

**(1981) 12 DEL CK 0026**  
**In the Delhi High Court**  
**Case No : First Appeal No. 6 of 1981**

Surjit Singh

APPELLANT

Vs

Gurinder Kaur

RESPONDENT

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**Date of Decision :** 03-12-1981

**Acts Referred:**

**Citation :** (1981) 12 DEL CK 0026

**Hon'ble Judges :** Sultan Singh, J

**Bench :** Single Bench

**Advocate :** M.L. Bhargav and Sushma Aggarwal, for the Appellant;

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## Judgement

(1) The marriage between the parties hereto was solemnised in accordance with Hindu rites in December, 1972. The appellant on 27th March, 1979, filed a petition for dissolution of his marriage by a decree of divorce on the ground that the respondent had been of incurably unsound mind and had been suffering from mental disorder of such a kind and to such an extent that he could not reasonably be expected to live with her. He alleges that he got her examined at the Lady Hardinge Medical College and Hospital where the respondent's parents were called for to know about her previous history but they did not co-operate with the hospital authorities. The respondent filed her written statement dated 1st June, 1979 denying the allegations. Subsequently the appellant made an application to amend his petition by incorporating the ground of desertion as contemplated by Section 13(I)(ib) of the Act. Leave was granted. The amended petition containing the ground of desertion was filed and the respondent also filed the amended written statement. After recording of the evidence, the appellant made a statement withdrawing his allegations of mental disorder against the respondent. The trial court by order dated 11th August, 1980 ordered that the averments quo the mental disorder attributed to the respondent would stand struck off from the petition. The statement of the respondent as her own witness was recorded on 30th August, 1980. The trial court held that the appellant actually wanted to get rid of the respondent because he suspected her

to be mentally deranged and Therefore he was interested in actually deserting her. It was further held that the respondent had not deserted the appellant. The petition for divorce was Therefore dismissed. Hence this appeal. Before the amendment of the divorce petition, the appellant had also led evidence regarding mental disorder of the respondent. After concluding evidence on 11th August, 1980, he gave up the allegations of mental disorder. But the trial court thought that the allegations of mental disorder would be relevant for determining the grad of desertion and Therefore it came to the conclusion that the appellant was interested in getting rid of her. Learned counsel for the appellant submits that the two grounds of divorce were independent, that he withdrew the ground of mental disorder but the ground of desertion has been proved and Therefore he was entitled to a decree of divorce.

(2) Held :- From the evidence on record it is proved that the wife left the appellant -husband on 24th February, 1977 and since then they have not lived together. It is further proved that she has been living with her parents since then. Her allegation is that she and her parents tried to reconcile with the appellant and to allow her to live with him in the matrimonial home but he refused. In the written statement her illegal ion is that she was given beating and was turned out of the matrimonial house. Her defense is contradictory. At one place she stated that she was given beating and was turned out of the matrimonial house in three clothes and then she says that the keys were taken by her husband's brother to enable him to take out his motor cycle and when she went to matrimonial home with her mother in the evening the appellant's brother was not available and she could not enter the house and Therefore she went to her parent's house. These are the alleged incidents of 24th February, 1977. The appellant-husband admittedly has been a patient of pleurisy etc., that he was lying in the hospital at the relevant time on 24th February, 1977 when she left. There is no allegation against her husband that it was he who did not allow her to enter the matrimonial home On 24th February, 1977. In fact at that time he was lying in the hospital, It does not stand to reason that the husband who was lying sick in the hospital would ask his wife to go away. The respondent used to visit her parent's house In January, 1977 the appellant fetched the respondent from her parents house. The wife left her husband-appellant at a time when he was lying sick. She left him in the hospital on 24th February, 1977. She did not care for him there after and never returned to the matrimonial home. It must, Therefore, be held that she intended to bring cohabitation permanently to an end. In other words, there was animus descend on the part of the wife. There was also never any intention on her part to return to matrimonial home. Even if the appellant's brother had taken the key and had not returned the same on that evening i.e. 24th February, 1977 it does not mean that she was not to join her husband at any time. She ought to have stayed with her husband in the hospital. She has deposed that her relations tried reconciliation with the appellant But no evidence has been produced by her. Even her parents have not appeared as witnesses.

(3) The trial court has placed undue emphasis on the fact that keys of the matrimonial home were taken from the wife by the appellant's brother for taking out his motor cycle, that she went there in the evening when appellant's brother was not available and she could not enter the matrimonial home and left for her parents house. This is not a sufficient reason for the wife to keep away from her husband. It seems strange that when her husband was lying in the Willingdon Hospital or Safdarjang Hospital or was under the treatment as an outdoor patient in T.B. Centre, New Delhi, the wife had no knowledge and she never cared for him. There can only be one reason, and it is that she never wanted to live with her husband after 24th February, 1977 as he was a separation started on 24th February, 1977. The divorce petition was on 27th March 1979, and it was amended on 10th April 1980. There was desertion by the wife for a period of more than two years immediately preceding the institution of the divorce petition.

(4) The trial court has further laid much stress on the point that there was allegation of Central disorder by the appellant. Therefore he wanted to get rid of her. On the other hand the evidence to me appellant is that the respondent was not in a proper mental condition and therefore he wanted to get her treated in Lady Hardinge Medical College and Hospital but her treatment could not continue as the hospital authorities wanted to know her previous history from her parents but they did not cooperate with the hospital authorities and therefore her treatment was given up. Initially, he filed the petition for divorce on the ground covered by Section 13(I)(iii) of the Act but later on he gave up the plea and withdrew the allegations presumably on the ground that he was not in a position to substantiate his allegations. He is not aware of her previous history of illness. Her parents did not co-operate with the hospital authorities. There is nothing on record to show that the appellant intended to get rid of her on account of her unsound mind at any time before the institution of the divorce petition. The two grounds of divorce are independent. He gave up the first ground but he has proved the other.

(5) The judgment of the trial court is not sustainable in law. From the evidence on record I am satisfied that the respondent deserted the "petitioner for a continuous period of more than two years immediately preceding the institution of the divorce petition.

(6) I may further mention that this case was on daily board for a number of days but nobody ever appeared on behalf of the respondent-wife. The trial court in its judgment has also observed that the wife's counsel did not address any arguments before it. It, therefore, seems that the wife has not been interested in living with her husband. In other words, it means the marriage between the parties has fallen and they cannot live together. I, therefore, set aside the judgment and decree of the trial court and dissolve the marriage between the parties by a decree of divorce. No order as to costs.