CASE NO.:
Appeal (civil) 576 of 2003

PETITIONER:
Geeta Jagdish Mangtani

RESPONDENT:
Jagdish Mangtani

DATE OF JUDGMENT: 20/09/2005

BENCH:
Arun Kumar & A.K. Mathur

JUDGMENT:
JUDGMENT

ARUN KUMAR, J.

This is an appeal by the wife against the judgment of the High Court passing a decree of divorce on a petition filed by the husband under Section 13 (1) (ia) and (ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'Act').

Briefly, the facts are that the marriage between the parties took place on 2nd November, 1992 at Ulhasnagar, Mumbai where the husband resides with his parents and other family members. The wife stayed in the matrimonial home up to 2nd June, 1993. In between she had returned to her parents' house at Adipur, Bhuj (Gujarat) on a couple of occasions to join her service as a teacher in a school at Anjar, Bhuj, Gujarat. The wife is teaching in the Municipal School at Anjar since prior to marriage. It is common case of the parties that on 2nd June, 1993, the appellant-wife left the husband's house for her parents' house at Adipur in Bhuj, Gujarat for her first delivery. A son was born on 11th November, 1993. The fact is clearly established on record that after 2nd June, 1993 the appellant never returned to her husband to join him in the matrimonial home at Ulhasnagar. In her evidence the wife has said that the husband visited her off and on, stayed with her at Adipur where she was staying with her parents. However, this statement made of the wife has been denied by the husband. These statements are merely oral statements made by the parties in support of their respective stands during the course of trial and have rightly not been relied upon by the courts below. The undisputable further fact is that on 30th September, 1996, husband sent a notice (Exhibit 21) to the wife through his lawyer alleging desertion on her part and also alleging that the wife wanted that the husband should resign his job in Ulhasnagar and stay with the wife at Adipur, Gujarat. This was on account of the fact that the wife was in a Government job as a school teacher and was earning about Rs.7000/- per month while the husband had a private job in which he was earning only Rs.1400/- per month. The husband's case has been that because he was not making enough money while the wife was earning well, she always wanted him to stay with her at Adipur in Gujarat. In reply to the notice vide Exhibit 22 dated 14.10.1996, the wife denied the allegations of the husband and stated that she was prepared to stay at Ulhasnagar with the husband. The husband got another notice dated 21st October, 1996 Exhibit-23, served on the wife more or less on the same allegations as were made in the previous notice. The wife sent a reply dated 4th December, 1996 Exhibit-25 on similar lines of denial. While appearing as a witness in support of her own case the wife has categorically maintained that she was willing to leave her job at the school in Anjar, Gujarat provided the husband was earning at least Rs.5000/- per month so that he could properly look after her and her son. Therefore, from the exchange of notices and the replies only one thing emerges that till 1996 there was no attempt on the part of the wife to join the husband.

Ultimately, on 31st December, 1996 the husband filed a divorce petition seeking divorce on the ground of cruelty and desertion. The trial court after recording evidence accepted both the grounds and granted a

decree of divorce. However, on an appeal filed by the wife, the lower Appellate Court reversed the judgment of the trial Court and dismissed the divorce petition filed by the husband. The husband appealed to the High Court against the said order. The High court by the judgment which is under challenge in this appeal confirmed the decree of divorce granted by the trial Court but only on the ground of desertion as the ground of cruelty was not pressed on behalf of the husband before the High Court. It is apparent from the judgment of the High court that the learned Judge made various attempts to bring about a settlement between the parties but he failed. This is noted by the learned Judge that both the parties appear to be adamant regarding their respective stands, that is, the wife is not prepared to leave her hob at Anjar in Gujarat unless the husband is able to earn a handsome salary at Ulhasnagar where he stays with his parents and other family members. Likewise, the husband is not willing to leave his present job and stay with the wife at Adipur, a place near Anjar in Gujarat where she is teaching. It may be mentioned here that at Adipur, the wife stays with her parents, the son of the parties is also with the wife.

The husband has made allegation that after the birth of the son he had gone to the house of the wife at Adipur, Gujarat where he was not allowed to meet her nor he was allowed to see his son. Likewise, the wife has made allegations that her mother-in-law had made dowry related demands from her. These are mere allegations and counter allegations on which reliance cannot be placed. Nothing of this kind was stated in the notices or replies thereto. The most important fact which emerges is that from 2nd June, 1993, the parties have been staying separately and there is total lack of any effort on their part to stay together. Since the wife left the matrimonial home on 2nd June, 1993 and has, admittedly, not returned to the said home, the absence of any desire on her part to honour the matrimonial obligation is clear. In this connection the observation of the High Court is worth reproduction:

"..Both husband and wife have renounced the relationship as husband and wife since June, 1993 and from the record of the case also presently the questions which I have asked in the chamber. I am satisfied that both husband and wife had no intention to live together as husband and wife and decided to break off from the relationship of marriage or withdraw that companionship of husband and wife. Desertion means rejection by the party of all the obligations of marriage and permanent forsaking or abandonment of one spouse by the other without any reasonable cause and without the consent of the other."

"14.7 I have considered the entire aspect and there is no useful purpose to have kept the parties as husband and wife particularly from 1993 both husband and wife have not stayed together. Though I have made efforts to see that wife can go to her matrimonial home at Mumbai or husband can stay at Gandhidham but unfortunately this Court's effort to reunite them as husband and wife failed. This Court has therefore no alternative but to pass the order for divorce to see that both people can be free to have their own houses in this behalf because to keep both husband and wife when one stays at Mumbai and another at Gandhidham, without intention to stay together, would serve no purpose. Therefore, the marriage is completely broken down and no useful purpose would be served by dismissing the Second Appeal."

We are of the view that these observations of the High Court are fully justified in the facts of the present case. One has to particularly note the fact that the parties knew even prior to marriage whatever they were earning. The earnings of the wife from a Government job before the marriage was more than double of that of the husband. With the knowledge of this fact the

parties entered into matrimonial alliance. The marriage survived only for a brief period of about seven months. After 2nd June, 1993 till the exchange of notices and replies during September to December, 1996 and filing of the divorce petition ultimately by the husband on 31st December, 1996, there has been no attempt on the part of the wife to stay with the husband. She is a school teacher and it is common knowledge that in schools there are long vacations during summer months, more so, in Government schools where the wife teaches. At least during those holidays she could have visited the husband at Ulhasnagar alongwith her son and stayed with him. There is nothing on record to show that any such attempt was ever made by her to visit the husband during this entire period. She has stated in her evidence that the husband used to come and stay with her during her vacations. This has been denied by the husband. Therefore, the conclusion in inevitable, that there was never any attempt on the part of the wife to go to husband's house i.e., matrimonial home of the parties after she left on 2nd June, 1993. From this fact alone animus deserendi on the part of the wife is clearly established. She has chosen to adopt a course of conduct which proves desertion on her part. In the facts and circumstances of the case, it cannot be said that this desertion on the part of the wife was with a reasonable cause. Such a course of conduct over a long period indicates total abandonment of marriage and cannot be justified on ground of monetary consideration alone as a reasonable cause to desert. It also amounts to willful neglect of the husband by the wife. Therefore, the conclusion reached by the High Court appears to be absolutely correct in the facts and circumstances of the case. This appeal is accordingly dismissed with no order as to costs.