

Neutral Citation No. - 2024:AHC-LKO:67745-DB
A.F.R.

**High Court of Judicature at Allahabad
(Lucknow)**

Reserved on : 16.07.2024

Delivered on : 01.10.2024

Court No. - 2

Case :- FIRST APPEAL No. - 63 of 2021

Appellant :- Sushil Kumar Trivedi

Respondent :- Smt. Richa

Counsel for Appellant :- Manoj Kumar Gupta

Counsel for Respondent :- Abhinav Singh, Lalit Kumari, Ran Vijay
Yadav

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

(Per Om Prakash Shukla, J.)

A. Prelude

(1) This appeal under Section 19 (1) of the Family Courts Act, 1984 has been filed by the husband/appellant, assailing the judgment and order dated 03.04.2021 passed by the Additional Principal Judge, Family Court, Court No. 2, Unnao (hereinafter referred to as '*trial Court*'), whereby Matrimonial Case No. 433 of 2016 : *Sushil Kumar Trivedi vs. Smt. Raicha*, seeking to dissolve the marriage under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as '**Act, 1955**') was dismissed.

B. Factual Matrix

(2) The appellant/husband instituted a suit (Matrimonial Case No. 433 of 2016) against the respondent/wife under Section 13 of

the Act, 1955 to obtain a decree of divorce mainly on the ground of cruelty, breakdown of their marriage due to mental torture suffered by the appellant and further, that cruelty was of a kind that the appellant could not be expected to live with the respondent.

- (3)** It was pleaded in the plaint that the appellant, Sushil Kumar Trivedi, got married to Smt Richa (respondent herein) in accordance with Hindu rites and rituals. After marriage, respondent came to matrimonial house and lived peacefully for two months and thereafter behaviour of the respondent towards the appellant and his parents was not good and she started quarreling over every issue. According to the appellant, although he took full care of the respondent as per her comfort and convenience but even then the behaviour of the respondent was always aggressive and cruel towards the appellant. It was also alleged in the plaint that appellant tried his best to convince the respondent, but the respondent used to quarrel and go away to her parents' house. It was also alleged that on 20.05.2012, at 06:00 p.m., the respondent came along with her step mother Usha, her aunt Sunita and Bitto and one woman to the house of the appellant in his absence and they forcefully snatched key of the box from the appellant's mother and took away the gold, silver jewellery worth about one lakh rupees and clothes and also insulted the appellant's mother by using abusive languages

and also threatened that if any action was taken against them, they would kill the appellant and after the said incident, the respondent had no relation with the appellant and even she did not want to live with the appellant. On 23.05.2012, the appellant complained about the aforesaid incident to the Superintendent of Police as well as Station House Officer, Gangahat personally and through post.

- (4) It was also pleaded that about a month after the aforesaid incident, father of the respondent along with his relative, who was also an Advocate, came to the house of the appellant and requested to forgive the mistake of the respondent/wife and other relatives, who had barged into the house of the appellant. According to the appellant, on account of dignity, he agreed to bring the respondent back to his home and as such brought the respondent to her matrimonial home. It was alleged in the plaint that till February, 2014, the respondent continued to come and go from the house of the appellant but during this period the respondent refused to have any conjugal relationship with the appellant.
- (5) It was further pleaded in the plaint that in March, 2014, father of the respondent came along with several people to the appellant's house and by insulting the appellant and his parents, took away the respondent along with jewellery worth about

Rs.5,00,000/- and the respondent told the appellant that neither she wants to live with him nor she wants to have any kind of marital relationship with the appellant and she would ruin them and would not let him and his family members live happily.

(6) It was also pleaded that appellant filed a suit, bearing Matrimonial Case No. 721 of 2014, under Section 9 of the Act, 1955 for restitution of conjugal rights on 28.04.2014. On 05.07.2016, when the appellant was going to court in the said case, the respondent along with her father and several persons came, armed with illegal arms, accosted the appellant near G.I.C. Inter College at 09:45 a.m. and threatened him and asked him to withdraw the said case. It has been stated by the appellant that fearing for his life on account of this threat, he withdrew the said case on 05.07.2016 and in this backdrop, the appellant instituted Matrimonial Case No. 433 of 2016 on 12.07.2016 seeking divorce on the ground of cruelty and desertion.

(7) In her written statement, the respondent/wife has categorically denied the grounds pleaded by the appellant, and has specifically pleaded that the appellant and his family members were demanding dowry and also tortured and threatened to kill her, in case demand of dowry was not fulfilled. It was also pleaded by the respondent/wife that ever since she came to her

matrimonial house, she maintained her marital relationship with the appellant. She kept pleading with folded hands to the appellant and his parents but the appellant and his family members always misbehaved with her and sometimes even locked her in the room and kept her hungry. It has been also stated by the respondent/wife that she did not go to parental home without informing the appellant. On 20.05.2012, her mother did not go to the house of appellant nor her father went to the house of the appellant in March, 2014. She also pleaded that her husband/appellant filed a suit under Section 9 of the Act, 1955, in which she appeared and has also filed an application under Section 24 of the Act, 1955 and thereafter, appellant himself withdrew the aforesaid suit. It was also pleaded that on 26.03.2024, the appellant and his family members assaulted her and by using abusive languages, the appellant threatened her for her life, upon which she informed her parents and then her father, uncle and other relatives came to the house of the appellant, but the appellant and his family members kept her jewellery and threw her out of the house and threatened to kill her if she took any action. She also pleaded that she is a student of L.LB and she is able to think about her own well being and she does not want to end her married life under any circumstances.

- (8) Based upon the pleadings led by the parties, the issues framed by the trial Court are as under:-

“1. क्या पक्षकारन आपस में विधिक रूप से विवाहित है ?

2. क्या पक्षकारन के मध्य कथित विवाह विच्छेदन होना उचित है ?

3. क्या वादी प्रतिवादिनी द्वारा किये गये परित्याग के आधार पर विवाह विच्छेद की आज्ञा पाने की अधिकारी है?”

- (9) The parties led evidence before the Trial Court. The appellant examined himself as P.W.1 and his mother, namely, Smt. Shyma Trivedi as P.W.2. Apart from it, the appellant (P.W.1) had filed documentary evidence i.e. a copy of the application sent by the appellant to Station House Officer, Gangaghat, a copy of the application sent by the appellant to the Superintendent of Police, Unnao and a copy of the registry receipt (marked as list 16Ga). The respondent examined herself as D.W.1. From the side of the respondent (D.W.1), no documentary evidence was filed.

- (10) By the impugned judgment and order dated 03.04.2021, the trial Court, after appraising both, oral as well as documentary evidence, decided the issues framed in the suits as under :-

Issue No.	Issues	Findings of the trial Court
1.	क्या पक्षकारन आपस में विधिक रूप से विवाहित है ?	Yes

2.	क्या पक्षकारान के मध्य कथित विवाह विच्छेदन होना उचित है ?	Issue nos. 2 and 3 were decided together in the negative and in favour of the respondent/wife.
3.	क्या वादी प्रतिवादिनी द्वारा किये गये परित्याग के आधार पर विवाह विच्छेद की आज्ञा पाने की अधिकारी है?	

(11) The trial Court thus dismissed the suit filed by the appellant under Section 13 of the Act vide judgment and decree dated 03.04.2021. It is this judgment and decree dated 03.04.2021, which has been assailed in the above-captioned appeal.

C. Points of Determination

(12) Based upon the pleadings, evidence on record and the impugned judgment passed by the trial Court, the following point for determination arises before us in this appeal:-

“Whether the findings of the Family Court regarding issues no. 2 and 3 especially regarding the plea of cruelty and desertion as allegations for divorce, are perverse and unsustainable thereby rendering the impugned judgment unsustainable ?”

D. Discussion & Analysis

(13) We have heard Shri Manoj Kumar Gupta, learned Counsel representing the appellant and Ms. Lalit Kumari, learned Counsel representing the respondent and perused the pleadings

of the parties, the evidence led by them and the impugned judgment.

(14) The main plank of learned Counsel for the appellant submission was :-

- i. that matrimonial life lasted only for few months and the couple have been living separately since 28.04.2014 and had deserted him. After all these years, there is no chance whatsoever of their coming together;
- ii. that the respondent/wife had caused cruelty by instituting a series of complaints against the appellant viz. (a) a complaint against the appellant, his father, mother and her sister on 29.07.2016, which is pending; (b) on 29.07.2016, Case No. 418 of 2016 under Section 125 Cr.P.C. before the Court of Chief Judicial Magistrate, Unnao which was decided on 03.04.2022, whereby the appellant was directed to pay Rs.2500/- per month as maintenance since the date of filing; (c) on 29.07.2016, a case under Section 20/21 of Domestic Violence Act against the appellant, his parents and his sister, which is pending.
- iii. that by filing the aforesaid cases, mental peace and reputation of the appellant and his family members has been irreparably damaged;
- iv. that respondent's cruel state of mind, had exhibited a behaviour of such a nature that it amounted to

treating the appellant with cruelty, rendering the marriage open to grant of a decree of divorce in terms of the grounds specified under Section 13 of the Act;

- v. that the findings of the trial Court that the behaviour of the respondent constituting grounds of cruelty, had not been proved, were perverse and contrary to the weight of the evidence on record.

(15) Placing reliance upon the judgment of the Apex Court in **Naveen Kohli Vs. Neelu Kohli** : (2006) 4 SCC 558, **Samar Ghosh Vs. Jaya Ghosh** : (2007) SCC 511 and **Joydeep Majumdar Vs. Bharti Jaiswal Majumdar** : (2021) 3 SCC 742, learned Counsel for the appellant submitted that findings recorded by the trial Court on the ground of cruelty while adjudicating issue nos. 2 and 3 are perverse and are liable to be set-aside. He further submitted that parties have been living apart since March 2014. During this period, they never met each other which indicates that their marriage has broken down irretrievably. Learned counsel, therefore, urges the Court to put their relationship to end by granting divorce.

(16) Replying to the contentions raised by the appellant/husband, learned Counsel for the respondent/wife has argued that the respondent wants to resume her matrimonial life with the appellant and the same was also pleaded in her written

statement filed by her in the trial Court. According to the learned Counsel, the respondent had filed complaints only to get her legal rights as married wife of the appellant, therefore, these complaints filed by the wife/ respondent ought to be treated/understood as efforts being made by the wife to preserve her marital relationship and not as an act of cruelty. Moreover, mere filing of criminal cases against the appellant-husband would not constitute cruelty. According to the learned Counsel, P.W.1/appellant himself had stated before the trial Court as well as in the mediation proceedings between the parties in the trial Court that the appellant would never bring home the respondent, whereas in the written statement, specific plea was taken by the respondent that she wants to live with the appellant, therefore, the findings recorded by the trial Court are just and proper and do not require any interference.

- (17)** Learned Counsel for the respondent/wife has further submitted that the appellant/husband compelled his wife/ respondent to leave her matrimonial home who is now trying to take advantage of his own wrong. It is submitted that if the respondent really intended to terminate the relationship, she would not have stated in her deposition that she wants to live with the appellant/husband. According to the learned counsel, the respondent is still willing to live with her husband. According to the learned Counsel, neither cruelty nor desertion

has been proved against the respondent/wife and moreover, the theory of irretrievable break down of marriage does not apply to this case as from the facts and circumstances of the case it cannot be established that their marriage has become dead. Learned counsel, therefore, urges the court for dismissal of the appeal.

(18) To consider the rival arguments and in order to answer the points for determination, it will be apposite to quote relevant provisions of Section 13 of the Hindu Marriage Act, 1955, which set out grounds for divorce :-

“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).”

- (19) The plaint for dissolution of marriage in the present case is restricted to two grounds referable to Section 13(1)(i-a) and under Section 13(1) (i-b) of the Act i.e. cruelty and desertion.
- (20) The specific pleadings alleging cruelty on the part of the wife are in paragraphs 3 to 9 of the plaint, but they have been specifically denied by the respondent in the written statement. Pleadings relevant to the ground of desertion are contended in paras 5, 6, 7 of the plaint.
- (21) At this juncture, it would be apt to mention that 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 subject to the State amendments to Section 13 (1) (i-a) in this regard. Section 13(1)(ib) of the Act deals with desertion.
- (22) To prove his case made in the plaint, the appellant has examined himself as P.W.1. He was also cross-examined. It has come in his deposition that the defendant/respondent is his wife and she wants to live with him, but he (appellant) himself did

not want to keep her (respondent) and his wife is residing at the address mentioned in the plaint. P.W.1 has further stated that he did not want to take back his wife (respondent) at any cost. P.W.1 has stated on one hand that he went to the house of his wife (respondent) alone but he did not remember the date on which he went to the house of respondent and on the other hand, he has stated that he did not go to see off his wife (respondent). He has further stated that he did not reveal anything about him and his wife to any of his relatives. He denied that he has thrown his wife out of the house by beating her. He has reiterated the fact that in the case of Section 9 of the Act, 1955, his wife had threatened and forced him to withdraw the case, but he has admitted that he did not report it to police but had told it orally in the Court.

(23) In support of his case, appellant/P.W.1 has also examined his mother as P.W.2, who, in his examination-in-chief, also reiterated the version of the plaint. She was also extensively cross-examined and in her cross-examination, she has also deposed that she did not want to take back respondent at all nor did she want to keep her. P.W.2 has also stated that respondent did not want to get divorced.

(24) One fact is clear from the aforesaid testimony of appellant/P.W.1 and his mother/P.W.2 that the plaintiff/appellant

(P.W.1) and his mother (P.W.2) themselves do not want to keep the respondent as both of them in their testimonies have clearly stated that they would not keep the defendant/respondent at any cost. Moreso, the record also reveals that matrimonial dispute between the appellant and respondent was not only referred to the mediation but even the trial Court attempted to bring about a settlement but the efforts could not succeed. The Mediator, after counseling the parties, has submitted a report (marked as Paper No. 22-Ka) before the trial Court, wherein it was specifically mentioned that the appellant does not want to keep her wife in any way and further the appellant was not ready to listen or accept any opinion nor did he want to accept anything and as such, there does not seem to be any possibility of reconciliation between the parties.

(25) D.W.1/respondent, while reiterating the version of her written statement in her testimony, has deposed before the trial Court that her husband/appellant herein had filed a case for restitution of conjugal rights but he himself withdrew the same and out of the wedlock no issue was borne.

(26) The record reveals that immediately after two years of marriage, litigation between the parties started. On one hand, the appellant had filed a case under Section 9 of the Act, 1955 for restitution of conjugal rights, whereas on the other, the

appellant had filed three cases, (i) under Section 125 of the Act, 1955, which was decided in her favour; and (ii) under the provisions of Domestic Violence Act and (iii) under the provisions of Dowry Prohibition Act against the appellant, which are pending before the Court. The appellant had also not brought on record before the trial Court the decision of the case filed by him under Section 9 of the Act, 1955.

(27) Thus, taking into consideration the aforesaid facts, particularly the testimonies of P.W.1, P.W.2 and D.W.2 as also the fact that the appellant did not bring on record before the trial Court the decision of the case filed by him under Section 9 of the Act, 1955, we are of the opinion that the ground pleaded by the appellant that his wife/respondent has deserted him, is not proved as P.W.1 and his mother P.W.2 have categorically deposed before the trial Court that they did not want to keep the respondent at any cost. We also find that the appellant has failed to prove the allegations pleaded by him in the plaint as regards reasons for withdrawal of the case filed by him under Section 9 of the Act, 1955. Thus, the ground of desertion pleaded by the appellant has no substance and we are in full agreement with the findings recorded by the trial Court on the ground of desertion.

(28) Now, the other issue pleaded by the appellant is that the respondent has treated the appellant with cruelty. In this regard, the appellant has pleaded in the plaint that the defendant/respondent used to insult him and his parents before the marriage, however, he tried his best to convince her; a dispute arose just after two months of marriage; once due to the efforts of the relatives, a settlement was reached between them and he brought his wife/respondent to home; till February, 2014, his wife/ defendant lived reluctantly in his house and refused to have marital relationship; in March, 2014, the father-in-law took away the respondent-wife with jewellery worth Rs.5,00,000/- and threatened him that the defendant would not live a happy married life while living with him. The defendant/wife had refuted the aforesaid allegations made in the plaint.

(29) It is well-settled that the expression 'cruelty' includes both (i) physical cruelty; and (ii) mental cruelty. The onus was on the plaintiff/appellant to prove cruel treatment by the defendant/respondent. Appellant/P.W.1 has stated that his wife/respondent herein remained faithful for three months of marriage but after that nature of his wife became aggressive. His statement shows that there was a dispute after two months of marriage. In para-5 of the affidavit filed by the appellant, he has stated that on 20.05.2012, at about 06:00 p.m., his wife along with step mother Usha, aunt Sunita and Bitto and another

woman came to his house in his absence and snatched away the key of box from his mother, took gold, silver jewellery worth of Rs.1,00,000/- and clothes from almirah and also used abusive languages against his mother and threatened his mother that if report be made, then she and her son would be killed. It was also pleaded that his wife told his mother that she had no concern with her son nor she would live with him. It was stated by the appellant/P.W.1 that the aforesaid incident was reported by him to the Superintendent of Police and Station House Officer, Gangaghat personally and through post. The mother of the appellant was also examined as P.W.2, wherein she has reiterated aforesaid averments in para-5 of her affidavit.

- (30) Both witnesses i.e. P.W.1 and P.W.2 have stated that the incident dated 20.05.2012 was reported to the police through post. In this regard, copy of receipt of registered post was filed by the appellant as list 16-Ga. The evidence of P.W.1 and P.W.2 do not show that the appellant himself went personally to report the incident to the police but it seems that the appellant had made a report of the incident to the police through post and only formally report the police about the incident. This shows that the appellant was not serious about the lodging the complaint of the incident as if the police did not take any action on his report, the appellant did nothing after that and kept silent as

there is nothing on record to show that the Appellant has taken any further remedial steps regarding the said incident.

(31) The evidence of P.W.1 and P.W.2 shows that after some time, on the intervention of the relatives, a settlement between the appellant and respondent was arrived and the appellant took back the respondent to his home and thereafter respondent lived along with the appellant at his house till February, 2014, thus, apparently any cruelty extended by the respondent/wife to the appellant prior to it appears to have been condoned as it is the own admission of the appellant that after the said incident, the father and other relatives of the respondent/wife came to his house and sought forgiveness and admittedly, the appellant/husband was magnanimous to forgive the respondent/wife and they both started living a happy matrimonial home after the said incident. At this stage, it would be apt to mention section 23 of the Hindu Marriage Act, wherein section 23 (b) *inter alia* states:

“(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty,”

From a plain reading of Section 23(b) of the Act, it is clear that if a party wants a decree of divorce on the ground of cruelty, he is not only required to prove the facts of cruelty, but is also

required to show that he has not in any manner condoned the alleged cruelty of the respondent. Further, even if the respondent/wife has not pleaded in her defence about the said condonation, as is not to be found in the pleading of the respondent/wife, this Court is reminded of an observation of a 3-Judges bench of the Hon'ble Supreme Court in **N.G Dastane Vs. S. Dastane**, (1975) 2 SCC 326, to quote;

“54 Even though condonation was not pleaded as a defence by the respondent it is our duty, in view of the provisions of Section 23(1)(b), to find whether the cruelty was condoned by the appellant. That section casts an obligation on the court to consider the question of condonation, an obligation which has to be discharged even in undefended cases. The relief prayed for can be decreed only if we are satisfied "but not otherwise", that the petitioner has not in any manner condoned the cruelty. It is, of course, necessary that there should be evidence on the record of the case to show that the appellant had condoned the cruelty.

55. Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation there must be, therefore, two things : forgiveness and restoration. The evidence of condonation in this case is, in our opinion, as strong and satisfactory as the evidence of cruelty. But that evidence does not consist in the mere fact that the spouses continued to share a common home during or for some time after the spell of cruelty. Cruelty, generally, does not consist of a single, isolated act but consists in most cases of a series of acts spread over a period of time. Law does not require that at the first appearance of accrual act, the

other spouse must leave the matrimonial home lest the continued co-habitation be construed as condonation. Such a construction will hinder reconciliation and there by frustrate the benign purpose of marriage laws”.

- (32) Thus, as far as the case of the appellant is concerned, although he had pleaded instances of cruelty before the incident of 20.05.2012, however, apparently as observed by this Court the same had been condoned in February, 2014 as is admitted by the appellant that he forgave the respondent/wife and both started living in the matrimonial home, thus, any incident of cruelty as alleged prior to February, 2014 cannot be considered.
- (33) Further, the record reveals that the appellant has not stated clearly as to how and in what manner the respondent behaved cruelly towards him till February, 2014 and his family. A conjoint reading of the testimonies of P.W.1 and P.W.2 reveals that the plaintiff/appellant has failed to prove the factum of cruelty during the period she returned back to her matrimonial home after the incident of 20.05.2012 till February, 2014, which had allegedly caused humiliation to the appellant and his family members, referable to section 13(1)(ia) of the Act, 1955 as applicable in the State of U.P. This, of course, is apart from the fact that he admitted to have condoned such acts in February, 2014. Thus, we are in agreement with the finding of the trial Court that the plaintiff/appellant has failed to prove the

ground of cruelty, which alleged is said to be perpetrated by the respondent/wife upon him.

- (34) As regards the case of **Naveen Kohli (Supra)** relied upon by the appellant to claim irretrievable break down of marriage, husband Naveen Kohli sought divorce against his wife Neelu Kohli, which was dismissed by the Family Court. Appeal of the wife was allowed by the High Court and divorce granted by the Family Court was dismissed. Appellant husband then came to the Supreme Court. In the said case, the husband alleged in his divorce petition that his wife was a bad tempered woman and she was of rude behaviour and after marriage she started quarrelling and misbehaving with her husband and parents. As a result, the husband and his parents left their ancestral house and started living in a rented house. In the said case, it was also alleged by the husband that he found his wife indulging in an indecent manner in a party and she was also found in a compromising position with another man. The wife also showed extreme cruelty against her husband by lodging series of criminal cases under various sections of IPC against her husband. It was proved by the husband that she lodged at least 10 criminal cases against him. Moreover, she also opposed the bail application moved by her husband and in one case in which final report was filed for lack of evidence, she even lodged a protest petition. The Apex Court observed that conduct of the

wife clearly demonstrates her deep and intense feeling of revenge against her husband and the Apex Court held as under :-

"83...From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again."

(35) In this factual context, the Apex Court granted divorce in favour of the husband Naveen Kohli by observing as under :-

"86.In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond."

(36) In the case of **Samar Ghosh (supra)**, the appellant/husband Samar Ghosh and his wife Jaya Ghosh were both IAS officers.

The factual context reveals that they were in marital tie for as

long as 22 years. After solemnization of their marriage on 13.12.1984, they started living separately from 27.08.1990. The wife was a divorcee who had a daughter from her first marriage. The daughter lived with her because custody of the daughter was given to her while she obtained a decree of divorce against her first husband who was also an IAS officer. According to the appellant/husband right from the beginning of their marriage, his wife imposed rationing in emotions in the area of love, affection, future planning and normal human relation. According to the appellant, she also declared that she would not have any child from her marriage with the appellant and it was her firm decision. As a result of her stubborn attitude serious problems developed between the couple right from the beginning of their marriage which kept growing. The wife was contemplating divorce and her daughter also told the appellant that her mother had decided to divorce him. Ultimately, from 27.08.1990, she started living separately. In this factual backdrop, the appellant husband filed a suit for grant of divorce in which the wife pleaded that her husband was guided by his relatives who were interfering in their family affairs. Ultimately, Addl. District Judge, Alipur, granted divorce on the ground of cruelty. In the appeal filed by the wife, High Court reversed the judgment on the ground that the husband could not prove cruelty. The Apex Court on consideration of the

cumulative facts and circumstances of the case, granted divorce in favour of the appellant husband observing as under :-

"102. When we take into consideration aforementioned factors along with an important circumstance that the parties are admittedly living separately for more than sixteen and half years (since 27.8.1990) the irresistible conclusion would be that matrimonial bond has been ruptured beyond repair because of the mental cruelty caused by the respondent."

(37) In the case of Joydeep Majumdar (supra), defamatory complaints had been made by wife to the superior officers and the complaint so made by the wife was held to have affected the career progress of the husband, the Hon'ble Supreme Court held that it amounted to 'mental cruelty' as the husband had suffered adverse consequences, in his life and career, on account of allegations, made by wife. The Family Court, had granted divorce to the husband, on the ground of cruelty. However, the High Court had reversed the finding of the Family Court. The Hon'ble Supreme Court, while deciding the matter, referred to another judgment passed in Samar Ghosh vs. Jaya Ghosh (supra), wherein, it was observed that in order to make out a case of mental cruelty, no uniform standard can be laid down and each case will have to be decided, on its own facts. Further, in Joydeep Majumdar's case (supra), it was observed as herein given:-

"11. The materials in the present case reveal that the respondent had made

several defamatory complaints to the appellant's superiors in the Army for which, a Court of inquiry was held by the Army authorities against the appellant. Primarily for those, the appellant's career progress got affected. The Respondent was also making complaints to other authorities, such as, the State Commission for Women and has posted defamatory materials on other platforms. The net outcome of above is that the appellant's career and reputation had suffered.

12. When the appellant has suffered adverse consequences in his life and career on account of the allegations made by the respondent, the legal consequences must follow and those cannot be prevented only because, no Court has determined that the allegations were false. The High Court however felt that without any definite finding on the credibility of the wife's allegation, the wronged spouse would be disentitled to relief. This is not found to be the correct way to deal with the issue.

13. Proceeding with the above understanding, the question which requires to be answered here is whether the conduct of the respondent would fall within the realm of mental cruelty. Here the allegations are levelled by a highly educated spouse and they do have the propensity to irreparably damage the character and reputation of the appellant. When the reputation of the spouse is sullied amongst his colleagues, his superiors and the society at large, it would be difficult to expect condonation of such conduct by the affected party."

(38) The facts of the case before us are very different from the above mentioned laws and the observations their do not apply to this case. In the case of Naveen Kohli(supra), the Apex Court has held that except in the cases when the marriage is found totally

dead, it would be appropriate for the Courts and all concerned to maintain the marriage status as far as, as long as possible and whenever possible. In the case of Samar Ghosh (supra), the Apex Court after analysis and scrutiny of its past judgments on the issue, laid down certain decisions on the basis of which the allegations of mental cruelty can be decided. In Joydeep Majumdar (supra), the Apex Court has observed that wronged party cannot be expected to continue with the matrimonial relationship and there is enough justification for him to seek separation. We are of the considered view that none of these tests is satisfied in the given case. It is true that the parties are living apart for a considerable period of time, but this is not the only test of irretrievable break down of marriage. Divorce is found on fault theory. Husband applied for divorce on the ground of cruelty and desertion. He has not been able to prove either of these grounds. We have already discussed that the basic element of desertion is *animus deserendi* which has not been proved in this case. With regard to cruelty, it is seen that the respondent/wife has pointed out that she is willing to live with her husband, whereas the appellant/husband has not proved the instances of cruelty or desertion against his wife supported by consistent and coherent evidence of witnesses and has deposed that he can not live with the respondent at any cost. The husband has not been able to substantiate his allegations of

cruelty against his wife. The wife is willing to live with him but it is he who does not want to live with her, therefore, in the facts of this case, plea of irretrievable break down of marriage cannot be accepted.

E. Conclusion

(39) Looking to the evidence on record, the only conclusion that we can arrive at is, that there is no ground made out by the appellant in terms of Section 13 (1)(i-a) and Section 13(1)(i-b) for seeking a decree of dissolution of marriage. The judgment of the trial Court has considered all the evidence to which we have made a reference and has correctly arrived at its finding, rejecting both grounds for seeking divorce. We are in complete agreement with the findings of fact arrived at by the Trial Court, which are in consonance with the evidence on record. There is no perversity or illegality in any of the findings arrived at by the trial Court in passing the impugned judgment. The point for determination formulated by us is answered in the negative.

(40) For the reasons stated above, we hereby **dismiss** the present appeal with no order as to costs.

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

Order Date : 1st October, 2024
Ajit/-