

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:41472-DB

Reserved

Court No. - 2

Case :- FIRST APPEAL No. - 44 of 2021

Appellant :- Smt.Prabhpreet Kaur

Respondent :- Jitendra Pal Singh

Counsel for Appellant :- Alok Verma,Prabh Jot Kaur,Ramesh Chandra Pathak

Counsel for Respondent :- Narendra Kumar Kashyap,Ratnoja @ Ratna Singh,Sunita

Connected with

Case :- FIRST APPEAL No. - 43 of 2021

Appellant :- Smt. Prabhpreet Kaur

Respondent :- Jitendra Pal Singh

Counsel for Appellant :- Alok Verma,Prabh Jot Kaur,Ramesh Chandra Pathak

Counsel for Respondent :- Narendra,Neha Dhanwani,Ratnoja @ Ratna Singh,Sunita

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

(Per Om Prakash Shukla, J.)

- (1) Heard Ms. Prabh Jot Kaur, learned Counsel representing the appellant/wife and Ms. Ratna Singh, learned Counsel representing the respondent/ husband.
- (2) Since these two appeals arise out of a common order dated 22.02.2021 passed by the learned Additional Principal Judge, Family Court-I, Lucknow based on a common factual matrix, they have been heard together and are being disposed of by this common judgment.
- (3) Both these appeals have been filed under Section 19 (1) of the Family Court Act, 1984 by the appellant/wife, *inert alia* as follows:

- (A) First Appeal No. 44 of 2021 has been filed challenging the order passed by Additional Principal Judge, Family Court-I, Lucknow dated 22.02.2021 by which Regular Suit No. 3300 of 2014 filed by the husband/respondent under Section 9 of the Hindu Marriage Act, 1955 has been allowed and learned Family Court has directed the wife/Appellant for restitution of conjugal rights with her husband/respondent herein.
- (B) First Appeal No. 43 of 2021 has been filed challenging the dismissal of Regular Suit No. 2335 of 2015 filed by the wife/appellant seeking divorce under Section 13 of the Hindu Marriage Act, 1955.
- (4) The factual exposition of these two appeals can be summarized as herein under :-
- (i) The parties claim to have been in love, culminating into their marriage on 20.06.2010 in Arya Samaj Mandir. Obviously there had been no exchange of dowry etc. and records reveal that parties also got their marriage registered in the office of Registrar, Hindu Marriage, U.P. on 23.06.2010. After marriage, both, the appellant and the respondent, had apprehended some risk, danger and threat, therefore, they filed Writ Petition No. 6298 (M/B) of 2010 before this Court, wherein father of wife/appellant had put in appearance and had stated

before the Court that he had no grudge against both of them and their apprehension is only a misconception. Noting this statement of the father of the wife/appellant herein and the fact that both of them were major, the said writ petition was disposed of vide order dated 12.07.2010 with a direction to the Station House Officer, Alambagh to provide due protection as required to them and their married life would not be interfered with or obstructed to in any manner.

- (ii) Apparently, both of them lived as husband and wife at matrimonial house after marriage and the record reveals that no child was born out of the said wedlock.
- (iii) The story further unfolds by the allegation of the husband/respondent, wherein according to him, the appellant/wife, after couple of years and due to certain bickering between them at the instance of parent of his wife, left the matrimonial home and went to stay at her parental house (*maika*) on 20.01.2013. After that he and his family had made frequent efforts to persuade her wife to return to her matrimonial house but all in vain. Ultimately, under the pressure of the police, a compromise was entered between them, according to which, both of them would seek divorce on mutual consent before the competent Court. For this purpose, a suit, bearing No.631 of 2014, under Section 13 (B) of the

Hindu Marriage Act, 1955 for divorce on mutual consent was filed before the Family Court, Lucknow, however, as claimed, when the husband realized that he could not live without his wife, then, he, instead of appearing in the said suit for divorce on mutual consent, filed Regular Suit No. 3300 of 2014 under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights.

- (iv) Notice was issued in the aforesaid suit. In response thereof, the wife/appellant herein had put in appearance before the Family Court and had filed written statement denying all the allegations made by her husband/respondent and as counter version it was said that she had solemnized love marriage with the respondent but after marriage, his behaviour towards her was very bad. Her husband harassed and tortured her physically and mentally. Her husband, while consuming alcohol and drugs in excessive quantity, had behaved in a very inhuman and unnatural manner with her and also burnt her with cigarette butts, on account of which there was threat to her life from her husband itself and as such she left the house of her husband on 20.01.2013 and since then she is living with her parents. She had also stated that she does not wish to live with her husband any longer. She is living separately since 20.01.2013 and ever since has acclimatized to her matrimonial status. She

also stated that since her husband did not appear before the Family Court in the said suit filed under Section 13-B of Act, 1955, instead her husband had filed a suit for restitution of conjugal rights, therefore, that suit filed under Section 13-B of the Hindu Marriage Act was dismissed on 08.07.2015. Various other allegations as levelled against her in the plaint were also denied by her.

(v) On the basis of pleadings and documents, the learned Family Court framed following two issues in Regular Suit No. 3300 of 2014 filed by the respondent/husband under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as '**First Suit**') :-

(a) Whether on the basis of the pleadings of the plaint, the plaintiff is entitled to get decree of restitution of conjugal rights?

(b) Whether plaintiff is entitled to get any other reliefs?

(5) Besides the contest in aforesaid suit for restitution of conjugal rights filed under Section 9 of the Hindu Marriage Act, 1955 by the husband/respondent, during its pendency, the wife/appellant herein also filed a petition seeking divorce under Section 13 of the Hindu Marriage Act, 1955 in the year 2015 on the grounds of cruelty and desertion, which was numbered as Regular Suit No. 2335 of 2015 (hereinafter referred to as '**Second Suit**'). In this suit, notice was also issued and in response thereof, husband/respondent had also put in appearance and filed

written statement denying the allegations levelled against him and reiterated his stand made by him in the first suit filed by him under Section 9 of the Hindu Marriage Act, 1955.

(6) On the basis of the pleadings and documents, the learned Family Court framed following two issues in the “**second suit**” filed by the wife under Section 13-B of the Hindu Marriage Act, 1955 :-

- (a) Whether on the basis of the pleadings of the plaint, the plaintiff is entitled to get decree of divorce?
- (b) Whether plaintiff is entitled to get any other reliefs ?

(7) Both the aforesaid suits were put for trial, wherein the husband/respondent, examined himself as P.W.1 and also exhibited two documents viz. (i) copy of the Marriage Certificate of Arya Samaj Mandir as annexure no.1; and (ii) copy of the statement made by his wife/appellant before the High Court as Annexure no.2. On the other hand, in support of her case, the wife/appellant examined herself as D.W.1. No other witness was examined by the parties in support of their case.

(8) The Family Court has noted that despite ample opportunity being granted to the husband/respondent, none responded on his behalf to argue both the suits, as such, the Family Court proceeded to consider the issues, as noted hereinabove, and heard the counsel for the wife/appellant and appraised the evidence available on record.

- (9) The learned Family Court took issue no.1 framed in both the suits together for the sake of convenience of discussion and decision. The Family Court considered the series of so-called gross misdemeanor and misconduct resulting in physical as well as mental torture upon the wife by husband as alleged by the wife/appellant and returned a finding that the appellant/wife did not mention any specific date or incident when the alleged cruelty was committed upon her by the respondent/husband. The learned Family Court also observed that the appellant/wife was unable to prove bad conduct of the respondent/husband which could give rise to an apprehension in the mind of the appellant that living with the respondent was unsafe and harmful. The learned Family Court had also returned a finding that the appellant/wife had failed to bring on record any witness such as her father, mother etc. or any other witness or evidence in support of her allegation of torture by her husband. In this backdrop, the Family Court opined that the appellant/wife has failed to establish "cruelty" and "desertion" claimed to be perpetrated by her husband against her. Accordingly, issue no.1 was decided in affirmative in favour of the respondent/husband and against the appellant/wife.
- (10) So far as issue no.2, as referred above, framed in both the suits is concerned, the Family Court had returned a finding that the appellant/wife had failed to bring home the ingredients which constituted desertion on the part of the respondent and the

appellant/wife had voluntarily and for her own left the in-laws' house and went to her parental house on 20.01.2013, hence issue no.2 was also decided in favour of the husband and against the wife.

- (11) By deciding the aforesaid two issues in favour of the respondent/husband, the Family Court has dismissed the divorce petition filed by the wife under Section 13 of the Hindu Marriage Act, 1955 and has allowed the suit for restitution of conjugal rights filed by the husband under Section 9 of the Hindu Marriage Act, 1955 by means of the impugned judgment dated 22.02.2021. It is this common order passed by the Additional Principal Judge, Family Court-I, Lucknow, which has been sought to be interdicted by the appellant by filing these two appeal before this Court.
- (12) During the course of arguments, learned Counsel representing the appellant/wife did not advance any argument nor attempted to demonstrate as to how the finding of Family Court on the question of desertion is perverse or erroneous in any manner.
- (13) However, learned Counsel representing the appellant/wife has submitted that learned Family Court proceeded in a very cursory manner in allowing suit for restitution of conjugal right filed by the husband/respondent and dismissing the suit for divorce filed by the appellant/wife by recording perverse findings on the issue of cruelty. She has submitted that the

appellant in her statement had stated before the Family Court that after couple of years of marriage, the family members including her husband/respondent had started torturing her mentally and physically and sometime even her husband burnt her with Cigarette butts. It has been submitted by the learned counsel for the appellant that inspite of the pain and agony having faced by her almost every day of her marital life, she tried her best to adjust with the respondent but behaviour of her husband continued to be cruel day by day. On being upset on account of day to day physical and mental cruelty of her husband, the appellant had made a complaint before the police, whereinafter a compromise was arrived between the parties by which both the parties agreed to dissolve the marriage by instituting a suit under Section 13 (B) of the Hindu Marriage Act, 1955. As a consequence of which, the said suit for divorce by mutual consent was filed under Section 13 (B) of the Hindu Marriage Act, 1955 before the Family Court, however, even after putting his signature/consent on the said suit by the respondent, the husband failed to appear before the Family Court for recording of statements etc. and instead, he filed a suit for restitution of conjugal rights before the Family Court. Ultimately, the said suit under Section 13 (B) of the Act, 1955 was dismissed on 08.07.2015 on account of absence of the respondent.

- (14) Placing reliance upon the decision of the Hon'ble Delhi High Court in **Rajiv Chikkara Vs. Sandhya Mathur** : 2016 SCC OnLine Del 6224 as well as the decisions of Hon'ble Kerala High Court reported in 2022 (2) KHC 11 : **Beena M.S. Vs. Shino G. Babu** and **Shreedharan Vs. Asha** (MAT Appeal No. 578 of 2015, decided on 18.09.2023), learned Counsel has submitted that unilaterally not appearing in the suit filed for seeking Divorce by mutual consent under Section 13 (B) of the Hindu Marriage Act, 1955 would itself amount to cruelty, however, the learned Family Court has erred in not considering this aspect of the matter and erred in dismissing the suit filed by the appellant/wife.
- (15) Learned Counsel for the appellant/wife, thus, has submitted that the facts and circumstances being what they are, it is neither possible nor desirable for the parties to live as husband and wife because the marriage has not only irretrievably broken down but both of them have been admittedly living apart for more than 11 years. Thus, it was argued that dissolving the marriage was the only right solution to the problem and the learned Family Court was not justified in not granting a decree of divorce to the wife/appellant and has erred in allowing the suit for restitution of conjugal right.
- (16) On the other hand, learned Counsel representing the respondent/husband has submitted that the Id. Family Court is absolutely justified both in law and fact in coming to the

conclusion about the cruelty, physical and mental, as alleged by the appellant/wife. According to the learned Counsel, the wife had intentionally left his house leaving the appellant. Thus, the wife/appellant cannot take advantage of her own wrong to seek a decree for divorce on the ground of cruelty and desertion which is not established on facts. Moreover, she has further submitted that it is a lame excuse on the part of the wife to pile up unfounded allegations of mental and physical torture and then to allege that it is not possible under the facts and circumstances to live with her husband/appellant. According to the learned Counsel, impugned judgment and order passed by the learned Family Court was in accordance with law, hence both the appeals are liable to dismissed.

- (17) We have gone through statements of the appellant/wife and respondent/husband recorded by the Family Court; other evidence on record; the impugned judgment; and have heard the learned counsel for the parties at length.
- (18) This Court would first like to deal with the evidence of husband/respondent (P.W.1). His statement was recorded by the Family Court on 22.10.2019, wherein in his examination-in-chief, he had reiterated the fact that his marriage was solemnized with the appellant on 20.06.2010 in the Arya Samaj Mandir. After marriage, both of them were living together as husband and wife. After 1^{1/2}-2 months of marriage, his wife (appellant herein) went to her *maika* (parental house). The

reason for dispute between them was on account of interference of his in-laws (parents of his wife). He denied the factum of fighting (*maar peet*) had ever taken place between them, however, he stated that wrangling had been a common feature of their relationship.. He further stated that his wife was residing at her parental house and she did not come back to his house and she submitted an application at police station. He denied the factum of any quarrel with his in-laws (parents of his wife). He admitted that at the police station, it was decided that both of them would part their ways by decree of divorce by mutual consent. It has come on record that both of them had preferred a suit for divorce on mutual consent.

(19) It is pertinent to mention that after aforesaid examination-in-chief of husband/respondent herein (P.W.1), he never turned up before the learned Family Court for further examination and as such, the learned Family Court closed his evidence and proceeded further to decide the claim of the parties.

(20) The relevancy of a party who does not appear into the witness box to cross examination was dealt with by the Apex Court in **Vidhyadhar vs. Manikrao**: AIR 1999 SC 1441, wherein the Apex Court has categorically observed that:

“16. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions

passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh and Anr.. This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh and Ors. AIR (1930) Lahore 1 and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh AIR (1931) Bombay 97. The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat also followed the Privy Council decision in Sardar Gurbakhsh Singh's case (supra). The Allahabad High Court in Arjun Singh v. Virender Nath and Anr. held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab & Haryana High Court in Bhagwan Dass v. Bhishan Chand and Ors., drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box.”

- (21) Thus, the statement recorded by the husband could not have been the relevant consideration for decision by the learned Family Court. However, having gone through the statement of respondent/husband (P.W.1), what we find that P.W.1 admitted the fact that compromise had entered between the appellant/wife and respondent/husband at police station to the effect that both of them would file a suit for divorce on mutual consent, in pursuance of which, both of them had actually filed a suit for divorce on mutual consent. It is borne out from the evidence of P.W.1/husband that he had no pressure or coercion in making compromise at police station in regard to moving a suit for divorce on mutual consent under Section 13-B of the Act, 1955. Therefore, the assertion of the husband/respondent in a suit filed by him under Section 9 of the Act, 1955 that on

the pressure of parents, his wife preferred suit under Section 13-B of the Act, 1955 and he put his signature thereon in Court on 12.03.2024 for the happiness of his wife, is not acceptable inasmuch as that P.W.1, in his statement, himself had stated that on the basis of compromise entered between them at police station, a suit for divorce on mutual consent under Section 13-B of the Act, 1955 was filed before the Court. Moreover the husband did not appear for further examination in the said suit under Section 9 of the Act, 1955 and his evidence was closed. This conduct of his is also relevant.

- (22) Now, coming to the evidence of wife/appellant (D.W.1). Her statement was recorded on 19.12.2019, wherein she had stated that she solemnized love marriage with the respondent out of her own sweet-will and prior to six months of marriage, she had love affairs with the respondent. She further stated that her parents had never filed any case against her husband/respondent, but her husband had filed a case against her parents in High Court, wherein she stated that she would live with her husband. She further stated that as her life was in danger and she could not trust and believe any further on her husband, as she was assaulted grievously, she left her matrimonial home and does not want to live with her husband any more. She had further stated that in her plaint, she stated the factum of cigarette and consuming alcohol by her husband and, as such, she did not want to live with her husband. On being confronted

as to whether she was willing to live with her husband, if he improves himself, she stated that she will not live with her husband. From the evidence of the D.W.1, it transpires that she reiterated the version of her suit filed under Section 13 of the Act, 1955 and has stated that her husband/respondent had burnt her by Cigarette butts and consumed drugs and also assaulted her.

(23) The Family Court declined to believe the evidence of D.W.1 by recording its finding that there is only sole testimony of D.W.1/ wife and evidence in the present case in which neither the basis of bitterness has been revealed by her nor any date or description of incident has been given nor any medical report has been presented nor any witness has been produced to prove the factum of burning with Cigarette or assaulting her by her husband by consuming excessive liquor. However, on a close scrutiny of the facts of the case and evidence on record specially the conduct of the husband, we see no reason to disbelieve it.

(24) On a conjoint reading of the statement of the wife/appellant (D.W.1) and husband/respondent (P.W.1) and other materials/evidence on record, what we find is that both the parties have admitted certain facts, which are very essential for deciding the present appeals. Apparently, the appellant/wife and husband admit going to the Police Station in connection with some complaint filed by the wife where a compromise has

arrived at to seek divorce by mutual consent and a suit for divorce on mutual consent under Section 13-B of the Act, 1955 was filed by the parties, which was dismissed on account of non-appearance/non-cooperation of the husband/respondent (D.W.1) on 08.07.2015. If the husband was serious in filing the suit under Section 9 of the Act, 1955, he would not have absented for further examination in the said suit as already noticed. The plea of the husband in the suit under Section 9 of the Act, 1955 that he was forced to enter into such compromise, is not believable in view of subsequent filing of a suit for divorce by mutual consent as there would have been no coercion or pressure before a Court of law.

(25) That being the position, now the question which falls for our determination is as to whether unilaterally non-appearance of the husband/respondent in a suit for divorce by mutual consent filed under Section 13-B of the Act, 1955 added to cruelty thereby entitling her to a divorce; and whether the long separation of 11 years coupled with the conduct of the husband amounts to irretrievable breakdown of marriage.

(26) Section 13 of the Act, 1955 reads as under :-

“13. Divorce.—(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; **or**

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; **or**

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; **or**

(ii) has ceased to be a Hindu by conversion to another religion; **or**

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.—In this clause,—

(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub—normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or

(iv) * * * * *

(v) has been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;

(viii) ***

(ix) ***

Explanation.—In this sub-section, the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground—

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,—

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality; or

(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards;

(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation.—This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).

(27) U.P. Amendment to Section 13 (1) (i-a) is as under :-

“(i-a) has persistently or repeatedly 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; or”

(28) It is apparent that Section 13 of the Act, 1955 provides for grant of divorce and enumerates various grounds on which the same may be granted. It enacts that “*any marriage solemnized*

whether before or after the commencement of this Act may be dissolved on petition presented either by the husband or by the wife or any of the grounds specified therein. Clause (i-a) of sub section (1) of section 13 of the Act, 1955 declares that a decree of divorce may be granted by a court on the ground that after solemnization of marriage, the opposite party has treated the petitioner with cruelty, however, the State amendment qualifies the extent and nature of such cruelty by stating that the said cruelty has been persistent and repeatedly meted out to one party, which would cause a reasonable apprehension in the mind of the one party that it would be harmful or injurious for the one party to live with the other party.

- (29) It is well-settled that the expression ‘cruelty’ includes both (i) physical cruelty; and (ii) mental cruelty. It is true that the bond of a marriage is built on the mutual respect, trust and love of the partners. There is a fine line separating ‘cruelty’ and misbehavior.
- (30) Dealing with the almost identical issue, the Delhi High Court in the case of **Rajiv Chikkara (supra)** observed that where a divorce by Mutual Consent was agreed to by both the parties, the subsequent unilateral withdrawal of consent by a spouse without any sufficient or just cause, would add to the cruelty meted out to the other spouse. In another judgment, the Kerala High Court in the case of **Shreedharan (supra)** dealing with the issue that the offer of settlement failed on account of the

wife refusing to accept the offer made by the husband, observed that the mutual consent for divorce failed in this matter as the bargaining could not meet the level of expectation. The idea of ‘No-Fault-Divorce’ is to make the parties realize that there is sensible way of parting on the agreed terms. Withholding mutual consent in a failed marriage is nothing but cruelty. In the decision of the Kerala High Court in **Beena M.S. (supra)**, it has been observed that withholding of consent for mutual separation in itself would cause mental agony and cruelty to the spouse who demands separation.

- (31) Keeping in mind the aforesaid decisions, what we find from perusal of the record is that the conduct of the respondent/husband in driving the appellant/wife to believe that their disputes were about to be “put to an end” and then to withdraw from the attempted settlement can cause disquiet, cruelty and uncertainty in the mind of the appellant. It is evident that the quarrel *inter se* between the parties was not on any justifiable grounds, but was a war of the egos prompted by the desire to wreak vengeance against the spouse. Thus, such unilateral withdrawal from divorce by mutual consent added to cruelty.
- (32) For the aforesaid reasons, we are unable to subscribe to the findings of the Family Court relating to the issue of unilateral non-appearance of the husband/respondent in a suit filed under Section 13-B of the Act, 1955 being not a cruelty. Rather, this court is of the view that such unilateral withdrawal from

divorce by mutual consent under Section 13-B of the Act, 1955 added to cruelty.

- (33) The other significant factor for determination as posed hereinabove is that whether the long separation of 11 years coupled with the conduct of the husband amounts to irretrievable breakdown of marriage. The Apex Court in **Samar Ghosh Vs. Jaya Ghosh** : (2007) 4 SCC 511, has held that: -

“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 the emotions of parties. In such like situations, it may lead to mental cruelty.”

- (34) In the instant case, admittedly, both the parties have been living separately since 20.01.2013 i.e almost more than 11 years. Time and again, the Apex Court as well as this Court has held that 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, which leads to cruelty. Recently, the Apex Court in the case of **Rajib Kumar Roy Vs. Sushmita Saha** : 2023 SCC OnLine SC 1221 observed as under :-

“Continued bitterness, dead emotions and long separation, in the given facts and circumstances of a case, can be construed as a case of “irretrievable breakdown of marriage”, which is also a facet of “cruelty”. In Rakesh Raman v. Kavita reported in 2023 SCC OnLine SC 497, this is precisely what was held, that though in a given case cruelty as a fault, may not be attributable to one party alone and hence despite irretrievable breakdown of marriage keeping the parties together amounts to cruelty on both sides. Which is precisely the case at hand.”

(35) For all the aforesaid reasons, both the appeals are **allowed**. The impugned judgment dated 22.02.2021 is hereby set-aside. The appellant/wife is granted divorce on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. Suit No. 2335 of 2015 is allowed. Suit No. 3300 of 2014 is dismissed.

(36) There shall be no order as to cost.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date : 31st May, 2024
Ajit/-