REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

BIPIN CHANDER JAISINGHBHAI SHAH V. PRABHAVATI (1956)

BENCH: Mr. Justice N.H. Bhagwati, Mr. Justice B. Jagannadhadas & Mr. Justice Syed Jaffer Imam

DECIDED: October 19, 1956

RATIO DECIDENDI & PRECEDENTIAL CRUX:
Desertion requires both physical separation (factum deserdendi) and the intention to desert permanently (animus deserendi) without reasonable cause.

1. Factual Matrix & Background:

A husband filed for divorce on grounds of desertion alleging that his wife left the matrimonial home and refused to return. The wife proved that she was driven out of the house following false allegations of infidelity and that she was always willing to cohabit.

2. Substantive Legal Questions Framed:

What are the essential legal ingredients of desertion as a ground for divorce or judicial separation under Hindu marriage law.

3. Analysis & Ratio Decidendi:

The Supreme Court three-judge bench delivered the foundational pronouncement on desertion in Indian law. Desertion is not the withdrawal from a place, but from a state of things. Two essential elements must co-exist on the part of the deserting spouse: the factum of separation and the intention to bring cohabitation permanently to an end (animus deserendi). If a spouse leaves due to conduct of the other, constructive desertion lies on the expelling spouse.

4. Principles Enunciated:

- 1. Desertion requires proof of both physical separation and animus deserendi.
- 2. The petitioner must prove absence of consent and absence of reasonable cause.
- 3. Constructive desertion: the spouse who drives the other out is the legal deserter.

5. Practical Litigation Implications:

- To establish or defeat desertion, place communications, WhatsApp chats, and legal notices on record proving whether there was a genuine willingness to resume marital life.

.....J.
[SUPREME COURT BENCH]