

RESERVED ON : 17.04.2026

PRONOUNCED ON : 10.07.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

MISCELLANEOUS FIRST APPEAL NO. 6994 OF 2021 (FC)

BETWEEN:

SRI. RUDRAMURTHY.S.,
S/O. SHIVANANDAMURTHY,
AGED ABOUT 37 YEARS,
R/O. VEERABHADRASWAMY NILAYA,
TKP ROAD, 10TH CROSS,
SAPTHAGIRI EXTENSION,
TUMAKURU - 572 102.

...APPELLANT

(BY SRI. S.B. TOTAD, ADVOCATE)

AND:

SMT. SUMA B.M.,
W/O. RUDRAMURTHY S,
AGED ABOUT 35 YEARS,
R/O. MAHARAJAPET IJARDAR GALLI,
NEAR VITTAL TEMPLE,
DAVANAGERE - 577 001.

...RESPONDENT

(VIDE ORDER DATED:16.12.2024 NOTICE TO
RESPONDENT IS HELD SUFFICIENT)



THIS MFA IS FILED UNDER SECTION 19(1) FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DATED:22.07.2021 PASSED IN MC NO.195/2020 ON THE FILE OF THE PRINCIPAL FAMILY JUDGE, FAMILY COURT, TUMKUR, DISMISSING THE PETITION FILED U/S.13(1)(a) OF HINDU MARRIAGE ACT 1955.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT DELIVERED/ PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

This appeal under Section 19(1) of the Family Courts Act, 1984 by the petitioner-husband, assailing the judgment and decree dated 22.07.2021 passed by the Principal Judge, Family Court, at Tumkur¹ in M.C.No.195/2020. The Family Court by means of Judgment and decree dismissed the petition filed by the

¹ "Family Court for short"

petitioner-husband, seeking for divorce on the ground of cruelty under Section 13(1) (ia) of the Hindu Marriage Act, 1955.

2. Parties are referred to as per their ranking before the Family Court.

3. Facts in brief leading to file this present appeal are as under:

As per petition averments:

3.1 The petitioner and respondent are the husband and wife and their marriage was solemnized on 09.05.2019 in Krishna Bhavani Kalyana Mantapa, at Davanagere as per the Hindu rites and customs.

3.2 Even prior to the marriage, there was misunderstanding between the family members and galatas have taken place and immediately after the marriage, the respondent-wife under the influence of her parents, started quarreling with the petitioner-husband and forcing him to send her to Davanagere by bus. She was abusing every family members of

the petitioner-husband and even not allowed the petitioner to establish physical contact with her. Within a period of one month, the respondent-wife left the matrimonial home along with her parents and not returned. All the efforts of the petitioner-husband to bring her back left in vain, as the respondent was reluctant to return back.

3.3 The respondent-wife is in habit of insulting the petitioner-husband before the relatives and even calling him as impotent and non-earning/unemployed. The respondent-wife informed the petitioner-husband that she is employed in Davanagere and if he want to join her, he has to come over to Davanagere and join her otherwise she is not interested in coming back to Tumakuru and lead marital life. Despite his attempt on 12.09.2019, when he went to Davanagere to meet the respondent, she declined to see him, stating that she is not feeling well and staying in the house. However, when the petitioner-husband informed that he is

already in Davanagere Railway Station, respondent-wife came along with her uncle and has not spoken to him, but uncle of the respondent-wife informed the petitioner not to meet the respondent and not to visit her house. This attitude and conduct of the respondent-wife goes to show that she is not interested in continuing the marital life. Accordingly, the same constrained him to file the petition seeking for divorce on the ground of cruelty.

3.4 The respondent-wife refused the notice sent in the case. The Family Court considered the same and placed her *ex-parte*.

3.5 The petitioner-husband in order to prove his case, examined himself as PW.1 and produced four documents and marked the same as Exs.P1 to P4.

3.6 On the petition averments, the Family Court framed three points for consideration, which reads as under:

"1. Whether the Petitioner makes out a case of mental cruelty at the hands of the Respondent as contended?"

2. *Whether the Petitioner is entitled for a decree of divorce as prayed?*
3. *What order?"*

3.7 The Family Court answered both Point Nos.1 and 2 in the Negative on the premise that the petitioner has not produced any corroborative, supportive and cogent evidence to prove the cruelty and allegations made in the petition as well as the fact that the respondent-wife voluntarily deserted the company of the petitioner-husband.

3.8 The Family Court further observed that the evidence as well as the pleadings of the husband is silent regarding the efforts made by the petitioner-husband in getting back the respondent-wife to lead marital life. Further, the Family Court held that even in the absence of the respondent-wife to contest the proceedings, the petitioner-husband has failed to prove the allegations made in the petition and as such dismissed the petition. It is this judgment and decree passed by the Family Court is called in

question in this appeal filed by the petitioner-husband.

4. Despite service of notice, the respondent-wife did not appear, which made the petitioner-husband to take steps through paper publication.

5. The respondent-wife did not care to appear before this Court, despite service of notice through paper publication. This Court on 16.12.2024 passed order stating that the service of notice on the respondent is held sufficient.

6. Heard Sri.S.B.Totad, learned counsel for appellant.

7. Sri.S.B.Totad, learned counsel appearing for the petitioner with all vehemence submits that the Family Court has failed to consider the main aspect of the matter that the contentions taken in the petition are not denied, as she has refused to accept the notice. This clearly shows the conduct of the respondent-wife. She has neither

appeared nor contested the matter either before the Family Court or before this Court.

7.1 The Family Court has stated that the petitioner-husband has not proved the case with corroborative evidence. Admittedly, there is no contest by the respondent-wife to the petition. No more evidence than the evidence led before the Family Court is required to prove the contentions. Whatever happened between them is between four walls and it is only in the presence of denial of the allegations by the respondent-wife, the petitioner-husband is required to be called upon to prove the allegations by other independent evidence. When there is no contest and the marriage having been lost within one month and the respondent-wife living apart without there being any reasonable cause making all sorts of allegations even calling the husband as impotent, all these contentions are sufficient to the Court to hold that, the respondent-wife who has treated the

husband with cruelty. The Family Court has failed to consider these aspects of the matter.

7.2 To buttress his contentions learned counsel has relied on the Judgment of Supreme Court in **NARENDRA VS. K.MEENA²**, to contend that the persistent effort of the respondent/wife to constrain the appellant/husband to be separated from the family would be tortuous for the husband and the same constitute an act of cruelty.

7.3 Further, in case of **SHASHIDHAR VS. VIJAYALAXMI³**, the Division Bench of this Court observed in paragraph No.30 that the allegations having not been proved to be genuine, and calling the husband an impotent without legally substantiating the same, itself would amount to cruelty within the meaning of Section 13(ia) of the Hindu Marriage Act, 1955.

² Civil Appeal No.3253/2008 Dt: 06.10.2016

³ MFA No.102625/2015 Dt: 31.05.2022

7.4 Further, in case of **LALITHA @ BASAMMA VS. SIDDARAMAPPA⁴**, the Division Bench of this Court at paragraph Nos.6 and 8 of the Judgment has observed that the husband who was served with the court notice, had appeared before the court and further did not contest the case indicates that, he did not dispute the petition allegations. In those circumstances, the inference drawn and the findings recorded by the court below is beyond propriety of the court and is perverse. Further observed that when there is no contest to the petition, the Family Court had no reason to look for corroboration, to whatever evidence placed by the Appellant/wife before the Court. With this, learned counsel sought to allow the appeal.

8. Having heard the submissions, perused the entire appeal paper, the Trial Court record as well as the Judgments relied on by the learned counsel appearing on behalf of the appellant.

⁴ MFA.No.6040/2014

9. As seen from the record, the respondent-wife left the matrimonial home within one month of the marriage and as per the contentions of petitioner-husband, there is no co-habitation between them, as she was abusing him by calling him as impotent. It is further revealed from the petition averments and the evidence that, she is happily settled in Davanagere. The notice which was sent from the Family Court returned as "refused". The Family Court considering the absence of the respondent placed her ex-parte. Even the notice sent from this Court as well as paper publication taken against the respondent, there is no attempt made by the respondent-wife to respond to the notice and not appeared before this Court. This conduct of the respondent-wife is more than sufficient to show that she is not at all interested any more to continue the marital life with the petitioner-husband.

10. The Co-ordinate Bench of this Court in **SMT.LALITHA @ BASAMMA**, stated supra, at paragraph No.8 has held that the Family Court Judge misdirected himself while evaluating the evidence placed by the wife

therein, though there was nothing contrary to the one placed by the wife, as the husband was served with notice, appeared but did not contest. That means to say he did not dispute the petition against him, and further held that the inference drawn and the findings recorded by the Family Court in that case, on the evaluation of the evidence is beyond propriety of the Court and is perverse. When there was no contest to the petition, the Family Court has fell in error to look for corroboration to whatever evidence placed by the appellant/wife before the Court in that case. Applying the said principles and facts to the case on hand, it is the husband who was in petition before the Family Court and the respondent-wife despite notice, refused it and did not contested the matter.

11. We fail to understand the reasoning of the Family Court that the petitioner-husband failed to corroborate his evidence. The petitioner-husband has led his evidence in support of his contentions in the petition averments. In the absence of any denial to the contention of the petitioner-husband, under the principles of

preponderance of probabilities, he has discharged his initial burden. In the absence of any denial or contest, nothing more is required for the petitioner-husband to prove further. The conduct of the respondent-wife in not responding to the notice issued also indicates that she is reluctant to join and save the marriage. There was marital discord between the parties, immediately after the marriage, that is, within one month. They are living apart since seven years, and there is no attempt by the respondent-wife to rejoin, despite several attempts by the petitioner-husband as per his claim in the petition constitutes cruelty.

12. We say so because there is no denial or contest to the said contentions by the respondent-wife. The marriage in the life of a person is an important event and the institution of marriage is standing on the bedrock of mutual understanding, compatibility, love and affection and sentiments. When such bedrock has been destroyed, there survives nothing to continue the relationship. The relationship between the parties has already been dead

and gone further and become meaningless. In that eventuality, continuation of the said marital life could even amounts to cruelty to both the parties.

13. The finding of the Family Court that the petitioner has not produced any document to show that the wife has deserted him without any reasonable cause, cannot be countenanced. In the present peculiar facts of the case, the respondent-wife never showed any interest to continue the marital tie between them. In that view of the matter, continuation of dead and meaningless relationship is nothing but whipping a dead horse to run.

14. We are aware of the fact that the Courts must be very slow while evaluating the evidence of the parties in any ex-parte judgment. However, the facts of the case and the conduct of the respondent-wife in not responding to the notice, either before the Family Court or before this Court left with us no other option than to draw an inference that she is no more interested in continuation of marital tie with the petitioner-husband.

15. The Co-ordinate Bench of this Court in the case of **SHASHIDHAR**, stated supra, while allowing the appeal filed by the husband under Section 13(1)(ia) of the Hindu Marriage Act, dissolving the marriage between husband and wife in that case, by setting aside the judgment and decree passed by the trial Court had an occasion to dwell upon the allegations by the wife calling the husband as impotent, which finds place in paragraph No.30, which reads as under:

"30. For the reasons stated supra and in light of the allegations having not been proved to be genuine, and calling the husband an impotent without legally substantiating the same, itself would amount to cruelty within the meaning of Section 13(ia) of the Act and the trial Court was not justified in holding that the cruelty asserted by the husband is not proved. Thus, we are of the considered opinion that the judgment and decree of the Family Court needs to be set aside and the petition filed by the husband under Section 13(1)(ia) of the Act needs to be allowed granting a decree of divorce in favour of the husband."

16. The same allegation has been made by the respondent-wife against the petitioner-husband according to his claim in the present appeal.

17. The Co-ordinate Bench of this Court in the afore had an occasion to quote words expressed by House of Lords (And Privy Council) in the case of **G. vs. G.**, reported in **LR 1924 AC 349** as under:

"Quoad hume et quoad hume, these people cannot consummate the marriage"

Thereby holding that two people should not be tied up together for the rest of their life in a state of misery.

18. The Supreme Court, in the case of **NARENDRA** supra, at paragraph No.11 of the judgment, held as under:

"The Respondent wife wanted the Appellant to get separated from his family. The evidence shows that the family was virtually maintained from the income of the Appellant husband. It is not a common practice or desirable culture for a Hindu son in India to get separated from the parents upon getting married at the instance of the wife, especially when the son is the only earning member in the family. A son, brought up and given education by his parents, has a moral and legal obligation to take care and maintain the parents, when they become old and when they have either no income or have a meagre income. In India, generally people do not subscribe to the western thought, where, upon getting married or attaining majority, the son gets

separated from the family. In normal circumstances, a wife is expected to be with the family of the husband after the marriage. She becomes integral to and forms part of the family of the husband and normally without any justifiable strong reason, she would never insist that her husband should get separated from the family and live only with her. In the instant case, upon appreciation of the evidence, the trial Court came to the conclusion that merely for monetary considerations, the Respondent wife wanted to get her husband separated from his family. The averment of the Respondent was to the effect that the income of the Appellant was also spent for maintaining his family. The said grievance of the Respondent is absolutely unjustified. A son maintaining his parents is absolutely normal in Indian culture and ethos. There is no other reason for which the Respondent wanted the Appellant to be separated from the family - the sole reason was to enjoy the income of the Appellant. Unfortunately, the High Court considered this to be a justifiable reason. In the opinion of the High Court, the wife had a legitimate expectation to see that the income of her husband is used for her and not for the family members of the Respondent husband. We do not see any reason to justify the said view of the High Court. As stated hereinabove, in a Hindu society, it is a pious obligation of the son to maintain the parents. If a wife makes an attempt to deviate from the normal practice and normal custom of the society, she must have some justifiable reason for that and in this case, we do not find any justifiable reason, except monetary

consideration of the Respondent wife. In our opinion, normally, no husband would tolerate this and no son would like to be separated from his old parents and other family members, who are also dependent upon his income. The persistent effort of the Respondent wife to constrain the Appellant to be separated from the family would be tortuous for the husband and in our opinion, the trial Court was right when it came to the conclusion that this constitutes an act of 'cruelty'."

19. There is one more reason for this Court to take an adverse inference against the respondent-wife, which the Family Court has failed to consider.

20. Order VIII Rule 10 of Code of Civil Procedure, 1908 prescribes as under:

"10. Procedure when party fails to present written statement called for by the Court- *Where any party from whom a written statement is required under Rule 1 or Rule 9 or fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment, a decree shall be drawn up."*

21. The Supreme Court in the case of **SHANTILAL GULABCHAND MUTHA VS. TATA ENGINEERING &**

LOCOMOTIVE CO.LTD & ANR⁵, had an occasion to dwell on the provision stated supra in paragraph No.4, which reads as under:

*"4. This Court in **Balraj Taneja & Anr. V. Sunil Madan & Anr.**, AIR 1999 SC 3381 dealt with the issue and held that even in such fact-situation, the court should not act blindly on the averments made in the plaint merely because the written statement has not been filed by the defendant traversing the facts set out by the plaintiff therein. Where a written statement has not been filed by the defendant, the court should **be little cautious in proceeding under Order VIII Rule 10, CPC**. Before passing the judgment against the defendant it must ensure that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of Court's satisfaction and, therefore, only on being satisfied that **there is no fact which need be proved** on account of deemed admission, the court can conveniently pass a judgment against the defendant who failed to file the written statement. However, if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the Court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. The power of the court to proceed under*

⁵ Civil Appeal No.6162/2025 Dt:18.03.2013

Order VIII, Rule 10 CPC is discretionary. The court further held that judgment as defined in Section 2(9) CPC means the statement given by the Judge of the grounds for a decree or order. Therefore, the judgment should be self-contained document from which it should appear as to what were the facts of the case and what was the controversy which was tried to be settled by the court and in what manner. The process of reasoning by which the court came to the ultimate conclusion and decreed the suit should be reflected clearly in the judgment. The court further held as under:-

*"Whether it is a case which is contested by the defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or **is a case in which the written statement is not filed and the case is decided under Order 8 Rule 10**, the Court has to writ a judgment which must be in conformity with the provisions of the Code or **at least set out the reasoning by which the controversy is resolved.**" (Emphasis added)."*

22. In the case on hand, the respondent-wife neither appeared nor filed any statement of objections. In that eventuality, there is no denial to the contentions taken by the petitioner-husband. He has led his evidence to the extent the allegations made in the petition. There are no disputed contradictory facts found either in the

pleadings or in the evidence. In that eventuality, this Court is satisfied that there is no fact which need to be proved more than the one which has already been proved on leading evidence by the petitioner-husband. In the absence of any contest and appearance, this Court has no other go than to draw an inference available under Section 114 of CPC against the respondent-wife to state that she has no interest to continue the marital tie with the petitioner-husband.

23. We have gone through the averments in the petition as well as the evidence. The petitioner at Paragraphs No.20 and 29 of the petition clearly stated that the respondent reluctant to return back to matrimonial home and consummate with him. He has stated that he had visited Davanagere on 12.09.2019 to bring her back, but he was not even allowed to talk with her by her uncle and even he was told by her uncle that he should not come to their house at Davanagere. This constitutes cruelty against him by the wife.

24. Further, at paragraph No.34 he has clearly stated regarding mental cruelty he and his family members have undergone due to the adamant behavior of the respondent - wife. Paragraphs No.20, 29 and 34 are extracted for easy reference, which reads as under:

"20. That it is submitted that the petitioner has been tolerating all and requested the respondent to come back to lead life amicably but the respondent did not agree by telling that the respondent is not in a position to take independent decision and told that the respondent uncle has to decide the same and the parents of the respondent have not decided her future life and thus by saying she has been neglected to join the company of the petitioner and did not show any interest and she has been saying one or the other pretext without any valid reasons in this way the respondent has been harassing the petitioner.

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29. That it is submitted that the respondent was aware of the fact that the petitioner wanted to contact the respondent on 12/9/2019 and intimated to contact the respondent but the respondent first told the petitioner to come over there and then when he is coming to Davanagere the respondent told that she was not feeling well and suffering from fever and staying in the house itself and again the petitioner enquired whether the respondent was in the hospital then she told that she told that she was in the office and the petitioner told that he was already in the Davanagere

Railway station and she told that within half an hour the respondent brought her uncle and the respondent did not have any talk with the petitioner properly and the respondent uncle told that he will come to the police station and there only he talk and asked the petitioner not to come to their house at Davanagere thus the respondent and her family members humiliated the petitioner and treated him very badly even when the petitioner has gone to the Davanagere to bring her back this shows that the respondent has absolutely no interest towards the petitioner to lead her life.

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34. That it is submitted that the petitioners parents and whole of his family members including the petitioner has been suffering from mental torture humiliation mental agony and there in no peace in the family since from the marriage due to the respondents attitude as said above and the petitioner and his family members tried their level best to bring her back but failed to succeed in the same because of the fact that there is no good intention to lead her life with the petitioner and throughout she wanted to take leave from the petitioner and her parents have no intention to settle/solve her life with the petitioner and thus she never return to the company of the petitioner and the parents have been evading and avoiding the petitioner in all respect."

25. The petitioner led oral evidence to support the contention raised in Paragraphs No.20, 29 and 34. As stated above, the contents stated in the pleadings are

supported by means of oral evidence and the same has not been denied by the respondent as she absented herself from the proceedings.

26. It is trite law that, the non-resumption of cohabitation despite request without there being reasonable cause by the wife and denying marital happiness to the petitioner also comes within the meaning of Cruelty as contemplated under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

27. Given the facts of the case as stated supra, the wife has no interest to continue the marital bond with the petitioner. In that view of the matter, we are of the opinion that there is no useful purpose would be served, if the marital tie continues between the parties as the petitioner proved his case of cruelty against him by the respondent - wife. The Family Court erred in holding that the petitioner has not produced any corroboration to his contentions. We fail to understand the reasoning of the Family Court. When there is no opposition or contest to the petition and in the teeth of oral evidence led by the

petitioner in support of his contention/petition averments and in the absence of any denial either to the pleadings or evidence, no more corroboration as observed by the Family Court is required.

28. The evidence in cases involving matrimonial disputes is often delicate and sensitive. Accordingly, the standard of proof applicable in such cases is that of the preponderance of probabilities, as the stricter standard of proof beyond reasonable doubt, which applies in criminal cases, cannot reasonably be expected. The Family Court has failed to consider this aspect of the matter. In that view of the matter, we set aside the order passed by the Family Court, by allowing this appeal. Consequently, the petition filed by the husband seeking decree of divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955, is hereby allowed dissolving the marriage between the petitioner and respondent solemnized on 09.05.2019 in Krishna Bhavani Kalyana Mantapa, at Davangere by this decree of divorce.

29. The Registry is directed to draw decree accordingly.

30. No order as to costs.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

RR/TKN