Durga Prasanna Tripathy vs Arundhati Tripathy on 23 August, 2005

Equivalent citations: AIR 2005 SUPREME COURT 3297, 2005 (7) SCC 353, 2005 AIR SCW 4045, (2005) 4 ALLMR 1012 (SC), (2005) 4 CTC 287 (SC), (2005) 4 JCR 42 (SC), (2005) 2 MARRILJ 684, (2005) 7 JT 596 (SC), 2005 (7) JT 596, 2005 (6) SCALE 657, 2005 (4) ALL MR 1012, 2005 (4) CTC 287, (2005) 34 ALLINDCAS 65 (SC), 2005 (6) SLT 373, 2005 (8) SRJ 324, 2005 (2) MARR LJ 684, (2005) 3 BLJ 53, (2005) 3 RECCIVR 819, (2005) 4 JLJR 59, (2005) 1 ANDHWR 707, (2005) 3 CURCC 135, (2005) 2 DMC 453, (2005) 2 HINDULR 618, (2006) 1 CIVILCOURTC 145, (2006) 1 GUJ LR 24, (2006) 2 MPLJ 1, (2005) 32 OCR 437, (2005) 4 ICC 435, (2005) 6 SCALE 657, (2005) 2 WLC(SC)CVL 461, (2005) 4 KCCR 3001, (2005) 61 ALL LR 173, (2005) 107 FACLR 915, (2005) 5 ANDHLD 573, (2006) 1 MAD LW 162, (2006) 1 MAH LJ 10, (2005) MATLR 739, (2005) 4 PAT LJR 132, (2005) 6 SCJ 452, (2005) 5 SUPREME 766, (2005) 6 ANDH LT 28, (2005) 4 ALL WC 3649, (2006) 1 CIVLJ 64, (2006) 1 BOM CR 386

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Bench: Ruma Pal, Ar. Lakshmanan

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           CASE NO.:
Appeal (civil)  5184 of 2005

PETITIONER:
Durga Prasanna Tripathy

RESPONDENT:
Arundhati Tripathy

DATE OF JUDGMENT: 23/08/2005

BENCH:
Ruma Pal & Dr. AR. Lakshmanan

JUDGMENT:
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J U D G M E N T (Arising out of S.L.P. (Civil) No. 9794 OF 2004) Dr. AR. Lakshmanan, J.

Leave granted.

This appeal is directed against the judgment dated 23.12.2003 passed by the High Court of Orissa at Cuttack in Civil Appeal No. 10 of 2001 whereby the High Court allowing the appeal filed by the

respondent-herein/wife under Section 13(1) of the Hindu Marriage Act, 1955 on the ground of cruelty and desertion.

The marriage between the appellant and the respondent was solemnized on 05.03.1991. After the marriage, the parties led their conjugal life in the village to which the appellant belongs and the respondent-wife persuaded the appellant to stay at Bhubaneswar, the place of her service as well as her parental place. The husband did not approve such proposal as a result of which dispute arose between the parties. It was alleged that the respondent-wife behaved with her husband and her in-laws in a cruel manner. She deserted the appellant by staying in the house of her father since 22.10.1991. The appellant and his parents tried their best to bring the respondent-wife to the marital home but all their efforts were in vain. Thereafter, on 26.05.1996, for the marriage ceremony of the appellant's younger brother, the mother of the appellant also went to bring the respondent but the latter was not inclined to come but misbehaved and insulted her mother-in-law. The appellant's father expired and for which also the father of the respondent was requested by the appellant to send the respondent to the house of the appellant since being the eldest daughter-in-law but then also the respondent did not come. Even after the death of the appellant's father, the respondent in spite of several requests by the appellant and his family members did not join the company of the appellant. The respondent, furthermore, joined the Office of the Civil Supplies at Puri and in view of this, the respondent and her father always insisted the appellant to shift to Bhubaneswar. The appellant, in view of this, after about 7 years from the date of separation took redress of the Court. After leaving the appellant, the respondent also joined as a Junior Assistant in the office of the Civil Supply Corporation.

The respondent-wife denied the allegations made against her. She further stated in her written statement that due to maltreatment of the appellant's mother and brother she came back to her parents house. She also stated that she was willing to live separately from her mother-in-law and brother-in-law. She, therefore, prayed for dismissal of the proceedings.

Both parties led oral evidence in support of their respective cases. The appellant was examined as P.W.1. During his evidence he corroborated the facts made in the original application for divorce. He has also stated that he is not willing to stay with the respondent as husband and wife after a long lapse of about 9 years and there is no chance of reunion between the parties. The respondent examined herself as O.P.W1. She also filed bunch of documents. On the basis of the pleadings and evidence of the parties, the Courts below framed an issue whether there is just and sufficient cause to pass a decree of divorce against the respondent-wife on the grounds of cruelty and desertion or not.

The Family Court, Cuttack passed its judgment and allowed the petition filed by the appellant-herein under Section 13 of the Hindu Marriage Act and thereby granted decree of divorce. The Family Court, after having heard the parties and after perusing the evidence on record, held as follows:-

> "When the wife-respondent declines to come to the marital home, undoubtedly it gave mental shock to the petitioner-husband, which knew no bounds. There is also no

> chance of reunion or reconciliation between the parties. The only course open to the Court is to pass a decree of divorce thereby to put an end to the litigation. The husband-petitioner has proved to the satisfaction of the Court that the wife-respondent is not only cruel, but also deserted him since more than seven years, which are good grounds for passing a decree of divorce."
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> "However, as regards the alimony the learned Judge directed the petitioner-husband to pay Rs.50,000/- to the wife-respondent towards her permanent alimony, which was to be paid/deposited in the shape of bank draft."

Aggrieved by the judgment of the Family Court, the respondent filed a civil appeal before the High Court of Orissa under Section 19 of the Family Courts Act, 1984.

The appellant contended before the High Court that while allowing the proceedings under Section 13(1) of the Hindu Marriage Act on the ground of cruelty and desertion, the Family Court dissolved the marriage solemnized between the parties on 05.03.1991 and has directed the appellant to pay a sum of Rs.50,000/- towards permanent alimony to the respondent and pursuant to such direction, the appellant has deposited the amount by way of a bank draft.

The High Court, vide its judgment dated 23.12.2003, set aside the decree of divorce passed by the Family Court and allowed the appeal filed by the respondent herein holding that the appellant had failed to prove cruelty and desertion as against the respondent.

Aggrieved against the judgment of the High Court, the appellant preferred the above Special Leave Petition.

We heard Mr. Ranjan Mukherjee, learned counsel appearing for the appellant and Ms. S.S. Panicker, learned counsel appearing for the respondent.

Mr. Ranjan Mukherjee, learned counsel for the appellant, submitted that the High Court has failed to appreciate that the failure of the respondent to substantiate the alleged reasons for staying away and omission to demonstrate readiness and willingness to discharge continuing obligation to return to matrimonial home taken together were sufficient to establish animus deserendi, necessary to prove legal desertion by the wife as per the principles laid down by this Court in a number of cases. He would further submit that the appellant has proved the desertion of the respondent- wife to the satisfaction of the Courts below and after considering all the aspects and evidence led in support of the desertion, the Family Court, after satisfying itself that a reunion between the parties is not possible, has passed a decree of divorce and in pursuance to the direction of the Family Court, the appellant had deposited a sum of Rs.50,000/- by way of a bank draft in favour of the respondent herein. It was further submitted that the High Court has failed to appreciate that in the present case both have been staying separately for about the last 14 years and in the meantime, the respondent has got a job at Bhubaneswar and moreover the appellant and his family members had on quite a number of times tried to get the respondent to her matrimonial home but of no avail. It was further submitted that the High Court has failed to appreciate that the allegations of dowry demand as

made by the respondent by the mother-in-law and the brother-in-law are concocted afterthoughts of the respondent to defend her inexplicable stand which is evident from the fact that though the respondent had left her matrimonial home in the year 1991 itself she had only chosen to lodge a complaint against her mother-in-law and brother-in-law before the Mahila Commission only in the year 1988 i.e. after about 7 years.

Mr. Ranjan Mukherjee further submitted that the parties have been living separately for almost 14 years which means that there is an irretrievable breakdown of marriage and that because of such breakdown of marriage, the marriage between the parties has been rendered a complete deadwood. Mr. Ranjan Mukherjee, in support of his submissions, cited the following judgments of this Court.

1. Anjana Kishore vs. Puneet Kishore, (2002) 10 SCC 194 (Three-Judge Bench)

2. Swati Verma (Smt) vs. Rajan Verma and Others (2004) 1 SCC 123

3. Sanat Kumar Agarwal vs. Nandini Agarwal, (1990) 1 SCC 475

4. Adhyatma Bhattar Alwar vs. Adhyatma Bhattar Sri Devi, (2002) 1 SCC 308

5. G.V.N. Kameswara Rao vs. G. Jabilli, (2002) 2 SCC 296 Ms. S.S. Panicker, learned counsel for the respondent submitted that the plea and evidence of the appellant before the Family Court was at variance and that in absence of corroboration the allegation of the appellant as to the desertion or cruelty by the respondent-wife could not be proved by the appellant. It was submitted that the High Court has rightly arrived at the conclusion that the order of the Family Court was erroneous as the same was passed by misquoting the evidence of the respondent. She would further submit that there is no error in the impugned order of the High Court much less an error requiring interference by this Court under Article 136 of the Constitution of India. It was submitted that the order of the Family Court is prima facie illegal, erroneous and that the Family Court failed to take into account the evidence adduced by the parties in its proper perspective. According to learned counsel for the respondent, a perusal of the evidence would make it amply clear that the appellant in his evidence has clearly admitted that he had himself led the respondent on 23.10.1991 in her father's house which was contrary to the statement in the divorce petition wherein he had made a specific allegation that the respondent had left the matrimonial home on her own accord. He had not written any letter nor taken any relations to persuade the respondent to lead marital life with him and that he was also not willing to stay with the respondent and to continue the marital relations. Learned counsel for the respondent invited our attention to the evidence led in by both the parties and misquoting of the evidence by the Court. The respondent, on the contrary, in her evidence had stated that after 23.10.1991 she had been to the matrimonial home with her father and other relations but the appellant refused to accept her, so she had to take shelter at her parental home, that the appellant was on visiting terms to her parental home that she had led conjugal life with the appellant till February, 1996, that even in the year 1997, the respondent had stayed with the appellant at Jajpur in a rented accommodation but was again forced to quit because of harassment by the in-laws that she was also willing to stay with the appellant at Jaipur and was interested in continuing their marital relations. Learned counsel submitted that the Family Court has failed to

take note that the wife had categorically stated before the Conciliation Officer as also in the evidence and pleadings before the Family Court that she was interested and willing to live with the husband and that the appellant on the other hand had clearly stated that he did not want to continue the marital relations. Learned counsel further argued that the appellant has also not been able to prove the allegations of cruelty against the respondent and that the appellant had only alleged that the conduct of the respondent of not returning to the matrimonial home, her lack of cooperation in establishing normal cohabitation, her repeatedly causing social embarrassment to the appellant by not performing the last rites of the father-in-law and not participating in a marriage ceremony of the appellant's brother and filing false complaint against the mother-in-law and brother-in-law had caused mental depression, anguish and frustration to the appellant amounts to mental cruelty. She would also further submit that the allegations which are necessary to constitute desertion are not present in the instant case. It was also submitted that the appellant filed divorce petition in the year 1998 that is almost 7 years after the alleged desertion by the wife from 23.10.1991 and that the appellant has not given any valid explanation for the unexplained delay in filing the divorce petition. Concluding her arguments, she submitted that the appellant was not entitled to a decree of divorce on the ground of desertion and he and his family members were themselves responsible for the respondent quitting the matrimonial home and, therefore, the appellant cannot be permitted to take advantage of his own wrong for obtaining a decree for divorce in violation of the provisions of the Hindu Marriage Act. She submitted that the High Court was, therefore, correct in setting right an apparent error on the face of the order of the Family Court as the order of the Family Court was passed without taking into the evidence of the respondent and the appellant.

We have carefully gone through the pleadings, the evidence led and the judgments cited by learned counsel for the appellant. Learned counsel for the respondent has not cited any ruling in support of her contentions.

This is a most unfortunate case where both the parties could not carry on their marital ties beyond a period of 7 months of their marriage. The marriage between the parties took place on 05.03.1991 and it is the specific case of the appellant that the respondent deserted him on 22.10.1999 and never again returned to her matrimonial home. Today the position is that the parties have been living separately for almost 14 years which means that there is an irretrievable breakdown of marriage and that because of such breakdown of marriage the marriage between the parties has been rendered a complete deadwood. Learned counsel for the appellant argued that no useful purpose will be served by keeping such a marriage alive on paper, which would only aggravate the agony of the parties. Therefore, he would pray that in the fitness of things and in the interest of justice, the marriage between the parties is forthwith terminated by a decree of divorce. We have perused the orders passed by the Family Court and also of the High Court. Both the Family Court as well as the High Court made efforts to bring about a reconciliation/rapprochement between the parties. The Family Court in this regard gave a clear finding that in spite of good deal of endeavour to effect a reconciliation the same could not be effected because of the insistence of the respondent to remain separately from her in-laws. It was totally an impracticable solution.

In this context, we may usefully refer to page 35 of the paper book which reads as follows:

> "Be that as it may, good deal of endeavour was made by the Conciliation Cell attached to the Court as per Section 9 of the Family Courts Act and as well as by this Court for a compromise between the parties, but the respondent-wife insisted and wanted to remain separately from her in- laws which was totally impracticable on the part of the petitioner-husband."

This apart, since October, 1991 till date the respondent has not taken any steps from her side to go back to her matrimonial home. The said fact gets reflected from her own deposition before the Family Court wherein she has deposed as under:-

> "On 23.10.1991, the petitioner left me in the house of my father. I went to the marital home with my father and other relations, but the petitioner created trouble and did not accept me as his wife. So I came away to my father and has taken shelter there."

> "The petitioner left me in my father's house after the marriage on 23.10.1991. It is not a fact that I came away suo moto from the marital home deserting the petitioner. Again I came and stayed in the marital home from December, 1991 till February 1992 and thereafter came to my father's house."

The Family Court has given cogent and convincing reasons for passing the decree of divorce in favour of the appellant. Having been convinced that there was no chance of reunion or reconciliation between the parties, more so because of the complaint filed by the respondent before the Mahila Commission, the Family Court with a view to put a quietus to the litigation inter se and the bitterness between the parties rightly passed the decree of divorce.

The Division Bench of the High Court by the impugned judgment has reversed the finding of the Family Court. The learned Judges of the High Court held against the appellant on two points, namely:-

> (a) Misquoting of the evidence of the respondent, by the Family Court; and

> (b) Inconsistent plea of the appellant with regard to leaving the matrimonial home by the respondent.

Both the aforesaid points taken into consideration by the learned Judges of the High Court cannot, in our view, be construed as a finding upon the merits of the case.

In our view that 14 years have elapsed since the appellant and the respondent have been separated and there is no possibility of the appellant and the respondent resuming the normal marital life even though the respondent is willing to join her husband. There has been an irretrievable breakdown of marriage between the appellant the respondent. The respondent has also preferred to keep silent about her absence during the death of her father-in-law and during the marriage ceremony of her brother-in-law. The complaint before the Mahila Commission does not implicate the appellant for dowry harassment though the respondent in her evidence before the Family Court has alleged dowry

harassment by the appellant. It is pertinent to mention here that a complaint before the Mahila Commission was lodged after 7 years of the marriage alleging torture for dowry by the mother-in-law and brother-in-law during the initial years of marriage. The said complaint was filed in 1998 that is only after notice was issued by the Family Court on 27.03.1997 on the application filed by the appellant under Section 13 of the Hindu Marriage Act. The Family Court, on examination of the evidence on record, and having observed the demeanor of the witnesses concluded that the appellant had proved that the respondent is not only cruel but also deserted him since more than 7 years. The desertion as on date is more than 14 years and, therefore, in our view there has been an irretrievable breakdown of marriage between the appellant and the respondent. Even the Conciliation Officer before the Family Court gave its report that the respondent was willing to live with the appellant on the condition that they lived separately from his family. The respondent in her evidence had not disputed the fact that attempts have been made by the appellant and his family to bring her back to the matrimonial home for leading a conjugal life with the appellant. Apart from that, relationship between the appellant and the respondent have become strained over the years due to the desertion of the appellant by the respondent for several years. Under the circumstances, the appellant had proved before the Family Court both the factum of separation as well as animus deserendi which are the essential elements of desertion. The evidence adduced by the respondent before the Family Court belies her stand taken by her before the Family Court. Enough instances of cruelty meted out by the respondent to the appellant were cited before the Family Court and the Family Court being convinced granted the decree of divorce. The harassment by the in-laws of the respondent was an after-thought since the same was alleged after a gap of 7 years of marriage and desertion by the respondent. The appellant having failed in his efforts to get back the respondent to her matrimonial home and having faced the trauma of performing the last rites of his deceased father without the respondent and having faced the ill-treatment meted out by the respondent to him and his family had, in our opinion, no other efficacious remedy but to approach the Family Court for decree of divorce.

In the following two cases, this Court has taken a consistent view that where it is found that the marriage between the parties has irretrievably broken down and has been rendered a dead wood, exigency of the situation demands, the dissolution of such a marriage by a decree of divorce to put an end to the agony and bitterness:

(a) Anjana Kishore vs. Puneet Kishore (2002) 10 SCC 194

(b) Swati Verma (Smt.) vs. Rajan Verma & Ors. (2004) 1 SCC 123 Likewise, in the following three cases, this Court has observed that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case and those facts have to be viewed as to the purpose which is revealed by those facts or by conduct and expression of intention, both anterior and subsequent to the actual act of separation.

(a) Sanat Kumar Agarwal vs. Nandini Agarwal (1990) 1 SCC 475

(b) Adhyatma Bhattar Alwar vs. Adhyatma Bhattar Sri Devi (2002) 1 SCC 308

(c) G.V.N. Kameswara Rao vs. G. Jabilli (2002) 2 SCC 296 The submission made by Mr. Ranjan Mukherjee that the marriage between the appellant and the respondent has for all practical purposes become dead, that there can be no chance of being retrieved and that it was better to bring the marriage to an end merits acceptance and force.

In Chanderkala Trivedi (Smt) vs Dr. S.P. Trivedi, (1993) 4 SCC 232, which is an appeal before this Court against the grant of decree for divorce by the Bombay High Court on the ground of cruelty. When leave was granted, this Court observed that they are granting leave because it appears to them that the marriage between the parties was in all practical purposes dead and the enforced continuity of the marriage will only mean that the parties will spend more years in bitterness against each other. Since the husband was in a position to provide reasonable maintenance or permanent alimony, this Court granted special leave. At the time of final hearing, this Court deleted the findings and has, however, decided not to interfere with the order passed by a Division Bench of the Bombay High Court. The husband, on the persuasion of this Court, agreed to provide a one bed-room flat to the wife in a locality where it can be available between Rs. 3 and 4 lacs. Therefore, while dismissing the appeal, this Court directed the husband to purchase a flat for the wife and further deposit a sum of Rs. 2 lacs by means of a demand draft in the name of the appellant with the Family Court. In V. Bhagat vs. D. Bhagat (Mrs), (1994) 1 SCC 337 = AIR 1994 SC 710, this Court while allowing the marriage to dissolve on ground of mental cruelty and in view of the irretrievable breakdown of marriage and the peculiar circumstances of the case, held that the allegations of adultery against the wife were not proved thereby vindicating her honour and character. This Court while exploring the other alternative observed that the divorce petition has been pending for more than 8 years and a good part of the lives of both the parties has been consumed in this litigation and yet, the end is not in sight and that the allegations made against each other in the petition and the counter by the parties will go to show that living together is out of question and rapproachment is not in the realm of possibility. This Court at page 720 of AIR has observed thus:

> "Before parting with this case, we think it necessary to append a clarification. Merely because there are allegations and counter allegations, a decree of divorce cannot follow. Nor is mere delay in disposal of the divorce proceedings by itself a ground. There must be really some extra- ordinary features to warrant grant of divorce on the basis of pleading (and other admitted material) without a full trial. Irretrievable breakdown of the marriage is not a ground by itself. But while scrutinising the evidence on record to determine whether the ground(s) alleged is/are made out and in determining the relief to be granted, the said circumstance can certainly be borne in mind. The unusual step as the one taken by us herein can be resorted to only to clear up an insoluable mess, when the Court finds it in the interest of both parties."

The decision reported in Romesh Chander vs. Savitri AIR 1995 SC 851 = 1995 AIR SCW 647 is yet another case where this Court in its powers under Article 142 of the Constitution directed the dissolution of the marriage subject to the transfer of the house of the husband in the name of the wife. In that case, the parties had not enjoyed the company of each other as husband and wife for 25 years, this is the second round of litigation which routing through the trial court and the High Court

has reached the Supreme Court. The appeal was based on cruelty. Both the Courts below have found that the allegation was not proved and consequently it could not be made the basis for claiming divorce. However, this Court after following the earlier decisions and in exercise of its power under Article 142 of the Constitution directed the marriage between the appellant and the respondent shall stand dissolved subject to the appellant transferring the house in the name of his wife within four months from the date of the order and the dissolution shall come into effect when the house is transferred and possession is handed over to the wife.

The facts and circumstances in the above three cases disclose that reunion is impossible. Our case on hand is one such. It is not in dispute that the appellant and the respondent are living away for the last 14 years. It is also true that a good part of the lives of both the parties has been consumed in this litigation. As observed by this Court, the end is not in sight. The assertion of the wife through her learned counsel at the time of hearing appears to be impractical. It is also a matter of record that dislike for each other was burning hot.

Before parting with this case, we think it necessary to say the following:

> Marriages are made in heaven. Both parties have crossed the point of no return. A workable solution is certainly not possible. Parties cannot at this stage reconcile themselves and live together forgetting their past as a bad dream. We, therefore, have no other option except to allow the appeal and set aside the judgment of the High Court and affirming the order of the Family Court granting decree for divorce. The Family Court has directed the appellant to pay a sum of Rs. 50,000/- towards permanent alimony to the respondent and pursuant to such direction the appellant had deposited the amount by way of bank draft. Considering the status of parties and the economic condition of the appellant who is facing criminal prosecution and out of job and also considering the status of the wife who is employed, we feel that a further sum of Rs. 1 lakh by way of permanent alimony would meet the ends of justice. This shall be paid by the appellant within 3 months from today by an account payee demand draft drawn in favour of the respondent Arundhati Tripathy and the dissolution shall come into effect when the demand draft is drawn and furnished to the respondent.
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> In the result, the Civil Appeal is allowed. There will be no order as to costs.