

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 22.03.2011
Judgment delivered on: --.07.2011

+ **FAO 440/2003**

Shri Ved Prakash Gulati Appellant.

Through: Mr.Rajat Aneja with Ms.Shweta
Singh, Advocates.

Vs.

Smt.Kusum Respondent

Through: Mr.Sameer Dewan, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may
be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported
in the Digest?

KAILASH GAMBHIR, J.

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1. By this appeal filed under Section 28 of the Hindu
Marriage Act 1955, the appellant-husband seeks to set

aside the judgment and decree dated 07.03.2003 passed by the learned trial court whereby the divorce petition filed by the appellant husband under Section 13 (1) (ia) of the Hindu Marriage Act was dismissed.

2. Broad facts of the case as per the appellant are that the appellant-husband got married to the respondent-wife according to Hindu rites and ceremonies on 15.02.1997 and out of the said wedlock one son was born on 17.10.1997. After the marriage, both of them started living in the matrimonial home at Keshav Kunj, Vikaspuri. The appellant husband has filed the petition for divorce on the ground of cruelty and so far the allegations are concerned, it is alleged by the appellant that in the month of June, 1997 the respondent started pressurizing the appellant to live separately from his parents and when the appellant expressed his inability to do so the respondent picked up quarrel with him and left the matrimonial home in the end of July, 1997 and that she was brought back to the matrimonial home by the appellant in the month of August, 1997 on her assurance that she will not raise the

demand of living separately but there was no change in the behaviour of the respondent and she continued to press the said unreasonable demand even while she was in advanced stage of pregnancy. It is also the case of the appellant that the respondent was disrespectful to him as well to his parents. It is further alleged that on 17.10.1997 the respondent gave birth to a child and thereafter went to her parents house to reside and when the appellant had gone to bring back the respondent on 28.10.1997 to celebrate the first Diwali at the matrimonial home, the respondent refused to accompany him without assigning any reason. The respondent ultimately joined the matrimonial home only in the end of November, 1997, but even thereafter there was no change in her behaviour and she used to pick up quarrel with the appellant and his other family members on one pretext or the other. It is also the case of the appellant that the respondent did not perform any household chores and even when he met with an accident and remained confined to bed for 3-4 days, the respondent refused to attend him. It is further alleged that in the second week of December, 1998 the respondent started

accusing the appellant of having illicit relationship with the washerwoman of the locality and also with a female employee of the factory where the appellant was employed. The respondent also used to make telephone calls in the office of the appellant so as to verify his presence in the factory and also to enquire from the person receiving her call about his illicit relations with the female employee of the factory. It is further the case of the appellant that the respondent went to reside at her parents house in the first week of April, 1998 so as to attend the marriage of her brother in the first week of May, 1998 and despite insistence of the appellant the respondent did not join back the matrimonial home till August, 1998 and during this entire period the respondent kept on insisting to arrange a separate accommodation. It is further alleged that on 02.10.1998 the respondent accused mother of the appellant of performing 'jadu tona' on the child. It is further the case of the appellant that the respondent went to her parents house on 17.10.1998 and she did not join the matrimonial home even on second Diwali despite his request and returned back to join him only in the first week of

November, 1998 and again started raising the demand of separate residence or transfer of the flat in her name and when the appellant refused to do so the respondent threatened to lodge a complaint before the Crime Against Women Cell. It is also the case of the appellant that the appellant arranged a separate house i.e. house bearing No.353, Pocket E-19, Sector-3, Rohini, Delhi when he found the unrelenting and adamant attitude of the respondent and even despite arranging the separate residence the appellant did not find any change in the behaviour of the respondent. It is further the case of the appellant that on 09.05.1999 the parents of the appellant came to see him and the child, but the respondent did not allow them to enter the house and started shouting at them with the result that they returned back without seeing either the appellant or the child. It is also the case of the appellant that whenever he returned late from his factory, the respondent used to pick up quarrel with him. It is also the case of the appellant that no cohabitation between the parties has taken place since 09.05.1999. It is also the case of the appellant that he had made a programme to go to

Vaishno Devi along with his friend and he had even got the tickets for 02.10.1999, but the respondent refused to accompany him by alleging that the appellant had plans to kill her. It is also the case of the appellant that the respondent turned him out from the matrimonial home and finding no alternative he started residing with his parents. As per the appellant, all the said acts of the respondent caused grave mental cruelty to him and to his parents and he filed a petition under section 13(1)(ia) of the Act which vide judgment and decree dated 7.3.03 was dismissed. Feeling aggrieved with the same, the appellant has preferred the present appeal.

3. On the other hand, the respondent has controverted the abovesaid allegations leveled by the appellant and she took a stand that she never treated the appellant with cruelty. The respondent also stated that she never asked for a separate residence or for the transfer of the flat in her name and that in fact the appellant took a separate residence on his own as he never wanted to reside with his parents. The respondent also denied having accused the

appellant of having illicit relationship with any lady. It is also the case of the respondent that the appellant had attempted to take her nude photographs during the period of honeymoon. It is also the case of the respondent that she was harassed and tortured by the appellant and his family members on account of her bringing insufficient dowry. It is also the case of the respondent that the appellant did not attend the marriage of her brother despite invitation. It is also the case of the respondent that the appellant deliberately did not attend the marriage, as he had sold the entire jewelery of the respondent which fact was learnt by the respondent from one Mr.K.L.Minocha, uncle of the appellant. It is also the case of the respondent that she always used to do the household jobs and she also took due care of the appellant when he met with a minor accident. She also denied ever humiliating her father-in-law and mother-in-law. It is also the case of the respondent that the appellant brought her to the matrimonial home at Diwali and they started living separately at Rohini since 10.04.1999 and that they stayed together at Rohini till 02.10.1999 and thereafter the appellant disappeared from

the said house without even informing the respondent. After waiting for about 20 days, the respondent returned to her parents house, as her father-in-law had refused her to enter the matrimonial home. Based on these averments, the respondent submitted that she never treated the appellant with cruelty and, therefore, the appellant cannot be permitted to take advantage of his own wrongs.

4. Based on the above pleadings of the parties, the learned trial court framed the following issues:-

"(i) Whether the petitioner was treated with cruelty by the respondent since the solemnization of the marriage, OPP.

(ii) Relief."

The appellant in support of his case examined himself as PW-1, H.C Dharam Singh as PW-2, Shri Surender Anand as PW-3, HC Surinder Kumar as PW-4 and his father Shri R.K.Gulati as PW-5. The respondent, on the other hand, examined herself as RW-1, besides examining Shri Sonik Puri as RW-2 and her mother Pramod Puri as RW-3.

5. The learned trial court, after taking into consideration the pleadings of the parties and the evidence led by them

came to the conclusion that the appellant failed to prove the allegations against the respondent and that he was treated with cruelty by the respondent since the solemnization of the marriage and dismissed the petition.

6. Assailing the aforesaid findings of the learned trial court, Mr.Rajat Aneja, learned counsel appearing for the appellant contended that the learned trial court failed to appreciate that the allegations leveled by the appellant were sufficient enough to prove the ground of cruelty against the respondent. Counsel further argued that the respondent in her cross-examination had duly accepted that a quarrel had taken place between her and the mother of the appellant on the point of washing the under garments of the newly born child and during this quarrel the respondent abused the mother of the appellant by using filthy language. Counsel also contended that the respondent did not take care of the appellant after he had met with an accident and remained confined to bed for 3-4 days which fact was duly proved by the appellant in his deposition. Counsel also argued that during the months of

June-July, 1999 the appellant had come late around 10 p.m because of some work load in the factory and on reaching back the respondent did not open the door and said he should go to those ladies with whom he was having illicit relations. Counsel also submitted that the respondent did not allow the appellant to have any sexual relationship since 09.05.1999, as she clearly told the appellant that he would be allowed to touch her body only after Vikaspuri flat is transferred in her name. Counsel also submitted that refusal of the respondent to accompany the appellant to the religious trip of Vaishno Devi for which tickets were also booked by the appellant also caused cruelty to the appellant, as he had suffered humiliation in the eyes of his friend and family members. Counsel further submitted that the allegations leveled by the respondent attacking his character are by itself sufficient enough to prove cruelty on the part of the respondent. In support of his arguments, counsel for the appellant placed reliance on the judgment of the Hon'ble Apex Court in the case of ***A Jayachandra Vs Aneel Kaur (2005)2 SCC 22*** and also of the Allahbad High Court in the case of ***Smt.Sadhana Srivastava Vs.***

Arvind Kumar Srivastava AIR 2006 All 7. Counsel also submitted that the repeated insistence of the respondent to live in a separate accommodation also caused grave mental cruelty to the appellant, as he was forced to live separately from his old parents.

7. Mr. Sameer Dewan, learned counsel appearing for the respondent, on the other hand, argued in support of the judgment and decree passed by the learned trial court by submitting that the appellant failed to prove any allegation which could cause cruelty to him and, therefore, the learned trial court has rightly held that the appellant failed to prove the allegations of cruelty leveled by him against the respondent.

8. I have heard learned counsel for the parties at considerable length and given my serious consideration to the pleas raised by them.

9. The expression 'cruelty' has not been defined in the Hindu Marriage Act and rightly so as it is not possible to put down the concept in a strait jacket formula, but since the ground of cruelty as envisaged under Section 13 (1) (ia)

of the said Act has been the subject matter of discussion before various High Courts and the Hon'ble Supreme Court, therefore, the concept of cruelty has got defined in somewhat broad terms. The concept of cruelty was examined in much detail in the celebrated judgment of ***Dastane Vs. Dastane AIR1975SC1534*** where defining the said concept, it was held as under:

"30. An awareness of foreign decisions could be a useful asset in interpreting our own laws. But it has to be remembered that we have to interpret in this case a specific provision of a specific enactment, namely, Section 10(1)(b) of the Act. What constitutes cruelty must depend upon the terms of this statute which provides :

10(1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition to the district court praying for a decree for judicial separation on the ground that the other party-

(b) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party;

The inquiry therefore has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent. It is not necessary, as under the English law that the cruelty must be of such a character as to cause "danger" to life, limb or health or as to give rise to a reasonable apprehension of such a danger. Clearly, danger to life, limb or health or a reasonable apprehension of it is a higher requirement than a reasonable apprehension that it is harmful or injurious for one spouse to live with the other."

This concept of cruelty as given in the abovesaid judgment was further expanded in the subsequent legal pronouncements and in the recent judgment of the Hon'ble Supreme Court reported in the case of ***Manisha Tyagi Vs. Deepak Kumar (2010)4 SCC 339*** where it was held that the concept of cruelty as was defined in ***Dastane vs. Dastane*** is no longer the required standard and that now it is sufficient to show that the conduct of one of the spouses is so abnormal and below expected norms that the other spouse would not reasonably be expected to put up with it. Relevant para of the said judgment is reproduced as under.

*"23. The classic example of the definition of cruelty in the pre-1976 era is given in the well known decision of this Court in the case of **N.G. Dastane v. S. Dastane** : (1975) 2 SCC 326 wherein it is observed as follows:*

The enquiry has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner as reasonable apprehension that it would be harmful or injurious for him to live with the respondent.

24. This is no longer the required standard. Now it would be sufficient to show that the conduct of one of the spouses is so abnormal and below the accepted norm that the other spouse could not reasonably be expected to put up with it. The conduct is no longer required to be so atrociously abominable which would cause a reasonable apprehension that it would be harmful or injurious to continue the cohabitation with the other spouse. Therefore to establish cruelty it is not necessary that physical violence should be used. However continued ill-treatment cessation of marital intercourse, studied neglect, indifference of one spouse to the other may lead to an inference of cruelty."

The concept of mental cruelty has also developed with time and it is dependent on each case and specific circumstances and there can be no common yardstick to judge the conduct complained of. It would be useful to refer to the case of ***A.Jayachandra Vs. Aneel Kaur (2005) 2 SCC 22*** wherein the Apex Court developed the concept in detail and it was held as under:-

"10. The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this

view that one has to consider the evidence in matrimonial disputes.

11. The expression 'cruelty' has been used in relation to human conduct or human behavior. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted."

Hence, no doubt mental cruelty is not as easy to be proved as physical cruelty, but the spouse complaining of the cruel conduct meted out to him should back the allegations by some evidence. No doubt that the standard of proof is not beyond reasonable doubt as in criminal trials, but then it cannot be assumed that the allegations leveled can be taken as true on its face value. The delicate nature of marital relationships poses roadblocks in the realm of proof but what is needed is not a *stricto sensu* proof but corroboration of the incidents leading to cruelty.

10. Similarly the scope of mental cruelty was expanded by the Hon'ble Supreme Court in another well celebrated judgment in the case of ***Naveen Kohli Vs. Neelu Kohli*** ***AIR 2006 SC 1675*** and dealing with the concept of mental cruelty, the Apex Court held as under:-

"56. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

57. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also

not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent."

In the case of ***Samar Ghosh Vs. Jaya Ghosh (2007)4 SCC 511***, the Hon'ble Supreme Court has given a treatise on the subject, examining the amplitude of cruelty in deferent countries and gauging the judicial trends, the Apex Court also laid down broad parameters which may be relevant in dealing with the case of mental cruelty and the said illustrative instances as narrated in the said judgment are as under:-

"74. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behavior of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behavior of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By

refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

Hence, it is manifest from the abovesaid excerpts that the conduct complained of must be grave and weighty and should touch a pitch of severity. It should be much more than ordinary wear and tear of married life. The demand of taking a separate residence and quarrels on petty issues seems to be trivial so as to be magnified to break the pious bond of matrimony. The court cannot adopt a hyper sensitive approach in analyzing the incidents of cruelty and cannot give the status of cruelty to trifling and frivolous incidents.

11. In another recent judgment in the matter of ***Gurbux Singh Vs. Harminder Kaur AIR 2011 SC 114*** the Hon'ble Supreme Court reiterated its earlier view that married life should be assessed as a whole and few isolated instances over certain period will not amount to cruelty. Relevant para of the said judgment is reproduced as under:-

"12. The married life should be assessed as a whole and a few isolated instances over certain period will not amount to cruelty. The ill-conduct must be precedent for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, one party finds it extremely difficult to live with the other party no longer may amount to mental cruelty. Making certain statements on the spur of the moment and expressing certain displeasure about the behaviour of elders may not be characterized as cruelty. Mere trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would not be adequate for grant of divorce on the ground of cruelty. Sustained unjustifiable and reprehensible conduct affecting physical and mental health of the other spouse may lead to mental cruelty."

Hence, the complained behaviour should be persistent and recurring over a length of time and that it should be evident that the relationship between the parties has deteriorated to such an extent that it is not possible for them to live together.

12. In the background of the above, adverting to the case in hand, the learned trial court, after analyzing the evidence led by both the parties, came to the conclusion that the allegations leveled by the appellant were not proved by him. The learned trial court also found that the incidents narrated by the appellant were not sufficient to dissolve the marriage of the parties. It is settled legal principle of adversarial system of law that the facts pleaded

cannot be held against the other party unless the same are proved. Levelling of allegations, howsoever grave, cannot be taken on its face value unless they are also proved as per law of evidence. Allegations leveled by the appellant, be that of respondent asking for a separate residence or asking for transfer of flat in her name or imputing the appellant having illicit relationship with the maid and with a female working in his factory or of depriving sex w.e.f. 09.05.1999 or of the respondent not taking care after the appellant met with an accident and was confined to bed for 3-4 days or the respondent picking up quarrel with her mother-in-law over some small issues or the respondent accusing the mother of the appellant for not washing the under garments of the child or also of the respondent pushing out the appellant from the matrimonial home on 02.10.1999, no doubt could have entitled the appellant for the grant of a decree of divorce, if all these allegations are taken in totality and not in isolation, but the moot question is as to whether the appellant had succeeded to prove the said allegations with the help of any corroborative evidence or because of his own unrebutted testimony.

13. The marriage between the parties was solemnized on 15.02.1997 and the learned trial court has rightly observed that during the period of their honeymoon, the appellant has not made any complaint about any misconduct of the respondent. The learned trial court has further rightly observed that no such circumstances were spelt out by the appellant which could have prompted the respondent to ask for a separate residence, that too after the respondent became pregnant, when she was not expected to live separately from the joint family. The learned trial court has also rightly observed that the respondent was fully justified in not returning back to the matrimonial home on the occasion of first Diwali as it is customary for the ladies to live at the parental house after giving birth to the first child and the Diwali had fallen immediately after the birth of the first child. The learned trial court has also rightly held that the appellant in his cross-examination had admitted that he has not taken any first aid after he met with a minor accident and any apparent reasons for the respondent not to take care of him after such a minor accident. Even the allegation of illicit relationship which was leveled by the

respondent could not be proved by the appellant by at least producing a witness from the factory of the appellant to whom the alleged call was made by the respondent to find out as to whether the appellant was having any such illicit relationship or not. Another noticeable fact taken into consideration by the learned trial court was that in none of the complaints made by the appellant with the police there was any such reference made by him complaining leveling of allegation of illicit relationship by the respondent. Even the allegation of the respondent accusing mother of the appellant to perform jadu tona on the child was not corroborated by him by producing his mother and even the same was not corroborated by the father of the appellant, who appeared in the witness box as PW-5. The appellant was also not found convincing on his allegation that he was thrown out of the matrimonial home by the respondent on 02.10.1999. Rather it looks more appealing to common sense that the respondent was left abandoned at the said rented house with her child without the appellant or his family members taking any pains to find out about the well being of the respondent and the small child. It was also

admitted by the petitioner that after he came to reside with his parents, he did not go to find out as to whether the respondent or any one for that matter was living in the house at Rohini. It is rather bothering to find that the appellant did not make any efforts to find the whereabouts of his wife and child and how is she managing without financial assistance. The parents of the appellant apparently also did not make any efforts at the reconciliation once the appellant husband left the matrimonial home.

14. Adjustment is the underlying principle of matrimony and the petty squabbles cannot be taken as amounting to cruelty in any event to seek a decree of divorce, even though the rising rate of divorce is a reality. The courts cannot overlook that when there is still hope to salvage the union that they say is made in heaven and accede to the demand of dissolution of marriage relying on other cases, as each case is different from the other and especially so in the domain of Marriage Laws.

15. In the light of the above position, this Court is of the clear view that the appellant has not proved cruelty as required by Section 13(1)(ia) of the Hindu marriage Act and hence this Court does not find any illegality, infirmity or any kind of perversity in the findings arrived at by the learned trial court and, therefore, the same does not call for any interference by this Court.

16. There is no merit in the present appeal and the same is hereby dismissed.

July , 2011
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KAILASH GAMBHIR, J