

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Misc. Appeal No. 1840/2024

Ravi Kumar S/o Choru Lal Pareek, Aged About 44 Years, R/o
Inside Jassusar Gate, Near Sub Post Office, Bikaner.

----Appellant

Versus

Smt. Babita W/o Ravi Kumar, D/o Krishna Dutt Sharma, R/o
Inside Jassusar Gate, Near Sub Post Office, Bikaner. At Present
Plot No. 246, Parihar Nagar, Bhadwasi Road, Jodhpur.

----Respondent

Connected With

D.B. Civil Misc. Appeal No. 1841/2024

Ravi Kumar S/o Choru Lal Pareek, Aged About 44 Years, R/o
Inside Jassusar Gate, Near Sub-Post Office, Bikaner.

----Appellant

Versus

Babita W/o Ravi Kumar, D/o Krishna Dutt Sharma, R/o Inside
Jassusar Gate, Near Sub-Post Office, Bikaner At Present R/o Plot
No. 246, Parihar Nagar, Bhadwasi Road, Jodhpur.

----Respondent

For Appellant(s)	:	Mr. Virendra Acharya
For Respondent(s)	:	Mr. Dilip Singh Baghela

**HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT**

Order(Oral)

24.02.2026

Per: Arun Monga, J.

1. Aforesaid two appeals have been preferred by the appellant-husband against the impugned judgment and decree dated 24.04.2024 passed by the learned Family Court No. 2, Jodhpur, whereby the petition filed by the appellant under Section 13 of the

Hindu Marriage Act, 1955 seeking dissolution of marriage on the grounds of cruelty and desertion was rejected and the application filed by the respondent-wife under Section 9 of the Act of 1955 for restitution of conjugal rights was allowed.

2. Succinctly stated, relevant facts are that the parties got married on 24.11.2013. According to the appellant-husband, the respondent-wife resided at the matrimonial home for about three months and on 10.06.2014, left for her parental home, taking jewellery with her, stating that she would return within a week.

2.1 However, despite repeated efforts by the appellant and his family members to persuade her to resume cohabitation including personal visits and telephonic conversations in July 2015, August 2015, and June 2016, she allegedly refused to return on one pretext or another, citing completion of coaching and examinations.

2.2 The appellant-husband asserted that on 16.06.2016, respondent-wife categorically declined to continue the matrimonial relationship and threatened to implicate him and his family in false cases. Appellant states that respondent had been residing separately without reasonable cause, had failed to perform her matrimonial obligations and had caused mental cruelty, thereby entitling him to a decree of divorce.

3. The respondent-wife denied above allegations in her written statement. She stated that she was subjected to physical and mental cruelty by the appellant-husband and his family in connection with demands for dowry. She stated that she was assaulted and harassed on several occasions, including in April 2014 during the festival of Gangaur and that such harassment led

to miscarriage. According to her, on 06.07.2014, she was forcibly expelled from the matrimonial home after being beaten. She never refused to live with the appellant-husband and was always willing to resume cohabitation, but the appellant-husband and his family insisted on dowry and threatened divorce. She further asserted that the appellant-husband neglected her and failed to maintain normal matrimonial relations.

4. Upon pleadings of the parties, the learned Family Court framed the necessary issues, including entitlement to relief. Both sides led oral and documentary evidence. The appellant examined himself and two witnesses and produced documents marked as Exhibits P-1 to P-6. The respondent examined herself and two witnesses and produced Exhibit D-1 in support of her defence.

5. After appreciating the evidence and hearing arguments, the learned Family Court, vide judgment dated 24.04.2024, dismissed the divorce petition filed by the appellant and allowed the petition for restitution of conjugal rights filed by respondent-wife.

6. Hence, the instant appeals.

7. In the aforesaid backdrop, we have heard the rival contentions advanced by learned counsel for the appellant and perused the case file as well as the record of the learned Family Court.

8. While returning the findings in favour of the wife, the learned Family Court, while deciding the issue of cruelty and desertion, *inter alia*, premised its reasoning by observing that although the appellant alleged that the respondent-wife had refused to return to the matrimonial home during telephonic conversations held in August and November 2015 and on 16.06.2016, his own evidence

materially contradicted such allegations. In his examination-in-chief and cross-examination, he admitted that the respondent's behaviour towards him was proper, that there were no disputes between them, that their physical relations were normal and that at the time of marriage, both liked each other. He further admitted that he began to dislike the respondent after three months of marriage and that even if she were ready to reside with him, he would not keep her. He also conceded that he had gone to bring her back only once after marriage.

8.1 Learned Family Court further noted that in proceedings under Section 125 Cr.P.C., the petitioner-appellant himself stated that the respondent's behaviour towards him and his family members was good. From the overall pleadings and evidence, it appeared that the respondent had gone to her parental home willingly, was preparing for competitive examinations and consistently expressed her willingness to resume matrimonial life. Her belongings were still lying at the matrimonial home and she had not initiated any criminal proceedings despite alleging dowry-related harassment, indicating her intention to preserve the marriage.

8.2 The learned Family Court also observed that the petitioner-appellant mentioned 10.06.2014 as the date of desertion, whereas material on record suggested otherwise and the petition having been filed on 22.06.2016, the statutory requirement of two years' continuous desertion prior to filing was not established. The Court held that the petitioner-appellant failed to prove that the respondent had deserted him without reasonable and sufficient cause. Observing that desertion requires proof of both factum of separation and intention to permanently end cohabitation, the

learned Family Court concluded that such essential ingredients were not proved by the petitioner-appellant and rather, the evidence demonstrated that it was the petitioner-appellant who was unwilling to continue the matrimonial relationship.

9. Thus, while recording findings against the husband, the learned Family Court held that since the appellant himself was the erring party, he could not be permitted to take advantage of his own wrong by seeking dissolution of the marriage

10. Likewise, the learned Family Court returned the finding in favour of wife while allowing the petition under Section 9 of the Act of 1955 seeking restitution of conjugal right. While returning the finding, it opined that the initial burden to prove entitlement to a decree for restitution of conjugal rights lay upon the respondent-wife and that the evidence on record established that respondent-wife was harassed, troubled and subjected to cruelty by the petitioner-appellant and his family members on account of demand for dowry in the form of money and gold and silver ornaments and was driven out of the matrimonial home.

10.1 Learned Family Court observed that from the very beginning, conduct of respondent-wife reflected her intention to continue the matrimonial relationship and for that reason, she did not file any dowry case against the petitioner.

10.2 It further recorded that on the contrary, the petitioner-appellant did not like the respondent and had abandoned her without any reasonable and sufficient cause and even expressed unwillingness to keep the respondent with him.

10.3 The Family Court, upon appreciation of the evidence on record, concluded that the petitioner-appellant failed to prove that

the respondent-wife treated him with cruelty or deserted him for a continuous period of more than two years prior to the filing of the petition without reasonable cause. It also noted that the respondent consistently expressed her willingness to reside with the appellant and continue the matrimonial relationship and had not initiated criminal proceedings regarding the alleged assault and dowry demand in order to preserve the marriage.

11. Accordingly, the learned Family Court held that the appellant had withdrawn from the society and not performed cohabitation with his respondent-wife without reasonable and sufficient cause and therefore, the respondent-wife was entitled to a decree for restitution of conjugal rights against the petitioner-appellant.

12. Having considered the matter in its entirety, we are of the view that the learned Family Court correctly dismissed the petition filed under Section 13 of the Act of 1955 and at the same time allowed the petition under Section 9 of the Act of 1955.

13. We are unable to persuade ourselves with the insipidity of the arguments of the learned counsel for the appellant that since the wife had chosen not file to any petition seeking restitution of conjugal right under Section 9 of the Act of 1955 prior to filing petition under Section 13 of the Act of 1955 by the husband, her conduct reflects that she was not interested to save the marriage.

14. The fact remains that the findings returned by the learned Family Court are based on the evidence which are reflective of the fact that the husband was the erring party and therefore, wife was fully justified in not resuming the marital ties in view of the hostility that was existing between two of them at the relevant time.

15. Accordingly, we find no grounds to interfere in either of the appeals and both are dismissed.

16. Before parting, in course of hearing, it transpires that the decree of restitution of conjugal right was passed on 24.04.2024 and since then, it has been almost two years (one month short) and the parties have not resided together.

17. In the premise, both the appeals are being dismissed with liberty to the appellant to seek his remedy under Section 13 (1A) of the Act of 1955 for filing a fresh divorce petition, if so advised, in accordance with law.

18. Any pending application(s) also stands disposed of.

(YOGENDRA KUMAR PUROHIT),J

(ARUN MONGA),J

40 & 41-KP Singh Dewasi/-