

## **Fakharuddin vs Mt. Hamidan on 6 February, 1953**

**Equivalent citations: AIR1953ALL571, AIR 1953 ALLAHABAD 571**

### **JUDGMENT**

Agarwala, J.

1. This is a defendant's appeal arising out of a suit for dissolution of marriage under the Dissolution of Muslim Marriages Act (8 of 1939). The respondent, Srimati Hamidan, sued the appellant for dissolution of her marriage alleging that the defendant was given to gambling and prostitution, that he habitually maltreated her, that he failed to maintain her for two years before suit and lastly that he failed to perform his marital obligations towards her within the last three years. The defendant denied that he was given to gambling or prostitution or that he maltreated her. He pleaded that the plaintiff-respondent had herself left his house and gone to live with her mother and thereafter refused to come back to him, and, therefore, he was not bound to maintain her and that for the same reason he was prevented from performing his marital obligations towards her

2. The defence was accepted by the learned Munsif and the suit was dismissed. On appeal, the lower appellate Court agreed with the Munsif that the plaintiff-respondent had failed to prove that the defendant-appellant had habitually maltreated her or that he was given to gambling or prostitution, but it was of the opinion that the defendant had failed to maintain the plaintiff and to perform his marital obligations towards her for over three years. What it found was that the plaintiff had gone to her mother's house with the defendant's consent on the understanding that she would return after Eid, that this was four years before the suit, that the defendant never called her after Eid, that, indeed, he went away from Mathura, where the parties resided, to Agra and remained there for over four years and during this period he never sent for his wife and never sent her any maintenance till she gave notice intimating to him that she would claim dissolution of her marriage with him, and that after the receipt of this notice some money was sent by the defendant to the plaintiff but even then he did not write to her to come and live with him. On these facts the lower appellate Court came to the conclusion that the conduct of the defendant-appellant showed that he did not want her to come back to him and had indeed deserted her. It also found that the defendant paid no maintenance to the plaintiff and did not perform his marital obligations towards her. In the result the lower appellate Court decreed the plaintiff's suit.

3. This appeal came up in the first instance before our learned brother. Gurtu, who considered that the case should be decided by a Bench as it involved an important question of law.

4. Before us learned counsel for the defendant-appellant has strongly urged that once it was found that the wife had gone away from the husband to her mother's house and did not return to her husband, it could not be maintained that the husband had deserted her. The argument is based on a misunderstanding of the findings of fact recorded by the Court below. It is not a case in which the

wife without the consent of the husband leaves him and does not return to him thereafter. As held by the lower appellate Court, the wife went to her mother's house, with the consent of the defendant-appellant on the understanding that she would remain at her mother's house up to Eid. According to the usual custom of this country, both in Hindu as well as Mohammadan families, when the wife goes to her mother's house, it is the husband who sends for her. The wife does not normally come back to the husband's house without being called back as it is considered to be very im modest and insulting to her to do this. The inference to be drawn from the facts found by the Court below is that the defendant-appel lant never intended to call her back and, there fore, in the eye of law deserted her. He did not maintain her and also did not perform his marital obligations towards her. We find no force in this appeal and dismiss it.