

**Dora Ina Eates Vs. Eric Nevel Eates**

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**SooperKanoon Citation :** [sooperkanoon.com/447863](http://sooperkanoon.com/447863)

**Court :** Allahabad

**Decided On :** Sep-15-1947

**Reported in :** AIR1949All421

**Appellant :** Dora Ina Eates

**Respondent :** Eric Nevel Eates

**Judgement :**

ORDER

**Mootham, J.**

1. This is a wife's petition under the Divorce Act for the dissolution of her marriage on the ground of her husband's adultery and desertion.

2. I am satisfied that the parties are domiciled in India, and that the petitioner professes the Christian religion. The petitioner and her husband last resided together in Dhanbad in Bengal, and the preliminary question which arises in this case is whether the fact-and I find it to be so-that both the petitioner and the respondent reside in Allahabad, but not together, is sufficient to give this Court jurisdiction to hear this petition. There is no reported decision of this Court on the point, but my attention has been drawn to the case in (Matrimonial Suit No. 8 of 1937) (loaded by Harries J., as he then was, in the year 1937. In that suit, which was undefended, the parties had last lived together in Calcutta but at the time of filing the petition both were living in Allahabad. The learned Judge, without stating

his reasons, held that the Court had jurisdiction. I agree, if I may say so with respect, with that decision.

2a. The matter turns upon the correct interpretation of the words 'where the husband and the wife reside or last resided together' in Sub-section (i) (j) of Section 3 of the Act, and the question is whether the word 'together' governs the word 'reside' as well as the words 'last resided.' Considered grammatically, the phrase is, I think, open to both interpretations, but in my opinion the more reasonable construction is to restrict the operation of the word 'together' to the immediately preceding words 'last resided' for, as was pointed by Marten J. in *D. A. Borgouha v. W. C. Borgouha* A.I.R. (7) 1920 Bom. 245:

one very cogent reason for not making the word 'together' govern the word 'reside' is that one can hardly imagine any case in which the husband and wife would be residing together at the date of the presentation of the divorce petition. For one thing, to do so would almost inevitably raise the strongest suspicion of collusion or connivance, and lead to the petition being dismissed. For instance, a wife's petition must depend on adultery plus either desertion or cruelty. Obviously in no petition founded on desertion could the parties be living together at the date of the petition.

3. In the earlier case of *N. Durand v. K. Durand* 14 W.R. 416-a decisional the Calcutta High Court-the same construction was placed on the words in question although no reasons were given for the decision, and *D. A. Borgouha v. W.C. Borgouha* A.I.R. (7) 1920 Bom. 246 has since been followed by the chief Courts of the Punjab and Oudh: *Gale v. Gale* 10 I.C. 487 and *Leadon v. Leadon* A.I.R. (13) 1926 Oudh 319. I hold, therefore, that as both the petitioner and her husband resided in this province at the date upon which the petition was filed, this Court has Jurisdiction to dispose of this petition.

4. I now turn to the evidence of adultery and desertion. Shortly after her marriage in 1938, the petitioner found that the respondent was on friendly terms with a Miss Nesta Rodgers, two of whose letters to the respondent, dated 3rd October 1939, and 23rd September 1940, have been produced. It is apparent from these letters that the respondent and Miss Rodgers were very well acquainted with each other. The petitioner spoke to the respondent about the correspondence and asked him

to break off his friendship with Miss Rodgers; he refused to do so; this resulted in estrangement between the husband and the wife and constant quarrelling. So matters went on until the end of 1941 when the petitioner left Dhanbad, where the parties were then living, to spend a holiday with her parents in Calcutta. In January 1942 she wrote to her husband asking him to send her a railway pass to enable her to return to Dhanbad. In reply the petitioner says - and I see no reason to disbelieve her-that she received a letter which she subsequently destroyed and in which the respondent stated that he did not want her back and was not therefore sending her a pass. Four times after this the petitioner wrote asking either for a pass -or for money for her fare, but to none of these did she get any answer. During this time the petitioner received no allowance from the respondent, and in the end she consulted solicitors in Calcutta through whose efforts she ultimately succeeded in getting an allowance at the end of the year 1942. I am satisfied upon the evidence that the petitioner was willing to return to the respondent if the latter had given any sign that he wanted her back, but his conduct showed clearly, in my opinion, that he wanted to have nothing more to do with her. He has neither written to her nor made any attempt to see her from that time onward, and I hold that the charge of desertion has been proved.

5. The evidence with regard to adultery is that of the petitioner and her sister Miss Hazel Good-and again I believe them - that as the result of information the petitioner had received they kept a watch on the flat occupied in Calcutta by Miss Rodgers on certain days in May, 1945, They saw the petitioner enter the flat on at least four occasions at about 8 p.m., and on two of these occasions they also saw him leave the flat about three hours later. When he left the flat he kissed Miss Rodgers, who had come to the door and who was attired in a night dress. I think that in all the circumstances I can infer that adultery was committed by the respondent as alleged in the petition. In my opinion therefore the charges of desertion and adultery have been sufficiently established and I grant the petitioner a decree nisi with costs. I fix counsel's fee at Rs. 300.

6. The petitioner does not ask for an order for maintenance, but she prays that she may be given a lump sum of Rs. 1500 in lieu thereof. I am prepared to make an order to this effect if I have the power, under Section 37 of the Act, to do so and

upon this point I will hear further argument on 19th September next.

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