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HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE.

DISTRICT :: ISLAMPUR; UTTAR DINAJPUR.

**IN THE COURT OF ADDITIONAL DISTRICT JUDGE,
ISLAMPUR, UTTAR DINAJPUR**

**PRESENT: Sri Plaban Mukherjee,
Additional District Judge, Islampur,
Uttar Dinajpur. J.O Code - WB01427**

Judgment : This 7th Day of May, 2026
Date of hearing : 28/04/2026

MATRIMONIAL SUIT NO. 27 OF 2021

C.N.R Number : WBUD05-000327-2021

Ajoy Das

..... PETITIONER

= VERSUS =

Smt. Anjana Das

..... RESPONDENT

Sri Bipra Sinha

....Ld. Advocate for the Petitioner.

Sri Snehasish Das

....Ld. Advocate for the Respondent

and having stood for consideration to this day, the court delivered the following judgment :-

J U D G M E N T

1. Seeking matrimonial relief under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955, in nutshell, the petitioner/ husband, namely, Ajoy Das asserts that his marriage with the respondent/ wife was solemnized on 9th Day of December, 2009 after observing all rites and customs as per Hindu Law. It is further asserted that since after their marriage the petitioner and the respondent started their conjugal life at the matrimonial house of the respondent. It is further averred that at the interval of some time after their marriage, the respondent being instigated by her family members started showing her true colours on the lame excuse of low income of the petitioner and the respondent further used to visit her father's house frequently and also started staying there for long time without any reasonable cause. It is also asserted that when the petitioner tried to convince the respondent, she became furious and being influenced by her family members the respondent started demanding to get separated from the family members of the petitioner which was denied by the petitioner due to his other family burden including stringent financial capacity to maintain two separate establishment. It is further projected that on 16.09.2010 at about 6.00 p.m. the respondent left her matrimonial home along with her elder brother with all Stridhan articles without consent of the petitioner and since thereafter the respondent never turned around to lead a conjugal life with the petitioner as she became financially sound for her tailoring business. It is also averred that the petitioner tried his best to convince the respondent with the intervention of the ASHA Family Counseling Centre at Islampur to resume their conjugal life again, but all his good efforts were proved to be futile due the adamant attitude of the respondent. Thereafter having no other alternative the petitioner instituted a suit against the respondent with a prayer for restitution of conjugal rights, but the respondent did not care to turn up there even after receiving summons to contest the said suit. It is further alleged that the respondent had filed false criminal cases with the objective of harassing the petitioner and his whole family members which caused sufficient mental cruelty upon them. Accordingly, the petitioner has instituted this suit praying for dissolution of their marriage on the ground of cruelty and desertion.

2. The respondent/ wife appeared in this suit after being served with the summons and resisted the claim of the petitioner by filing her brief written statement. The respondent evasively denied the contention of para 5 to 16 of the plaint and further contended that the statement of para No. 1 to 4 of the plaint are partly true and partly denied. Apart from denying all allegations of the petitioner evasively, the respondent has not set up any positive plea in her written statement in order to counter the allegations of the petitioner or to justify her alleged act. Besides, the respondent has also projected some conventional grounds of defense in her written statement by way of challenging the maintainability of the suit and lack of cause of action. Hence, the respondent prayed for dismissal of the instant suit.

3. This Court has already framed certain issues earlier on 20.12.2022, but for proper adjudication of the instant suit this Court has recast the following issues on 28.04.2026 after considering the pleadings of the parties –

ISSUES

- 1) **Is the suit maintainable in its present form and in law?**
- 2) **Has the petitioner any cause of action to file the instant suit?**
- 3) **Has the respondent subjected the petitioner with cruelty since after solemnization of their marriage?**
- 4) **Has the respondent deserted the petitioner without any lawful excuse since 16.09.2010?**
- 5) **Is the petitioner entitled to get any decree in the manner as prayed for?**
- 6) **To what other relief or reliefs the petitioner is entitled as per law and equity?**

DECISION WITH REASONS

4. Both the parties adduced evidence in this suit. The petitioner/ husband, namely, Ajoy Das has examined himself as P.W. 1 in support of his case. Apart from himself, the petitioner examined one Anirban Nag, Jayanta Kumar Saha and Sanjib Chandra Bagchi in support of his contention as P.W. 2, P.W. 3 and P.W. 4 respectively. The petitioner also

relied upon the following documents which were admitted into evidence in this case : –

Serial No	Exhibit No	Description of Documents
1.	Exbt. 1	Self attested copy of Aadhaar Card of P.W. 1
2.	Exbt. 2	Certified copy of Order sheets in c/w Mat. Suit No. 35/ 2011
3.	X for identification	Copy of Letter of Asha Family Counseling Centre

Be it noted here that in course of examination of P.W. 4, the following documents have been admitted into evidence, but those are mistakenly again marked as follows –

Serial No	Exhibit No	Description of Documents
1.	Exbt. 1	Letter dated 07.01.2011
2.	Exbt. 2	Notice dated 08.10.2010

At the inception of cross-examination of P.W. 2, his summons was admitted into evidence and the same was marked as Exbt. A.

Issue No. 1 and Issue No. 2

1) Is the suit maintainable in its present form and in law?

AND

2) Has the petitioner any cause of action to file the instant suit?

5. These two issues are taken up together first to avoid repetition. The first issue is in respect of maintainability of the suit. The respondent has challenged the maintainability of the suit including cause of action as

a mere formal ground of defence. During trial and argument of this suit, learned Advocate representing the respondent did not challenge the maintainability of the present suit in any substantial manner. Despite that fact, be it mentioned here that the petitioner/ husband had stated in para 3 of his plaint that his marriage with the respondent was solemnized on 09.12.2009 according to Hindu rites and customs which was also not specifically denied by the respondent in her written statement. It further appears that the instant suit has not been instituted within one year from the date of marriage of the parties. It should further be placed on record that from the pleadings of the parties as well as evidence on record it can be seen that both the petitioner and the respondent are the permanent resident within the jurisdiction of this Court and their marriage was also solemnized within the jurisdiction of this Court. In addition it appears from the evidence of the petitioner that the respondent is presently residing at her father's house which is also within the jurisdiction of this Court. Thus considering the pleading and evidence of parties it appears that the requirement of Clause- (i), Clause- (ii) and Clause- (iii) of Section- 19 of the Hindu Marriage Act, 1955 are satisfied and therefrom it appears that this Court is having every jurisdiction to try and adjudicate the present suit in all respect. Accordingly from the pleadings of the parties, I have no hesitation to conclude that the present suit is very much maintainable in its present form and law.

In support of his contention of the plaint, the petitioner brought several allegations against the respondent and also mentioned specific date in which the respondent is alleged to have left her matrimonial home without the consent of the petitioner. The petitioner also projected several acts of the respondent alleging cruelty upon the petitioner based on which the petitioner instituted the instant suit and accordingly, all these bundle of essential facts constituted the cause of action for the petitioner to institute the instant suit.

Accordingly, the Issue No. 1 and Issue No. 2 are decided in the affirmative.

Issue No. 3 :-

Has the respondent subjected the petitioner with cruelty since after solemnization of their marriage?

6. In order to substantiate the instant suit, the petitioner/ husband has examined himself as P.W. 1. The petitioner/ husband has sought for divorce from his wife on account of cruelty as one of the grounds.

Considering the pleading and affidavit-in-chief filed under Order XVIII, rule (4) of the Code of Civil Procedure, 1908, hereinafter referred to as the 'C.P.C.', filed by the petitioner/ husband as P.W. 1, the following points in brief are put forward by the husband as element of cruelty by the wife :-

(a) Since after their marriage, the respondent being instigated by her family members started showing her true colours on the pretext of low income of the petitioner;

(b) the respondent used to go to her father's house frequently and stayed there for long time without any reasonable cause;

(c) The respondent implicated the petitioner and his family members in false criminal cases without any reasons which are still pending;

(d) The respondent also used to become furious and she started compelling the petitioner to shift with her in a rented accommodation to get separated from his family members which was impossible for the petitioner due to his family burden and stringent financial condition;

7. First of all this Court considers it prudent to mention that the neither the present petitioner nor the respondent feels it necessary to enrich their pleading with sufficient facts with all precision in support of their contention. The petitioner incorporated certain facts in his plaint to project cruelty which are alleged to be inflicted upon him by the respondent, but the same are devoid of specific dates and vivid description. Following the same trend the respondent in her written statement also denied the allegations of the plaint evasively. The

respondent did not set up any positive assertion in support of her defense. At this stage it would be apt to mention here that the pleading of the parties to this suit are the glaring examples of 'mofussil drafting' which was recognized by the Hon'ble Supreme of India in **Badat and Co. vs. East India Trading Company** reported in **AIR 1964 SC 538** with a solemn observation that such drafting should be taken into consideration liberally and the Court should ensure substantial justice over hyper-technical nuances. By referring to rule 3, 4 and 5 of Order VIII of the Code of Civil Procedure, 1908 the Hon'ble Apex Court has been pleased observed –

“..... But in mofussil Courts in India, where pleadings were not precisely drawn, it was found in practice that if they were strictly construed in terms of the said provisions, grave injustice would be done to parties with genuine claims. To do the justice between those parties, for which Courts are intended, the rigor of rule 5 has been modified by the introduction of the proviso thereto. Under that proviso the Court may, in its discretion, require any fact so admitted to be proved otherwise than by such admission. In the matter of mofussil pleadings, Courts, presumably relying upon the said proviso, tolerated more laxity in the pleadings in the interest of justice....”

8. One of the ground of attack of the petitioner for obtaining a decree of divorce in the instant suit is 'cruelty' and now we are to see that what constitutes 'cruelty' in legal parlance. The term 'cruelty' has not been defined in any provision of the Hindu Marriage Act, 1955. The Hon'ble Apex Court in **A. Jayachandra Vs. Aneel Kaur**, reported in **AIR 2005 SC 534**, has been pleased to observe in para 12

“12. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in

the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.”

9. Thus it could be seen that there is no straight jacket formula to ascertain the fact which amounts to cruelty for any party to a proceeding. It depends upon the facts and circumstances of each case and norms of society, social obligation, bindings and education of the parties for coming to the conclusion of mental cruelty suffered by one spouse due to the acts of the other.

10. On the contrary, learned Advocate representing the respondent/ wife vociferously submitted that the petitioner has brought some vague general allegations which he has failed to substantiate materially. At the inception it is apt to mention here that the petitioner projected in his pleading, though not deciphered in so many words, that the respondent was not happy with the meager income of the petitioner and for that reason the respondent used to visit her father's house frequently and also stayed there for long without any reasonable cause. The plaint of the petitioner makes it limpid that their marriage was solemnized on 09.12.2009 and the respondent had left her matrimonial home on 16.09.2010 which signifies that the conjugal life of the parties to this suit continued for only nine months. Surprising to note here that the petitioner

did not mention within the four corners of his pleading that what was his profession at the relevant point of time or what was the amount of his monthly income which did not satisfy the expectation of the respondent for her livelihood. The petitioner neither mentioned any specific day or date of visit of the respondent to her father's house nor state the actual period of stay of the respondent therein. The petitioner has also failed to bring on record any material to substantiate the fact of demand of the respondent to shift in rented accommodation to get separated them from the family members of the petitioner. Surprising to note here that though the petitioner spells about his inability to maintain two separate establishment due to his family burden and stringent financial capacity, the petitioner did not even specify about his other family members.

11. Besides the petitioner further projected that the respondent implicated the petitioner and his family members in false criminal cases one by one which are still pending. It is vociferously argued that initiation of false criminal cases at the instance of a wife against her husband and other in-laws constitutes sufficient mental cruelty. Attention of this Court was further drawn to the factual aspect that the respondent initiated the criminal case against the petitioner long after her departure from her matrimonial home on 16.09.2010. It is further argued that the respondent lodged complaint at police station even after the institution of the suit under section 9 of the Hindu Marriage Act, 1955 by the petitioner which simply indicates that the respondent lodged false complaint in order to teach the petitioner a lesson. Upon careful scrutiny of the entire pleading repeatedly it appears that the petitioner did not incorporate any details or particulars of any criminal proceeding against them which was claimed to be initiated by the respondent. The petitioner did not bring on record any document in support of his contention about the existence of the criminal proceeding against them. The learned Advocate representing the respondent during cross-examination of the petitioner as P.W. 1 has elicited from his mouth that his wife had lodged complaint against him and his relatives alleging mental and physical torture upon her which are still pending in the court of the learned Judicial Magistrate, 1st Court, Islampur, and they are on court bail in that case. Such unequivocal disclosures regarding existence of criminal proceeding by the petitioner

(P.W. 1) during his cross-examination leaves no space for the respondent to deny such fact any more, but now it should be considered that how far this fact be treated as cruelty upon the petitioner. At this juncture it would apt to mention here that the Hon'ble Apex Court in **Civil Appeal No. 8871 of 2019 (Arising out of SLP (Civil) No. 1981 of 2019)** between **Rani Narasimha Sastry Vs. Rani Suneela Rani**, decided on 19.11.2019 has been pleased to opine as follows : –

“ It is true that it is open for anyone to file complaint or lodge prosecution for redressal for his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot ipso facto be treated as cruelty. But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband.”

Thus borrowing wisdom from the above noted solemn decision of the Hon'ble Apex Court, it becomes crystal clear that mere lodging of FIR by the respondent/ wife against the petitioner/ husband should not ipso facto be treated as cruelty, but acquittal of the petitioner in that case after proper trial should be treated as cruelty. Pleading of the petitioner itself makes it clear that the criminal proceedings against them are still pending which further finds strength while the petitioner divulged during his cross-examination that the said case is still pending in the Court of the learned Judicial Magistrate, 1st Court, Islampur, and they are on court bail in that case. Thus relying on the ratio of the solemn decision of the Hon'ble Apex Court in **Rani Narasimha Sastry Vs. Rani Suneela Rani (Supra)** it can be said that mere pendency of a criminal proceeding against the present petitioner should not be counted as cruelty since it is yet to be adjudicated.

In view of the above discussions, I am of the considered view that the petitioner has failed to establish any solitary incident at the instance of the respondent which may be counted as cruelty upon the petitioner entitling him to get a decree of divorce on this ground.

Hence, this issue is decided in the negative.

Issue No. 4

Has the respondent deserted the petitioner without any lawful excuse since 16.09.2010?

12. The petitioner has projected ‘desertion’ as one of the ground in support of his application praying for divorce. Section 13(1)(i-b) of the Hindu Marriage Act, 1955 reads as follows -

“S. 13. Divorce.– (1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party–

(i) X;

(ia) X;

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

X X;”

The explanation appended to section 13 of the Hindu Marriage Act, 1955 provides the meaning of the word ‘desertion’ as follows -

“Explanation.– In this sub-section, the expression “desertion” means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.”

The explanation appended to section 27 of the Special Marriage Act, 1954 also defines the term 'desertion' in the same language as in the Hindu Marriage Act, 1955. Thus one of the requirements of desertion as a ground of divorce is that the desertion must be for a continuous period of not less than two years immediately preceding the institution of the suit praying for divorce. Learned Advocate for the respondent relied on the solemn decision of the Hon'ble Jharkhan High Court in **Santosh Kumar vs. Kumari Arpana (F.A. No. 245 fo 2024)** decided on 20.03.2026 and draws attention of this Court towards the para 58 wherein the Hon'ble Court has been pleased to opine –

“58. The law consistently has been laid down by the Hon'ble Apex Court that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be animus deserendi on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse spouse to leave the matrimonial home.”

It is further submitted by the learned Advocate representing the respondent that the petitioner has materially failed to discharge his onus to prove that he has been deserted by the respondent as alleged in the application. In the instant suit the petitioner claimed that he has been deserted by the respondent since 16.09.2010 and the case record reveals that the instant suit was instituted on 10.03.2021. The respondent neither denied the date of their separation specifically in her written statement nor has set up any

positive defense indicating rival contention disputing the assertion of the petitioner in this regard, but surprising to note here that the respondent in her examination-in-chief has depicted that she was driven out from her matrimonial home after being physically tortured on account of demand of dowry on 29/11/2012 which is altogether absent in her pleading. Thus, it is clear that the instant suit was instituted after two years from the date of separation of the parties to this suit even if we consider the claim of the respondent as sacrosanct. Now this court is to adjudicate that whether the respondent has deserted the petitioner within the meaning of section 13 of the Hindu Marriage Act, 1955.

13. The petitioner in his plaint averred that on 16.09.2010 at about 5.30 the respondent became violent as the petitioner made protest over the issue of her regular visit to her father's house and thereafter the respondent had left her matrimonial home at about 6.00 p.m. with her elder brother with all her Stridhan articles without the consent of the petitioner. It is further asserted that the petitioner approached twice before the ASHA Family Counseling Centre, but all his good effort proved to be futile due to the adamant attitude of the respondent. The petitioner further projected that he had instituted a suit against the respondent under section 9 of the Hindu Marriage Act, 1955 praying for restitution of conjugal rights, but the respondent did not turn up despite receiving summons. Learned Advocate representing the petitioner submitted that the respondent had left her matrimonial home voluntarily without consent of the petitioner and deserted the petitioner willfully without any reasonable cause and excuse. Per contra, learned Advocate for the respondent submitted that the respondent was driven out from her matrimonial home on 29.11.2012 after being assaulted by the petitioner on account of demand of dowry and there was fault on the part of the respondent. It is also submitted that the respondent is still willing to resume her conjugal life with the

petitioner which she has mentioned in her written statement without any ambiguity.

14. Even at the cost of reiteration it would be apt to mention here that the petitioner did not incorporate all the facts in support of his plea of desertion in his pleading which he has mentioned in his examination-in-chief. The petitioner omitted to mention in his pleading the particulars of the suit under section 9 of the Hindu Marriage Act, 1955 which he has mentioned in para 9 of his examination-in-chief being P.W. 1. The petitioner further omitted to mention in his plaint the entire para 10 of his examination-in-chief which reads as follows –

“10. That thereafter the O.P has assured your petitioner through her relatives for continues her conjugal life with the petitioner and due to the said communication for continue their conjugal life your petitioner has leave to taking steps in the said Matrimonial suit vide no 35/ 2011 for the verbal assurance of the O.P and the said suit has been disposed of for non prosecution on 30.06.2016 but the O.P has or have not returned her matrimonial house till date.”

The examination-in-chief of P.W. 1 reveals that the petitioner let his suit under section 9 of the Hindu Marriage Act, 1955 be dismissed for default even it was fixed for ex-parte hearing since the respondent had shown her intention through her relatives to resume her conjugal life with the petitioner. It is true that the petitioner omitted to mention this fact in his pleading, but it equally true that the petitioner being P.W. 1 was not cross examined on this aspect. It is also apt to mention here that the petitioner was not even confronted with his such subsequent development in his examination-in-chief in course of his cross-examination. Accordingly, failure on the part of the learned Advocate for the respondent to confront P.W. 1 during his cross-examination with

regard to his subsequent development in his examination-in-chief leaves no space for the respondent to challenge this portion of the evidence of the petitioner on the ground that this information is beyond his pleading.

15. As has already been mentioned above that the respondent in her written statement denied the allegations of the plaint evasively. The respondent did not set up any positive assertion in support of her defense which may justify their separation. This time too the respondent being D.W. 1 has mentioned in her examination-in-chief that she was driven out from her matrimonial home after being physically tortured by her husband on account of demand of dowry on 29.11.2012, but the respondent did not incorporate this fact in her written statement. In course of her cross-examination being D.W. 1, the respondent was confronted with such portion of her subsequent development. It is pertinent to mention here that the respondent in her written statement did not specifically deny the allegations of the petitioner. In order to negate an allegation contained in the pleading of a party, it is essential to deny that allegation specifically through his pleading, otherwise it would have the effect of admission of that portion. Rule 3 of Order VIII of the Code of Civil Procedure, 1908 (hereinafter referred to be as "CPC") provides as follows—

“3. Denial to be specific.- It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.”

Again rule 4 of Order VIII of CPC provides that where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. In addition, rule 5 of Order VIII of CPC states that every allegation of fact in the plaint shall be taken to be admitted unless it is denied specifically or by necessary implication or stated to be not admitted.

Upon perusal of the written statement of the respondent it appears that the respondent stated in para 9 to 11 of her pleading as follows –

“9. That the statements made in the application/ petition which are not categorically admitted by this O.P. Member deemed to be denied.

10. That the statements made in para No- 1 to 4 is partly admitted

and partly denied by the Op member.

11. That the statements made in para No-5 to 16 of the application is not a true fact deemed to be denied by the Op member.”

Thus it can be seen that the respondent/ wife has denied the principal allegations of the petitioner/ husband contained in para 5 to 16 of his pleading evasively and there are no specific denial of the allegations of the petitioner. The respondent/ wife also did not deny specifically the claim of the petitioner in her examination in chief. The respondent in para 10 of her pleading stated that the allegations contained in para 1 to 4 of the Application are partly admitted and partly denied. But it is surprising to note that the respondent did not state specifically that which portion of the allegations are true and which portions are claimed to be false. Without specific denial by the respondent, it becomes impossible for this Court to discern that portion which are admitted to be true from those allegations claimed to be false. The Hon'ble Supreme Court of India in **Badat and Co. vs East India Trading Company (supra.)** by referring to rule 3, rule 4 and rule 5 of Order VIII of the C.P.C. has been pleased to opine as follows –

“These three rules form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The written-statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary.....”

16. The petitioner in his plaint asserted that the respondent had left her matrimonial home on 16.09.2010 and since thereafter the petitioner tried several times to bring back the respondent to resume their conjugal life, but she did not turn up. It is further projected that the petitioner tried to resolve their apple of discord with the intervention of the ASHA Family Counseling Centre which also did not give any fruitful result. The

respondent disputed these facts in substance. P.W. 2 and P.W. 3 being friends of the petitioner have corroborated the version of the petitioner to the effect that the respondent had left her matrimonial home on 16.09.2010. On the contrary, the respondent projected in her examination-in-chief that she was driven out from her matrimonial home on 29.11.2012 which signifies that she stayed at her matrimonial home for almost three years. It is pertinent to mention here that the respondent during her cross-examination on 17.05.2025 being D.W. 1 has admitted that her husband issued notice through ASHA Family Counseling Centre for the purpose of amicable settlement of the dispute. The respondent further admitted during her cross-examination dated 15.09.2025 that 09.10.2010 was the date of the proceeding at ASHA Family Counseling Centre and after that date her husband did not keep any touch with her. This fact further finds strength from the Notice issued from ASHA Family Counseling Centre (Exbt. 2) addressing the parties to this suit which was admitted into evidence in course of substantive evidence of P.W. 4. This Notice reflects that the date of sitting was fixed on 09.10.2010. Accordingly, such unequivocal disclosure from the mouth of the respondent during her cross-examination supported by documentary evidence leaves no avenue for her to deny these fact in any way. In addition, the petitioner being P.W. 1 adduced the certified copy of the order sheets of Matrimonial Suit being No. 25/ 2011 which were admitted into evidence in course of substantive evidence of P.W. 1 and marked as Exbt. 2. These order sheets (Exbt. 2) reveal that the said suit under section 9 of the Hindu Marriage Act, 1956 was instituted at the instance of the present petitioner against the respondent on 23.02.2011. This fact also negates the claim of the respondent that she was driven out from her matrimonial home on 29.11.2012 since there were neither any cross-examination on this point nor the respondent adduced any other evidence to corroborate her own version.

17. Besides, it has been elicited from the mouth of the petitioner (P.W. 1) during his cross-examination dated 17.08.2023 that when his wife left home and went to her parental house, he tried to bring back her several times. P.W. 2 and P.W. 3 being friend of the petitioner have disclosed during their cross-examination that they have tried several times to settle

the dispute. The petitioner has been able to show that since after their separation he had instituted a suit praying for restitution of conjugal rights and he also knocked the door of ASHA Family Counseling Centre twice to bury the hatchet in between himself and the respondent. But on the contrary the respondent could neither adduce any substantive evidence nor discredit the claim of the petitioner at the time of his cross-examination in any way. The respondent pleaded in her written statement that she is still willing to resume her conjugal life, but she could not establish before this Court a solitary instance to show that her such intention was reflected in any of her act, rather she admitted in course of her cross-examination dated 15.09.2025 that she had not filed any application or case before any appropriate authority or forum when she was denied by her husband to enter into her matrimonial home after the proceeding in Asha Family Counseling Centre. On the next moment the respondent admitted that 09.10.2010 was the date of the proceeding before the ASHA Counseling Centre. Such disclosure by the respondent during her cross-examination shows that she could not convert her willingness into any positive gesture which would help them to give their marital life a proper shape. Learned Advocate has elicited from the mouth of the petitioner (P.W. 1) during his cross-examination that the respondent had lodged a complaint against himself and his relatives alleging mental and physical torture upon her and the said case is still pending in the Court of the Judicial Magistrate, 1st Court, Islampur. Though the respondent could recollect during her cross-examination that she was mercilessly tortured by her husband since after her marriage, she could not recollect whether she filed any case in the Islampur Police Station with allegation of offence of infliction of torture under section 498A of the IPC in the year 2013. Such failure on the part of the respondent creates a shadow of doubt in the mind of this Court to the effect that is there any effort on the part of the respondent to suppress material facts before this Court.

18. Accordingly, this Court is of the considered view that the petitioner has successfully established that the respondent, of her own volition, abandoned the petitioner without his consent and without any justifiable or reasonable cause. The material on record

clearly demonstrates that the petitioner made consistent and bona fide efforts to persuade the respondent to return and resume their conjugal life. However, the respondent has failed to place on record any cogent or convincing evidence to justify her prolonged separation from the petitioner, which has persisted for over a decade.

Hence, this issue is decided in favour of the petitioner.

- Issue No 5 -

Is the petitioner entitled to get any decree in the manner as prayed for?

19. The petitioner has instituted the present suit praying for dissolution of their marriage on the grounds of cruelty and desertion. The petitioner has successfully discharged his burden in proving the issue of desertion. As all the issues discussed above are decided in the affirmative except Issue No. 3, hence this issue is also decided in the affirmative as this issue is entirely dependent upon the decision of the above noted issues.

Hence, this issue is also decided in the affirmative.

- Issue No. 6 -

To what other relief or reliefs the petitioner is entitled as per law and equity?

20. In the instant suit, the petitioner has prayed for a decree of divorce on the ground set forth in his pleading in which he succeeded and in my considered opinion the petitioner is not entitled to any other relief or reliefs as per law and equity.

Hence, this issue is decided accordingly.

21. In short, the instant matrimonial suit succeeds.

22. Court Fee paid is found to be correct.

23. Hence, it is -

ORDERED

that the instant Matrimonial Suit being No. 27 of 2021 be and the same is hereby decreed on contest in favour of the petitioner, namely, Ajoy Das against the respondent, namely, Smt. Anjana Das, but without any order as to cost.

The marriage tie between Ajoy Das and Smt. Anjana Das solemnized on 9th Day of December, 2009 be dissolved by a decree of divorce with effect from the date of decree.

Decree be drawn up accordingly.

D.A. is directed to do the needful at once.

Thus, the instant suit is disposed of.

Note in the relevant register.

Upload in the CIS.

Dictated & corrected by me

A.D.J, Islampur, Uttar Dinajpur.
Dated : 07.05.2026

Additional District Judge
Islampur, Uttar Dinajpur