wife and four children were born. So thereafter, respondent left the matrimonial house on 12.03.2012 and present petition was filed on 18.12.2017. So, as per Section 13(1)(i)(d) of Hindu Marriage Act, petitioner has fully proved that he has been deserted by the respondent without any reasonable

cause for a continuous period of two years before filing the present petition. So accordingly, petition of the petitioner on the ground of desertion stands allowed. So, onus to prove issue No.1 was on the petitioner and petitioner has proved the same. So, accordingly issue No.1 is decided in favour of the petitioner and against of respondent.”

11. ‘Desertion’ means the intentional, permanent forsaking and abandonment of one spouse by the other without the other’s consent and without reasonable cause. In order to prove the desertion, the twin condition of (i) the factum of separation, and (ii) the intention to bring cohabitation permanently to an end (animus deserendi), must be established. Hon’ble Supreme Court in **Darshan Gupta** Vs. **Radhika Gupta**, (2013) 9 SCC page 1, has held that merely because husband and wife are staying separately, cannot be an inference that the wife has withdrawn from the company of the husband. It is settled law that the deserted spouse must prove that there is a factum of separation and there is an intention on the part of the deserting spouse to bring cohabitation to permanent end.

Still further in **Malathi Ravi** v. **B.V. Ravi**, (2014) 7 SCC 640, it has been held by the Hon’ble Supreme Court that desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without the consent of the other spouse. It was held as under:-

“ 20. In the said Savitri Pandey’s case (2002) 2 SCC 73, reference was also made to Lachman Utamchand Kirpalani case (AIR 1964 SC 40) wherein it has been held that desertion in its essence 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 separation, and (2) the intention to bring cohabitation permanently to an end (animus deserandi). 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.”

12. In our opinion, the finding recorded by the learned Family Court as regards desertion is based on the evidence on record. As noticed above, both, the appellant-wife while appearing as RW3 and RW1-Mohinder Kaur, deposed that the parties had been living separately since 2013.

13. Though learned counsel for the appellant-wife has contended that the appellant-wife had visited the matrimonial house 40 days prior to the filing of the divorce petition, but there was no evidence to this effect led by her, and, thus, such argument seems to be only an afterthought. Much emphasis has been laid by learned counsel for the appellant on the pendency of FAO-5872-2018, wherein the challenge is stated to be to the dismissal of the petition under Section 9 of the Act filed by the appellant-wife. However, in

our opinion, the pendency of the said appeal is no ground to hold that the finding recorded by the learned Family Court is not tenable. Rather, the burden to prove that she had been living separately since 2013 for any justified reason was upon the appellant-wife, which she had failed to discharge.

14. In view of the above, we find that the findings recorded by the learned Family Court are the plausible findings and the same cannot be said to be illegal or perverse. It could not be shown that any evidence has been misread or not taken into consideration.

15. No other point has been urged.

16. Finding no merit in the present appeal, the same is hereby dismissed.

17. Pending application(s), if any, shall also stand disposed of.

**[ SUDHIR SINGH ]**  
**JUDGE**

**[ SUKHVINDER KAUR ]**  
**JUDGE**

24.03.2025

himanshu

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No