IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(ARISING OUT OF SLP (CIVIL) NO. 24920 OF 2019)

DR. ANITA **APPELLANT(S)**

VERSUS

INDRESH GOPAL KOHLI **RESPONDENT(S)**

O R D E R

1. Leave granted.

2. The appellant (wife) is aggrieved by the judgment dated 20.09.2019 passed by a Division Bench of the High Court of Uttarakhand at Nainital, whereby appeal of the respondent (husband) was allowed, his petition filed under Section 13 of the Hindu Marriage Act, 1955 (for short, the "Act") was accepted, and the marriage between the parties was dissolved by way of a decree of divorce on the ground of cruelty.

3. The parties got married on 20.05.2009. A male child was born from wedlock on 07.03.2010. Unfortunately, the parties, on account of marital discord, started contesting litigation soon thereafter, with the respondent filing Civil Suit No.59/2010 seeking divorce on the ground of cruelty. The said petition was, however, withdrawn by him. Soon thereafter, the respondent filed a second case in 2013 seeking divorce under Section 13(1)(i)(b) of the Act, i.e., on the grounds of desertion. The appellant contested that case. The trial court dismissed the divorce petition on 15.02.2018. The aggrieved respondent preferred first appeal, which has been allowed by the High Court vide the impugned judgment.

4. The High Court has granted divorce primarily on the strength of the reasons assigned in paragraph 11 of the impugned judgment, accepting the oral narratives of the respondent with respect to the alleged mental cruelty suffered by him. The High Court has, for the reasons best known to it, not adverted to the appellant's plea that she was thrown out of the matrimonial home and was forced to live separately. It is not in dispute that the child is in custody of the appellant from the very beginning. In the light of such a plea, which she duly supported in her deposition, it was imperative upon the High Court firstly to determine as to:

(i) Whether the appellant was thrown out of the matrimonial home or she herself voluntarily deserted the respondent?

(ii) Whether the withdrawal of the first divorce petition wherein also the divorce was sought on the ground of cruelty, would bar the filing of second petition on the same cause of action?

(iii) Whether cruelty was committed by the respondent in not allowing the appellant to join the matrimonial home and/or by denying any maintenance, love, affection, and care to the minor child of the parties?

5. In this vein, we may hasten to add that Courts, in recent times, often observe that since the parties are living separately, the marriage should be taken to have broken irretrievably. However, before jumping to such a conclusion, it is imperative upon the Family Court or the High Court to determine as to who out of the two is responsible for breaking the marital tie and forcing the other to live separately. Unless there is cogent evidence for willful desertion or refusal to cohabit and/or look after the other

spouse, the finding of marriage having been broken irretrievably is likely to have devastating effects, especially on the children. The arrival of such a conclusion puts the Courts under an onurous duty to deeply analyse the entire evidence on record, consider the social circumstances and the background of the parties, and various other factors.

6. We do not find that any such exercise has been undertaken by the High Court in the instant case.

7. Consequently, the appeal is allowed in part. The impugned judgment of the High Court is set aside and the matter is remitted to the High Court for a fresh consideration in accordance with law.

8. The parties are directed to appear before the High Court on 24.11.2025.

.....J.
(SURYA KANT)

.....J.
(JOYMALYA BAGCHI)

NEW DELHI;
NOVEMBER 14, 2025.

ITEM NO.12 COURT NO.2 SECTION III-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 24920/2019

[Arising out of impugned judgment and order dated 20-09-2019 in FA No. 78/2018 passed by the High Court of Uttarakhand at Nainital]

DR. ANITA Petitioner(s)

VERSUS

INDRESH GOPAL KOHLI Respondent(s)

Date : 14-11-2025 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE JOYMALYA BAGCHI

For Petitioner(s) : Mr. Tushar Bakshi, AOR

For Respondent(s) : Mr. Satyajit A. Desai, Adv.
Mr. Sachin Singh, Adv.
Mr. Parth Johri, Adv.
Mr. Sanchit Agrahari, Adv.
Mr. Pratik Kumar Singh, Adv.
Ms. Anagha S. Desai, AOR

UPON hearing the counsel the Court made the following

O R D E R

1. Leave granted.

2. The appeal is allowed in part in terms of the signed order.

3. Pending application(s), if any, shall stand closed.

(NITIN TALREJA) (PREETHI T.C.)
ASTT. REGISTRAR-cum-PS ASSISTANT REGISTRAR

(Signed order is placed on the file)