

In the Court of the Additional District & Sessions Judge, Fast Track Court-1

At Bongaon, District: North 24 Parganas

**Present: Sri Durga Sankar Rana,
Additional District & Sessions Judge,
Fast Track Court-1, Bongaon.**

Matrimonial Suit No - 575 of 2025

Kalpana Dhali Biswas alias Kalpana Dhali *Petitioner*

-Versus-

Asim Dhali *Respondent*

**Suit Filed Under Section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955
for Dissolution of Marriage by a Decree of Divorce.**

Order No - 05 Dated 01-07-2026

This is a matrimonial suit instituted by the Petitioner-wife against the Respondent-husband seeking a decree of dissolution of marriage by divorce under Section 13(1)(ia) [Cruelty] and Section 13(1)(ib) [Desertion] of the Hindu Marriage Act, 1955.

Case of the Petitioner in Brief

The case of the petitioner, as per the plaint and uncontroverted testimony, is that her marriage with the respondent was solemnized on **06.05.2007** according to Hindu rites, customs, and ceremonies at her paternal residence at Village-Pratapara, under Gaighata Police Station. It was a negotiated marriage. After marriage, the petitioner went to her matrimonial home at Village-Jhaudanga. The petitioner's father provided sufficient dowry, cash, gold ornaments, and furniture at the time of marriage, and subsequently purchased a plot of land jointly in the names of the petitioner and respondent, upon which a house was built.

During their cohabitation, a male child named Subhajit Dhali was born out of the wedlock, who is currently about 16 years old and resides with the petitioner. Though the marriage was initially peaceful, the respondent subsequently developed an illicit extra-marital relationship with a widowed woman named Sabitri Barai. Following this development, the respondent began subjecting the petitioner to physical torture, severe verbal abuse, and systematic cruelty. Ultimately, on **14.07.2017**, the respondent brutally assaulted the petitioner and forcibly ousted her along with their minor child from the matrimonial home. Since then, the respondent has completely deserted the petitioner and the child, failing to provide any maintenance, shelter, or financial support, and has taken up permanent residence with the said third party.

Procedural History

Records reveal that despite due and proper service of summons, the respondent chose not to appear before this Court, failed to file any written statement, and did not contest the proceedings. Consequently, the suit was ordered to be heard *ex-parte* vide order dated 24-03-2026

Evidence Adduced

To prove her case, the Petitioner examined herself as **PW-1** and submitted her evidence-in-chief via affidavit, reiterating the assertions made in the plaint. She produced:

1. Her original Aadhaar Card (Photocopy marked as **Exhibit-1**).
2. The original Birth Certificate of her son, Subhajit Dhali (Photocopy marked as **Exhibit-2**).

The petitioner also examined her mother, Jyotsna Biswas, as **PW-2**, who filed a matching evidence-in-chief by affidavit supporting the petitioner's assertions regarding the marriage, the subsequent extra-marital relationship of the respondent, the physical assault, and the forcible ouster on 14.07.2017. She produced her Aadhaar Card (Photocopy marked as **Exhibit-3**).

Points for Determination

1. Is the suit maintainable in its present form and law?
2. Has the respondent treated the petitioner with cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act, 1955?
3. Has the respondent deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of this petition under Section 13(1)(ib) of the Act?
4. Is the petitioner entitled to get a decree of divorce as prayed for?

Decision with Reasons

Point No. 1 (Maintainability)

The petitioner is currently residing within the territorial jurisdiction of this Court at Bongaon, North 24 Parganas. The marriage was solemnized and the parties last resided together within the district of North 24 Parganas under Bongaon Sub-division. Thus, this Court has valid territorial jurisdiction. The petition satisfies all statutory criteria under the Hindu Marriage Act, 1955. Point No. 1 is decided in the affirmative.

Point No. 2 (Cruelty)

The undisputed oral evidence of PW-1 and PW-2 explicitly establishes that the respondent entered into an open extra-marital liaison with a widow named Sabitri Barai, which resulted in total neglect, domestic violence, and verbal vilification of the petitioner.

In the landmark case of **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511**, the Hon'ble Supreme Court laid down illustrative instances of mental cruelty, observing that a sustained course of abusive and humiliating conduct, or complete aversion showing total indifference, amounts to mental cruelty. Further, it is settled law that a spouse living in open adultery or maintaining an extra-marital relationship causes the highest magnitude of mental agony and cruelty to the innocent spouse.

The testimony of PW-1, corroborated fully by PW-2, remains unimpeached and unchallenged.

There is no reason to disbelieve their statements. Hence, this Court holds that the respondent's conduct constitutes severe physical and mental cruelty under Section 13(1)(ia) of the Act. Point No. 2 is decided in favor of the petitioner.

Point No. 3 (Desertion)

To establish desertion under Section 13(1)(ib), two essential conditions must be fulfilled: (i) the factum of separation, and (ii) the intention to bring cohabitation permanently to an end (*animus deserendi*).

In **Bipinchandra Jaisinghbai Shah v. Prabhavati, AIR 1957 SC 176**, the Hon'ble Supreme Court held that desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause.

In the present case, the uncontroverted evidence proves that the respondent forcibly drove the petitioner and their child out of the matrimonial home on **14.07.2017**. Since then (for over 8 continuous years prior to the date of judgment), the respondent has maintained zero communication, provided no maintenance, and has completely abandoned his marital obligations without any justifiable cause. The fact that he is living with another woman solidifies his clear *animus deserendi*. Therefore, the ground of desertion stands fully proved. Point No. 3 is decided in favor of the petitioner.

Point No. 4 (Relief)

As the respondent has chosen to remain absent, the evidence of PW-1 and PW-2 has gone unchallenged, uncontroverted, and deemed admitted. In **Mst. Brij Lal Devi v. Pramod Kumar, AIR 2021 SC 4022**, it has been held that when evidence is unchallenged, the Court should ordinarily accept the version unless it is inherently improbable. There is no statutory bar under Section 23 of the Act to deny relief. The marriage has broken down irretrievably due to the sole fault of the respondent. Accordingly, the petitioner is entitled to a decree of divorce.

Hence, it is,

Ordered

That the **Matrimonial Suit No. 575 of 2025** be and the same is hereby **decreed EX-PARTE** against the respondent.

The marriage between the Petitioner (Kalpana Dhali Biswas alias Kalpana Dhali) and the Respondent (Asim Dhali) solemnized on 06.05.2007 is hereby **dissolved** by a decree of divorce on the grounds of cruelty under Section 13(1)(ia) and desertion under Section 13(1)(ib) of the Hindu Marriage Act, 1955.

The parties shall bear their own costs of this suit.

Let the decree be drawn up accordingly.

**Additional District & Sessions Judge,
Fast Track Court-1, Bongaon, North 24 Parganas**

Dictated & Corrected by me,

**Additional District & Sessions Judge,
Fast Track Court-1, Bongaon, North 24 Parganas**