

03.11.1995, but there was no monetary transactions between the parties either before or after the marriage. Soon after the marriage, the respondent-wife joined the petitioner-husband to lead marital life at Dowlaiswaram. But neither the parents of the respondent-wife nor her sisters followed her for Dowlaiswaram as a matter of custom. 4. The petitioner-husband laid foundation in the pleadings for the grounds under Sections 13(1)(1a) and 13(1)(iii) of the Act, pointed out several instances of mental disorder and cruelty and the following are the main instances among them. (a) Since the date of marriage, the respondent-wife used to tell the petitioner-husband that she did not like him and her marriage was performed by force and she liked a personality equal to her third brother-in-law, but she married a short and flabby man (the petitioner-husband) and she developed suspicious mentality. The respondent-wife even forgetting to switch off the gas cylinder, but when the petitioner-husband switched off the gas cylinder, she used to blame him that he likes to kill her by releasing gas. (b) On 23.11.1995, the respondent-wife was taken by her parents to Kakinada in the month of December, 1995, but there was no change in the behaviour of the respondent-wife. On the other hand, in the second week of December, 1995, the petitioner-husband vomited number of times after eating food. On enquiry, she informed that she did not mix anything in the food and asked him to shut his mouth. While so, in the end of December, 1995, the petitioner-husband and respondent-wife went to Hyderabad, as he was appearing for Group-I main examination, he dropped her at her sister's house at Hyderabad, and after completion of examination, in most casual manner, he asked whether she was feeling bored, then she abruptly replied "shut-up and don't talk unnecessarily". Later, the petitioner-husband and respondent-wife returned to Dowlaiswaram. (c) As the respondent-wife became pregnant, she always used to tell that she wanted to get the pregnancy terminated while saying that she should not give birth to a person like the petitioner-husband. (d) During 1996, whenever the petitioner-husband used to sleep during day time after attending night shifts, the respondent-wife used to pull his eyelids and fist on his chest so that she cannot sleep. Therefore, he suffered seriously due to sleeplessness and even when he was seriously ill lying on bed for a day, she did not attend on him. On the other hand, she commented that "You are like he-buffalo (sick) and why should I render service to you. If you died, I will get rid of the worse and that I will get your job and property." On account of such comments, the petitioner-husband was put to humiliation and suffered mentally. (e) In the month of May, 1996, the respondent-wife went to her parents' house on her own accord and the petitioner-husband also went to Kakinada and appraised her parents about abnormal behaviour of the respondent-wife. The respondent-wife remained with her parents even after delivery of male child for about five months till April, 1995. (f) In the month of August, 1996, the petitioner-husband got prepared new gold Mangala Sutras (in vernacular) and shown to his mother. Thereupon, the respondent-wife grew wild for such act and immediately responded that she will go to her parents' house as she does not like to live with him. (g) In the month of April, 1997, again, the respondent-wife joined the petitioner-husband along with the child. When the parents of the petitioner-husband wanted to see the new born child, she declined to allow them to see the child and entered into a room along with the child and bolted from inside while saying that they may practice witchcraft to the boy. Thereafter, the parents of the petitioner-husband felt deeply humiliated. After some time, the newly born son became sick and he was taken to Dr. M.Jagannadham, and the doctor on examination, prescribed some medicines. Then the respondent-wife suspected that the boy was suffering from fever due to witchcraft. (h) On 26.08.1997, Dr. M.Jagannadham personally called the petitioner-husband and apprised him that the respondent-wife is suffering from schizophrenia and gave a letter of recommendation to another doctor. The petitioner-husband also requested the respondent-wife to come to Rajahmundry so as to take advice from Dr. K.Rama Reddy, but she refused saying that she is not suffering from any mental illness, and even on the request of the petitioner-husband, her parents also refused to get her treated with Dr.K.Rama Reddy saying that she is hale and healthy. Immediately, the petitioner-husband requested her parents to take her to Kakinada to get her treated by a doctor at Kakinada. Even for that also, father of respondent-wife refused. (i) In the month of September, 1997, the respondent-wife went to her parents' house on the eve of Atlataddi (regional festival in Andhra Pradesh) and remained at Kakinada till February, 1999, without getting treatment from any doctor. However, mediators, by name, M.Sathi Raju and M.Veeranna, were sent to the house of the parents of the respondent-wife and mediation was also held, but proved futile. After February, 1999, the respondent-wife executed a letter expressing regrets and the letter was attested by her father and other elders. On third day, without intimating anyone, she left the house of the petitioner-husband along with the child and father of the petitioner-husband and Veeranna searched for her, but she reached her parents' house and the same was not even intimated to the petitioner-husband. Again mediation took place, but no purpose was served. In the month of August, 1999, the schizophrenic problem of the respondent-wife reached to the peek stage and she caused an injury over the head of her sister. Immediately, she was taken to Dr. Datla Raghava Raju, who in turn, advised father of respondent-wife not to discontinue the treatment at any cost. But the said fact was not disclosed by the parents of the respondent-wife to the petitioner-husband. While so, in the month of December, 1999, the respondent-wife joined the petitioner-husband due to mediation and her conditijon was normal till the end of January, 2000. Again, the schizophrenic problem was aggravated, as she did not take medicines prescribed by the doctors. (j) During January, 2000, the child was suffered from jaundice and was admitted in the hospital. By the time, the boy was discharged and the respondent-wife's problem was further increased and she did not agree even to undergo treatment and started blaming that the petitioner-husband is responsible for jaundice of his son and that the petitioner-husband administered some medicine which would effect jaundice to the boy. Everyday, when the petitioner-husband attended to duty, the respondent-wife would say that the petitioner-husband was going to have illicit contact with another woman working in the plant and she used to telephone to the plant to confirm the petitioner-husband's presence there. Some times, she used to bolt the room outside when the petitioner-husband was preparing to go to plant, and, thereby, confining him in the room. (k) The respondent-wife used to sleep in a separate room bolting from inside, expressing apprehension that she will be killed if she remains in the petitioner-husband's house and suffered insomnia and used to allege that as if the petitioner-husband caused it by administering some witchcraft against her. She was not preparing food on the pretext that servant-maid did not attend on many occasions. (l) On one occasion, the respondent-wife poked her fingers into the eyes of the petitioner-husband when he went to his father-in-law's house along with the respondent-wife. Father of respondent-wife came with the "Trinorm" and "Oleanz" tablets and informed that the tablets are enough to keep the respondent-wife, normal. Then, the petitioner-husband, his father and respondent-wife's father requested her for medical check-up, but she refused. Father of respondent-wife left her for Dowlaiswaram directing the petitioner-husband to bear her. (m) In the month of June, 2000, the respondent-wife's father informed the petitioner-husband that the respondent-wife was being treated by Dr. D.Raghava Raju at Kakinada and that she was suffering from schizophrenia even prior to her marriage and directed to administer "Trinorm" and "Oleanz" tables regularly to her. While undergoing treatment at Kakinada, the petitioner-husband used to visit the house of his in-laws every week to take her to the doctor for treatment. Despite treatment by Dr. Raghava Raju, she was not taking medicines. (n) In the month of October, 2000, the petitioner-husband shifted the respondent-wife to Dowlaiswaram, but she did not take medicine as directed by the doctor and when questioned, she used to threaten the petitioner-husband that she would give false report to the police. Gradually, schizophrenic problem was aggravated and she subjected the petitioner-husband to cruelty in different ways, and one occasion, the respondent-wife threw chilly powder on the face of the petitioner-husband and she used to squeeze his testicles while informing the neighbours that he is sexually week. After birth of the male child, the respondent-wife never allowed the petitioner-husband to have sexual intercourse. (o) In the month of August, 2001, the petitioner-husband again took the respondent-wife to Dr. Datla Raghava Raju at Kakinada and admitted

in the hospital and got treated her for about a week as an inpatient. Again, she was shifted to Dowlaiswaram, where she mixed Trinorm and Oleanz tablets with food of the petitioner-husband and served him when he had to go to night shift duty, and having gone to the duty, he fell unconscious. When the petitioner-husband asked her what was the problem with the food, then she said that she mixed the tablets saying that she would do like that if she was asked to take tablets. On another occasion, the respondent-wife mixed acid with the coffee and served the same to the petitioner-husband. (p) On 16.02.2002, the petitioner-husband took the respondent-wife to the Government General Hospital, Kakinada, where Dr. Mallikharjuna Rao and Dr. Ravi Sankar, on examination, observed the behaviour of the respondent-wife and advised the petitioner-husband to admit her in the hospital as an inpatient. But, father of respondent-wife expressed his inability to look after her as he was old. Then, the doctor referred her case to mental hospital at Visakhapatnam, where the respondent-wife would be treated without attendant. The petitioner-husband requested Dr.D.Raghava Raju to give a letter so as to enable the doctor at Visakhapatnam to treat the respondent-wife immediately. Thereupon, the said Dr.Raghava Raju addressed a letter to Dr.Vijay Gopal of Visakhapatnam Hospital, but father of respondent-wife refused to take her to Visakhapatnam for treatment. (q) However, in the month of March, 2002, the respondent-wife was admitted in Government General Hospital, Kakinada, and again on 07.04.2002, she left the hospital without intimation to the doctors. 5. All the above incidents would show that father of the respondent-wife suppressing the ailment of the respondent-wife, performed the marriage and that respondent-wife is suffering from mental disorder, as she is suffering from schizophrenic problem, the petitioner-husband lost his conjugal life and pleasure in marital life, besides loss of mental peace, and, thus, he was subjected to cruelty in different ways by the respondent-wife and made the petitioner-husband to lead miserable life. Therefore, the petitioner-husband is entitled to seek decree of divorce under Sections 13(1)(ia) and 13(1)(iii) of the Hindu Marriage Act, 1955, on the ground that the respondent-wife is suffering from mental disorder continuously and subjected him to cruelty, and sought the relief of dissolution of marriage between the petitioner-husband and respondent-wife. 6. The respondent-wife filed counter admitting the marriage between herself and the petitioner-husband and birth of a child, while denying the other material allegations. (a) She specifically contended that at the time of marriage, an amount of Rs.3,00,000/- was paid to the petitioner-husband by her parents, besides payment of Rs.30,000/- towards Adapaduchu Lanchanams and also presented gold jewelry as Balatodugu (in vernacular) weighing about 15 sovereigns. Out of the said amount, Rs.1,00,000/- was directly paid to the petitioner-husband. On 13.11.1995, household articles and cash of Rs.30,000/- was given to the petitioner-husband for purchase of furniture, etc., and the respondent-wife joined the petitioner-husband to lead marital life. She denied the alleged harassment narrated by the petitioner-husband in the petition, so also her sufferance from schizophrenia. (b) It is the specific case of the respondent-wife that on 20.11.1995, she was sent back to her parents' house to bring remaining dowry of Rs.2,00,000/-, which was kept in fixed deposit in Andhra Bank, Gandhi Nagar, Kakinada, and get a registered document for Ac.2-45 cents, silver glass and silver plate. After fulfilling the demand of the petitioner-husband, in the month of December, 1995, the respondent-wife, again joined the marital house. At that time, a security bond was obtained from the father of the respondent-wife for executing a document for the balance of Ac.0-50½ cents promised to be given to the petitioner-husband. The respondent-wife was subjected to cruelty, torture and mental agony by keeping her and her son at the parents' house of the petitioner-husband at Kothuru, which is a small village near Jaggampeta when the boy was 1½ years old. The petitioner-husband used to visit the respondent-wife only once in a month to supply rice, dal and vegetables. The petitioner-husband used to live in A.E.3 Quarter of A.P.S.E.B. at Dowlaiswaram, while working at Vijjeswaram G.P.T.S. Power Plant as Assistant Divisional Engineer. The petitioner-husband's parents used to live in a house bearing D.No.16-33-49/6, Sambamurthy Nagar, Kakinada. The respondent-wife suffered hell at Kothuru as no medical facility is available to her small child. Even when the petitioner-husband came to Kothuru, he used to sleep outside the verandah by using a folding cot. The birth of the healthy child is clear proof that she never suffered from any disease at any time. Father of respondent-wife never suppressed any fact and performed marriage, but the marriage was fixed only by mutual consent. (c) The petitioner-husband used to threaten the respondent-wife that he will admit her in Mental Hospital at Visakhapatnam and he never treated her with love and affection from the beginning. After birth of the child, the petitioner-husband developed dislike and hatred against her having been influenced by his parents, brother-in-law and sister. The petitioner-husband left the respondent-wife at her parents' door-steps in the month of May, 1996, when her parents were not in the house and never visited the house atleast to see her and newly born child. The petitioner-husband used to prefer night shifts leaving the respondent-wife and child alone in the spacious quarters. (d) It is further contended that in the month of August, 2001, the petitioner-husband tied both the legs and hands of the respondent-wife with a rope and forcibly put her in a taxi with the help of his brother-in-law M.Venkata Rao and some neighbours, brought to Kothuru village and made her to take wrong treatment in the hospital of Dr.Raghava Raju of Kakinada against her consent and wish. The petitioner-husband, with the connivance of his brother-in-law, tried to get rid of the respondent-wife. Thus, the respondent-wife never subjected the petitioner-husband either mental or physical cruelty. On the other hand, the petitioner-husband himself subjected the respondent-wife to cruelty. The respondent-wife never suffered any mental disorder or schizophrenic problem and it is an invention of the petitioner-husband to get rid of the respondent-wife. Hence, there are no grounds to dissolve the marriage between the petitioner-husband and respondent-wife and prayed for dismissal of the petition filed by the petitioner-husband. 7. The wife (respondent in H.M.O.P.No.135 of 2002) filed H.M.O.P.No.170 of 2002 under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights and the allegations made in the petition are almost identical to the facts pleaded in the counter in H.M.O.P.No.135 of 2002 while specifically alleging that the respondent-wife was forcibly got admitted in Government General Hospital, Kakinada, against her will as if she was suffering from schizophrenia and filed the petition for dissolution of marriage in H.M.O.P.No.135 of 2002. The other allegations made in the petition need not be repeated in view of the narration of the specific allegations of the counter in H.M.O.P.No.135 of 2002. However, the specific case of the respondent-wife in this petition (petitioner in H.M.O.P.No.170 of 2002) is that the petitioner-husband deserted her without any reasonable excuse and sought a decree for restitution of conjugal rights. 8. The husband (petitioner in H.M.O.P.No.135 of 2002) filed counter in H.M.O.P.No.170 of 2002 reiterating the specific contentions raised in H.M.O.P.No.135 of 2002. Therefore, it is needless to repeat those contentions, since the pleas are almost identical in both the petitions. However, prayed for dismissal of the petition filed under Section 9 of the Hindu Marriage Act, 1955. 9. Since the questions involved in both the matters are interrelated to one another, the trial Court recorded evidence in H.M.O.P.No.135 of 2002 and to treat the same as evidence in H.M.O.P.No.170 of 2002. 10. During the course of enquiry, on behalf of the petitioner-husband, P.Ws.1 to 8 were examined and Exs.A.1 to A.10 were marked; and on behalf of the respondent-wife, R.Ws.1 to 5 were examined and Exs.B.1 to B.21 were marked. 11. The trial Court, upon considering the oral and documentary evidence and written argument filed by both the advocates, held that the respondent-wife is suffering from schizophrenia which is a mental disorder and that she subjected the petitioner-husband to both mental and physical cruelty, which afforded a ground to grant decree of divorce under Sections 13(1)(ia) and 13(1)(iii) of the Act, and passed a decree in the petition filed by the petitioner-husband, dissolving the marriage between them, while holding that the respondent-wife failed to establish that the petitioner-husband deserted her without any reasonable cause and disbelieved the same, thereby, declined to grant decree for restitution of conjugal rights, and, accordingly, dismissed the petition filed by the respondent-wife. 12. Aggrieved by the common order and decrees in both the petitions, the respondent-wife (petitioner in O.P.No.170 of 2002 and respondent in O.P.No.135 of 2002) preferred both the present appeals on identical grounds, mainly contending that the trial Court did not appreciate the evidence while concluding that she is suffering from mental disorder continuously and that the evidence of P.W.6 is sufficient to conclude that the disease of the respondent-wife is a curable one vide Ex.B.21 and the same is supported by the evidence of R.W.3 and Ex.B.18. If these documents are considered in proper perspective, the trial Court would not have come to a conclusion that the respondent-wife is suffering from any mental disorder, but the trial Court on wrong appreciation granted decree of divorce on the ground that the respondent-wife is suffering from mental disorder. 13. It is further contended that the evidence of P.Ws.6 and 7, who are working in the same hospital and when P.W.6 issued Ex.B.21, they are not supposed to testify in contradiction to one another and P.W.6 in total ignorance of Ex.B.21. Therefore, much credence cannot be given to the evidence of P.Ws.6 and 7. Even otherwise to grant decree of divorce under Section 13(1)(iii) of the Act, the petitioner-husband has to establish that the respondent-wife has been suffering from an incurable disease, but the evidence established that the disease is curable. Therefore, grant of decree of divorce is against the settled principles of law. 14. It is further contended that the conduct of the parties has to be taken into consideration while deciding a petition under the Hindu Marriage Act, 1955, but the trial Court did not take into consideration of the conduct of the parties. 15. It is also contended that no evidentiary value can be attached to Ex.A.2 as it was obtained by pressure. But the trial Court gave much credence to it and placing reliance on it, accepted the contention of the petitioner-husband and this approach is totally erroneous. The trial Court also failed to consider the

observations of I Additional Senior Civil Judge, who recorded evidence of the respondent-wife for four days and found that she was alright in all respects, and if this observation is considered, the trial Court would not have granted decree of divorce dissolving the marriage between the petitioner-husband and respondent-wife and finally prayed to allow both the appeals setting aside the common order passed in H.M.O.P.Nos.135 and 170 of 2002. 16. During the course of argument, the learned counsel for the respondent-wife Chidhambaram would vehemently contend that when the respondent-wife is not suffering from an incurable disease, a decree of divorce cannot be granted and that too, the evidence on record was not appreciated in proper perspective of the trial Court in view of the admission of P.W.6 about the nature of the disease which the respondent-wife is suffering from. In support of his contentions, he placed reliance on a judgment in Kollam Chandra Sekhar v. Kollam Padma Latha. If the principle laid down in the above judgment is applied to the present facts of the case, the petitioner-husband is not entitled to claim decree of divorce. Even otherwise, the conduct of the respondent-wife as pointed out in the pleadings by the petitioner-husband disclosing specific instances, which would go to show that the behaviour of the respondent-wife is abnormal and to conclude that she was suffering from schizophrenia, are not substantiated by any evidence. That apart, the alleged cruelty, either physical or mental attributed to the respondent-wife, if proved, it is only due to subjecting her to cruelty by the petitioner-husband, not otherwise. He also drawn our attention to certain evidentiary aspects in the evidence of the witnesses examined before the trial Court and such evidence will be considered at appropriate stage. Hence, the finding of the trial Court that the petitioner-husband was subjected to cruelty and that the respondent-wife is suffering from mental disorder are erroneous and if the evidence is appreciated with reference to law, the petition filed by the husband for dissolution of marriage is liable to be dismissed and the petition filed by the wife for restitution of conjugal rights is to be allowed, prayed to allow both the appeals setting aside the common order passed in H.M.O.P.Nos.135 and 170 of 2002 and pass a decree for restitution of conjugal rights. 17. Sri V.S.R.Anjaneyulu, the learned counsel petitioner-husband, would contend that the medical evidence of three doctors would suffice to conclude that the respondent-wife is suffering from schizophrenia and suppressing the said fact, the marriage of the petitioner-husband was performed with the respondent-wife, and in those circumstances, it is impossible for the petitioner-husband to lead marital life in normal course and the events. The specific instances of abnormal behaviour of the respondent-wife and subjecting him to cruelty by her behaviour is suffice to grant decree of divorce as on both grounds under Sections 13(1)(ia) and 13(1)(iii) of the Hindu Marriage Act, 1955. Even if Ex.A.2 is ignored, there is clinching evidence which supports the contention of the petitioner-husband to establish the mental disorder of the respondent-wife and subjecting him to cruelty by the respondent-wife both physically and mentally. Whereas, the reason for deserting the respondent-wife by the petitioner-husband is only because of such severe mental disorder, which did not allow him to lead marital life as wife and husband, and that too, the conduct of the respondent-wife created a bad environment, which lead the petitioner-husband to suffer mentally while discharging his duties in A.P.S.E.B., which is carrying on hazardous business of supplying of electric power. In such case, it is difficult for him to discharge his duties. Hence, it is impossible for the petitioner-husband to live with the respondent-wife as there is every reason to create an apprehension that it is unsafe or endangerous for him to lead marital life with the respondent-wife. In those circumstances, the trial Court passed a decree for dissolution of marriage under Sections 13(1)(ia) and 13(1)(iii) of the Act, while declining to grant decree for restitution of conjugal rights and supported the common order in all respects while placing reliance on several judgments of this Court and the Apex Court. He has also drawn the attention of this Court to a downloaded hard copy of literature on schizophrenia from Wikipedia, the free encyclopedia, relating to the classification and external resources of disease 'Paranoid schizophrenia'. Where the effect of paranoid schizophrenia symptoms, diagnosis, prevention, treatment, and other related aspects were enlightened and the purpose of administering Trinorm and Oleanz tablets was also analyzed in the same literature and the classification of the doctors who can treat such patients suffering from paranoid schizophrenia. Finally, he prayed to dismiss both the appeals confirming the common order and decrees passed by the trial Court. Considering rival contentions, perusing the common order under challenge, oral and documentary evidence on record, the points that arise for consideration are as follows: Whether the respondent-wife has been incurably of unsound mind, or has suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner-husband cannot reasonably be expected to live with the respondent-wife? If so, is the petitioner-husband entitled to a decree of divorce under Section 13(1)(iii) of the Hindu Marriage Act, 1955? Whether the respondent-wife has, after the solemnization of the marriage, treated petitioner-husband with cruelty creating reasonable apprehension in his mind that it is harmful and endangerous for him to live with the respondent-wife ? If so, is the petitioner-husband entitled to a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955? Whether the petitioner-husband deserted the respondent-wife without any reasonable cause? If so, is the respondent-wife entitled to a decree for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955? Point No.1: 18. The basis for grant of decree of divorce by the trial Court is that the respondent-wife is suffering from mental disorder which enables the spouse to obtain a decree of divorce under Section 13(1)(iii) of the Act. The main contention of the petitioner-husband from the beginning is that the respondent-wife is suffering from schizophrenia and narrated several instances pointing out the abnormal behaviour of the respondent-wife in the petition. Before appreciating the evidence on record, it is necessary to look at the specific provision under the Hindu Marriage Act, 1955, to grant decree of divorce. Section 13(1)(iii) of the Act is a relevant provision and we find that it is apposite to extract hereunder for better appreciation, which as follows: " 13(1)(iii) has been incurably of unsound mind, or has 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 include 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;" 19. On analysis of Section 13(1)(iii) of the Act, it consists of two parts. The first part affords a ground to grant a decree of divorce when the spouse has been suffering from incurably of unsound mind; and second part enables the Court to grant a decree when either of the spouse 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. The present set of facts attracts the second part of Section 13(1)(iii) of the Act, i.e., suffering continuously or intermittently from "mental disorder". 20. The word "mental disorder" is again explained under clause (a) of the explanation to Section 13(1)(iii) of the Act, which includes "psychopathic disorder". If the petitioner-husband is able to establish that the respondent-wife is suffering from "paranoid schizophrenia" or "psychopathic disorder" as explained in the explanation to Section 13(1)(iii) of the Act, the petitioner-husband is certainly entitled to a decree of divorce. 21. The trial Court upon considering the evidence of the petitioner-husband, more particularly, the medical evidence of three doctors P.Ws.5 to 7, and voluminous documentary evidence produced before the trial Court, concluded that the respondent-wife is suffering from "paranoid schizophrenia" and granted decree. The finding of the trial Court is now challenged on the ground that the evidence of P.Ws.6 and 7 is contradictory to one another and to the contents of Ex.B.21, but the trial Court gave much credence to the medical evidence rather than the direct evidence of the witnesses examined on behalf of the respondent-wife. That apart, Ex.B.18 supports the evidence of R.W.3, but the trial Court overlooked those two documents and discrepancies in the evidence of P.Ws.6 and 7, and if the evidence of witnesses P.Ws.6 and 7 and Exs.B.18 and B.21 are considered in proper perspective, the trial Court would not have come to a definite conclusion that the respondent-wife is suffering from "paranoid schizophrenia", which is a ground to grant decree of divorce under the second part of Section 13(1)(iii) of the Act. 22. When the petitioner-husband claimed divorce under Section 13(1)(iii) of the Act, the initial onus of proof is always on him to establish that the respondent-wife is suffering from mental disorder either continuously or intermittently from mental disorder of such kind and to such an extent that he cannot reasonably be expected to live with the respondent-wife. Mere proof that the respondent-wife is suffering from mental disorder is not sufficient to grant decree of divorce and the petitioner-husband is required to establish that the mental disorder of such a kind and to such an extent that he is not reasonably be expected to live with the respondent-wife. When the petitioner-husband discharged his initial onus of proof, it will automatically shift on to the respondent-wife to rebut the same. Therefore, the legal burden is on the petitioner-husband to establish the requirement under Section 13(1)(iii) of the Act, otherwise he is disentitled to claim divorce. 23. The relationship between the petitioner-husband and respondent-wife and giving birth to a male child are undisputed facts, but the dispute is with regard to the mental condition of the respondent-wife. The trial Court relied on the medical evidence on record for the reason that the mental condition of the respondent-wife is to be decided by a medical expert. 24. The petitioner-husband himself was examined as P.W.1. He almost reiterated what he pleaded in the petition in H.M.O.P.No.135 of 2002 and his evidence is consistent that the respondent-wife is suffering from mental disorder, i.e.,

“paranoid schizophrenia”, as explained under clause (a) of explanation to Section 13(1)(iii) of the Act. In the evidence of P.W.1, he admitted joining of the respondent-wife with the petitioner-husband and leading of marital life, but however, intervened by different instances of aggressive behaviour of the respondent-wife. The respondent-wife executed a letter Ex.A.1 attested by her father, much evidentiary value cannot be attached to such document since there is possibility of obtaining such document to save the marital tie of the respondent-wife. 25. The petitioner-husband relied on medical record of the respondent-wife. Ex.A.6 is the prescription dated 02.09.2001. Ex.A.7 is the prescription book evidencing treatment of the respondent-wife for her mental illness. Ex.A.4 is the letter dated 19.02.2002 addressed by P.W.5-Dr.Datla Raghava Raju to a doctor at Visakhapatnam. Ex.A.5 is the case sheet of the respondent-wife dated 21.03.2002. All these documents would go to show that the respondent-wife is suffering from mental disorder and she was admitted in the Government General Hospital, Kakinada, treated there for her mental disorder and it is not disputed by the respondent-wife in the entire cross-examination by suggesting to P.W.1, but contended that she was forced to admit in the hospital, but this was not substantiated by any evidence. Therefore, the fact remains on record is that the respondent-wife was treated for her mental disorder in the Government General Hospital, Kakinada. 26. Admittedly, the respondent-wife was treated in the Government General Hospital, Kakinada, during February, 2002, but left the hospital on 07.04.2002 without intimating the doctors. This fact is not disputed but explained by the respondent-wife that the reason for her leaving the hospital is that she fell down in the bathroom, and therefore, she was discharged. This reason is not acceptable for the reason that she did not produce any evidence on record to believe the same. However, the hospital record Ex.A.5-case sheet discloses that she left the hospital without intimation. Normally, if the condition of the patient is not restored to normalcy, no patient would leave the hospital without intimating the hospital authorities and some times, a patient may leave the hospital against the medical advice. But in the present case, her mental condition drove her to leave the hospital, which is strong reason to believe that the respondent-wife’s mental condition was not good. 27. The petitioner-husband also examined P.Ws.5 to 7 to prove the treatment given to the respondent-wife. In the evidence of P.Ws.5 to 7, they explained the treatment given to the respondent-wife based on the medical record available. P.W.5 is Dr. Datla Raghava Raju, who is working as Psychiatrist in a private nursing home in Kakinada and he issued Exs.A.4 and A.6. According to him, he treated the respondent-wife as an outpatient, but did not maintain any case sheet and the patient number was 7130. Even prior to Ex.A.6, the patient was under his treatment and he referred the respondent-wife to Dr. Vijay Gopal, a doctor at Visakhapatnam, as the respondent-wife is a schizophrenic patient. He further admitted that he treated the respondent-wife in the month of August, 1999, but he does not remember whether he treated the respondent-wife in the month of June, 2000 and he asserted that the respondent-wife is suffering from psychiatric disease and she requires treatment. In the cross-examination, P.W.5 admitted that he is only a Graduate, possessing a Degree of M.B.B.S., but it was mentioned in Ex.A.4 his degree as M.B. He was cross-examined referring to the words used in the letter as ‘he’ instead of ‘she’, but those words are insignificant. However, in the further cross-examination, the learned counsel for the respondent-wife could elicit that Trinorm and Oleanz tablets were administered for treating the respondent-wife as outpatient, but did not disclose the duration of administering those two tablets. The said two tablets are anti-psychotic drug and those drugs will be prescribed to psychiatric patients. A specific suggestion was put to P.W.5 that the tablet Trinorm is being administered to reduce tension during olden days, but the doctor denied, asserting that it was only anti-psychotic drug. Except denial of suggestion that the respondent-wife was not treated by him, nothing has been elicited by the learned counsel for the respondent-wife before the trial Court. Consistent evidence of P.W.5-Dr.Raghava Raju established that he treated the respondent-wife for psychiatric disease. The main contention of the learned counsel for the respondent-wife is that P.W.5 is not a qualified doctor. The qualification of P.W.5, as per Ex.A.4, is M.B., D.P.M. (Maroli), Neuro Psychiatrist. The word ‘D.P.M.’ means ‘A diploma in psychiatry’ as per the downloaded hard copy of literature from Wikipedia, the free encyclopedia, relating to the classification and external resources of disease ‘Paranoid schizophrenia’ produced by the learned counsel for the petitioner-husband. The doctors, who have successfully completed M.B.B.S. programme of study, are eligible for specialization in psychiatry. There are two options, i.e., (1) A postgraduate (MD) in psychiatry, and (2) A diploma in psychiatry (DPM). Therefore, P.W.5 is a qualified psychiatrist, who possessed diploma in psychiatry as per the literature produced by the learned counsel for the petitioner-husband. Mere possessing Degree as M.B., D.P.M., without mentioning M.B.B.S. is not a disqualification to treat the patient who is suffering from psychopathic disorder by the respondent-wife. Even Ex.A.6-prescription disclosed that P.W.5 prescribed Trinorm 5 mg and Oleanz 10 mg and another tablet. The tablets Trinorm and Oleanz are being used only for psychopathic disorder as they are anti-psychotic drugs. 28. P.W.6 is Dr. P.Ravi Sankar, resident of Kakinada, who is working as an Assistant Professor in Government General Hospital, Kakinada. According to him, one Dr. Mallikharjuna Rao of their hospital issued Ex.A.7, accordingly to recitals of it, he examined the respondent-wife on 21.03.2002 on being brought to the hospital by her husband and her father due to her aggressive behaviour, i.e., she is in excessive talkativeness, and they also informed that she is unable to sleep during night time suspecting the character of her husband, she was hostile against her in-laws and abusing her husband. Immediately on examination, she was admitted in psychiatric ward in the hospital and his treatment reveals that the respondent-wife is suffering from ‘schizophrenia’. She absconded from the hospital on 07.04.2002 and she was given electric shock five times after obtaining consent of her husband and her father for such treatment and for using ‘clozapine’ medicine. Though there was improvement from 04.04.2002, she left the hospital. He admitted that he is one of the members of the Family Counselling Centre, when the petitioner-husband and respondent-wife attended to the Family Counselling. On close analysis of examination in chief of P.W.6, he treated the respondent-wife for schizophrenia administering medicines, Trinorm, Oleanz and Clozapine, and gave electric shock five times after obtaining consent from her husband and her father. In the cross-examination, he admitted that the respondent-wife fell down in the bathroom on 07.04.2002 during afternoon, but denied the suggestion that she left the hospital as there was nobody to look after her. The learned counsel for the respondent-wife could elicit that after treatment, the aggressiveness was reduced to some extent and that he never had an occasion to see the patient prior to treatment. Therefore, the consistent evidence of P.W.6 established that the respondent-wife was suffering from schizophrenia and she was treated by P.W.6 in the hospital along with P.W.7-Dr.C.Mallikharjuna Rao. The entries in Ex.A.5 were not disputed by the respondent-wife in the entire cross-examination. Hence, much evidentiary value can be attached to the case sheet maintained in regular course of his business by the Government Hospital. 29. Dr.C.Mallikharjuna Rao was examined as P.W.7 and testified in support of the petitioner-husband’s contentions. According to him, the respondent-wife was admitted as an inpatient in Government General Hospital, Kakinada on 21.03.2000 and treated by him till 07.04.2002, when she left the hospital, as she was suffering from schizophrenia. Basing on the stress, the patient will expose to such disease, but stress will not cause the disease. He used to treat the patient basing on the seriousness of the disease. Since 1996, the respondent-wife is suffering from the said disease as per the information given by her father and husband. Thus, the duration of the illness is six years and during the period of treatment, her condition was serious. In the cross-examination, he admitted that as per the records, he saw her on 06.04.2002 when she was admitted in the general ward of Government General Hospital, Kakinada, and she never requested them to shift her from general ward to special ward. His testimony is based on the record available and he recorded the statements of her husband and father before commencement of the treatment and advised the petitioner-husband to adjust to live with her. He specifically asserted that it is not possible to cure the disease but it can be controlled. A suggestion was put to P.W.7 that he is deposing false at the instance of the petitioner-husband and he denied the same. 30. P.W.7 asserted that the evidence of P.W.6 is inconsistent with the certificate issued to Family Counselling Centre, Kakinada dated 28.11.2002 certifying that the mental condition of the respondent was normal and her mental faculty is good. Whatever the facts elicited in the cross-examination of P.W.7 are of no use. On the other hand, the facts elicited from the cross-examination of P.W.7 about the mental condition of the respondent-wife strengthen the stage of the mental disorder of the respondent-wife. On overall consideration of the material available on record including Ex.B.21 produced by the respondent-wife, the patient Surya Prabha, wife of the petitioner-husband is an old case of schizophrenia, but no old record was produced as per the endorsement at page No.1 of Ex.B.21 and she was presently on anti-psychiatric treatment. This document supports the case of the petitioner-husband that the respondent-wife is suffering from schizophrenia, which is incurable as per the evidence available on record. 31. Major contention of the respondent-wife is that the petitioner-husband illtreated her and she experienced hell in the hands of the petitioner-husband. In the examination in chief, R.W.1 almost testified in support of her case. However, in the cross-examination, she admitted that the averments in Exs.B.10 and B.11 are correct. Exs.B.10 and B.11 are only letters addressed by the petitioner-husband to the respondent-wife explaining several aspects and requested her to continue the habit of extending love and affection towards him. Ex.A.12 is another letter and the contents of which show about the behaviour of the respondent-wife, etc. When the contents of Exs.B.10 and B.11 are true, it is evident that the petitioner-husband complained about the

behaviour of the petitioner-husband and requested to change her attitude. Therefore, from the beginning, he was complaining about the behaviour of respondent-wife. 32. In the cross-examination, R.W.1 admitted that Ex.A.2 contains her signature as executant and signature of her father, Veeranna and Sathiraju as attestors and she has gone through the contents of Ex.B.2, but explained the reason for execution of the document, however, it is not much relevant. In the last four lines of cross-examination at page No.3, she admitted that she mentioned in her counter, if she had got any schizophrenic problem, it was only due to harassment in the hands of the petitioner-husband, but she was not suffering from such disease. She further admitted that three doctors were examined to prove that she is suffering from the said disease, but she volunteers that she was forcibly taken to the doctors. In any view of the matter, the facts whatever elicited in the cross-examination of R.W.1 would go to show that the respondent-wife totally denied her sufferance from schizophrenia. 33. R.W.2 is the father of R.W.1 and as usual he supported the contentions of the respondent-wife. In the first five lines of his cross-examination, he admitted that after the respondent-wife left the hospital, again he took her to Government General Hospital, Kakinada on 14.05.2002 and treatment was continued upto 30.10.2002. This admission establishes that the respondent-wife was treated in the hospital for the said disease of schizophrenia. In the further cross-examination, he explained the reason for getting the respondent-wife treated and contended that only due to force of the petitioner-husband, the respondent-wife was got treated under Ex.B.21. As per Ex.B.21, the respondent-wife was a patient of old case of schizophrenia and that she was under treatment of anti-psychiatric drugs. If for any reason, the petitioner-husband forced R.W.2 to get the respondent-wife treated, nothing prevented him to give a complaint against the petitioner-husband for using such force, and that too, R.W.2 is a retired Class-I Officer of the State Government. Maintaining silence without reporting to the police against the petitioner-husband about the use of force, would go to show that no such force was exerted on R.W.2 to believe that the respondent-wife was got treated at the force of the petitioner-husband. The cumulative effect of entire evidence on record is that the respondent-wife was got treated by R.W.2 for schizophrenia and she was treated by PWs.5 to 7. 34. To destroy the case of the petitioner-husband, the respondent-wife examined an advocate by name Smt. Y.Usha Kiran as R.W.3, who is practicing at Kakinada and running Family Counselling Centre, but her evidence is of no avail to prove that the respondent-wife is not suffering from schizophrenia. 35. The evidence of R.W.4 is only to prove the sound mental condition of the respondent-wife and he testified that the respondent-wife was maintaining sound mental condition. Similarly, the evidence of R.W.5, who is related to the respondent-wife, also was only to prove that the petitioner-husband deserted the respondent-wife without any reasonable cause. 36. On overall consideration of entire material on record, more particularly, the medical evidence of P.Ws.5 to 7 and Exs.A.4 to A.7 and Ex.B.21, established that the respondent-wife is suffering from paranoid schizophrenia. The learned counsel for the petitioner-husband brought to our notice about the literature downloaded from Wikippedia on 'paranoid schizophrenia'. Even as per which, paranoid schizophrenia is defined as "a chronic mental illness in which a person loses touch with reality (psychosis)". Paranoid schizophrenia is divided into subtypes based on the "predominant symptomatology at the time of evaluation." The clinical picture is dominated by relatively stable, often paranoid, delusions, usually accompanied by hallucinations, particularly of the auditory variety (hearing voices), and perceptual disturbances. In the present facts of the case, the mental condition of the respondent-wife is almost correlating with the symptoms of paranoid schizophrenia as mentioned in the document. Paranoid delusion is nothing but believing everyone is ought to cause harm and one criterion for separating paranoid schizophrenia from other types is delusion. A delusion is a belief that is held strong even when evidence shows otherwise. Therefore, behaving aggressively without any reason, more particularly, not allowing the parents of the petitioner-husband to see the child with an apprehension that they may practice witchcraft against him, sleeping inside the room closing the doors bolting from inside with a suspicion that she will be killed by the petitioner-husband, etc., are nothing but delusions, and in such case, basing on the symptoms and the evidence of medical experts, it can safely be held that the respondent-wife is suffering from schizophrenia, and the evidence, more particularly Ex.B.21, produced by the respondent-wife, itself is suffice to conclude that the respondent-wife is suffering from schizophrenia. Added to that, administering Trinorm and Oleanz tablets is another strong circumstance that the respondent-wife is suffering from schizophrenia. As per the prescriptions referred above, Trinorm and Oleanz were administered and they are only anti-psychiatric drugs. Even in the literature produced by the learned counsel for the petitioner-husband, the importance of Trinorm and Oleanz was explained and described as anti-psychiatric drugs and it is being administered for acute and maintenance treatment of schizophrenia and related psychotic disorders, as well as acute treatment of manic or mixed episodes of bipolar one disorder. Intramuscular Oleanz is indicated for the rapid control of agitated patients. Similarly Trinorm is being used for treatment of schizophrenia and other psychoses. It is also used in schizoaffective disorder, delusional disorders, ballism, and tourette syndrome (a drug of choice) and occasionally as adjunctive therapy in mental retardation and the chorea of huntington disease. 37. Viewed from any angle, administering Trinorm and Oleanz to the respondent-wife by P.Ws.5 to 7 is a strong indication that she is suffering from schizophrenia and the same is supported by Ex.B.21 produced by the respondent-wife herself. Therefore, we have no hesitation to conclude that the respondent-wife is suffering from schizophrenia and the trial Court on close analysis of evidence rightly concluded that the respondent-wife is suffering from schizophrenia. 38. The main endeavour of the learned counsel for the respondent-wife is that mere proof that the respondent-wife is suffering from schizophrenia or mental disorder by itself is not sufficient to grant a decree of divorce, unless it is proved that the mental disorder of such a kind and to such an extent, it is not possible for the spouse reasonably to live with the other. No doubt, it is a requirement to grant decree of divorce and in the present case, various facts narrated in the petition and supported by the evidence of P.Ws.1 to 8 shows that the respondent-wife threw chilli powder on the face of the petitioner-husband on one occasion, mixed the tablets Trinorm and Oleanz with the food of the petitioner-husband and caused injuries on the body like squeezing testicles, etc. These facts pleaded by the petitioner-husband were not disputed in the entire cross-examination of P.W.1. Therefore, the un-rebutted evidence of P.W.1 with regard to the injury suffered by him, both physically and mentally, would reasonably cause an apprehension in his mind that it is harmful and endangerous to him to live with the respondent-wife. The material on record is sufficient to establish that the petitioner-husband is not reasonably be expected to live with the respondent-wife on account of continuous and intermittent mental disorder and that too, as per the evidence of P.Ws.5 to 7 the disease of schizophrenia is only controllable not curable. Hence, the contention of the learned counsel for the respondent-wife is legally sustainable, when the facts established that it is impossible for the petitioner-husband to live with the respondent-wife due to her mental disorder, a decree for divorce can be granted. The learned counsel for the respondent-wife while contending that suffering from schizophrenia is not a ground to grant decree of divorce, drawn the attention of the decision of the Apex Court in Kollam Chandra Sekhar's case (cited supra), wherein the Apex Court ruled as follows: "Under Hindu law, marriage is an institution, a meeting of two hearts and minds and is something that cannot be taken lightly. In the Vedic period, the sacredness of the marriage tie was repeatedly declared; the family ideal was decidedly high and it was often realised. In Vedic Index I it is stated that "The high value placed on the marriage is shown by the long and striking hymn". In Rig Veda, X, 85; "Be, thou, mother of heroic children, devoted to the Gods, Be, thou, Queen in thy father-in-law's household. May all the Gods unite the hearts of us "two into one" as stated in Justice Ranganath Misra's 'Mayne's Treatise on Hindu Law and Usage. Marriage is highly revered in India and we are a Nation that prides itself on the strong foundation of our marriages, come hell or high water, rain or sunshine. Life is made up of good times and bad, and the bad times can bring with it terrible illnesses and extreme hardships. The partners in a marriage must weather these storms and embrace the sunshine with equanimity. Any person may have bad health, this is not their fault and most times, it is not within their control, as in the present case, the respondent was unwell and was taking treatment for the same. The illness had its fair share of problems. Can this be a reason for the appellant to abandon her and seek dissolution of marriage after the child is born out of their union? Since the child is now a grown up girl, her welfare must be the prime consideration for both the parties. In view of the foregoing reasons, we are of the opinion that the two parties in this case must reconcile and if the appellant so feels that the respondent is still suffering, then she must be given the right treatment. The respondent must stick to her treatment plan and make the best attempts to get better. It is not in the best interest of either the respondent or her daughter who is said to be of adolescent age for grant of a decree of dissolution of marriage as prayed for by the appellant. Hence, the appeal is liable to be dismissed". 39. In the facts of the above judgment, basing on the evidence of doctors who testified that schizophrenia has become eminently treatable with the advent of many new psychiatric drugs and the schizophrenia patients are able to lead a near normal life with medication. The High Court reversed the judgment of the trial Court. But in the present case, the evidence of P.Ws.5 to 7 is consistent that schizophrenia is only a controllable and not curable. However, continuous or intermittent mental disorder which disabled the spouse to reasonably live with the other is sufficient to grant decree of divorce. 40. One of the contentions of the respondent-wife is that when schizophrenia is curable disease as admitted by P.W.6, divorce cannot be granted. But perusal of the language of Section 13(1)(iii) of the Act, it is clear that if a spouse is suffering

from incurable unsound mind or mental disorder, divorce can be granted. But these two clauses are distinct to one another. The curability is only relevant when the petition is filed on the ground that the respondent-wife is suffering from incurable unsound mind, but when the respondent-wife is stated to have suffering from mental disorder, the possibility of curing mental disorder may not be relevant. However, the consistent evidence on record, more particularly, the evidence of P.Ws.5 to 7, it is clear that the respondent-wife is suffering from aggravated form of paranoid schizophrenia, which is not curable but it can be controlled. Therefore, the contention that the respondent-wife is suffering from curable paranoid schizophrenia is not acceptable, and therefore, the trial Court granted decree of divorce rightly.

41. The learned counsel for the petitioner-husband in support of his contentions, placed reliance on a judgment of the Apex Court in Pankaj Mahajan v. Dimple alias Kajal, wherein the Apex Court held that when the petitioner made out a case of divorce on the ground of mental illness and cruelty by wife is proved beyond reasonable doubt. In the said case, the husband has brought cogent material on record to show that the respondent-wife is suffering from mental disorder, i.e., schizophrenia. From the side of the husband, various doctors and other witnesses were examined to prove that the respondent-wife was suffering from mental disorder. All the four doctors/psychiatrists, who treated the respondent-wife, prescribed medicines and also expressed the view that it is "incurable". Even the respondent-wife and her father themselves admitted in their cross-examination that the respondent-wife had taken treatment from the said doctors for mental illness. Thus, it is proved beyond doubt that the respondent-wife is suffering from mental disorder/ schizophrenia and it is not reasonably expected to live with her and the husband has made out a case for a decree of divorce and the decree can be granted in favour of the husband and against the respondent-wife.

42. The facts of the above judgment are almost identical to the present facts of the case for the reason that medical experts P.Ws.5 to 7 who treated the respondent-wife, have categorically testified the nature of disease the respondent-wife is suffering from and the treatment given to her and also about the advise to get her treated in mental hospital at Visakhapatnam issuing recommendation letter for her treatment at Visakhapatnam and consistently testified that schizophrenia is incurable but controllable. If the principles laid down in the above judgment are applied to the present facts of the case, the petitioner-husband is certainly entitled to the decree of divorce under Section 13(1)(iii) of the Hindu Marriage Act, 1955.

43. The learned counsel for the respondent-wife also placed reliance on another judgment of the Apex Court in Darshan Gupta v. Radhika Gupta. But in the said judgment, the Apex Court concluded that the respondent-wife was suffering from mental disorder, but there was some improvement in her mental condition due to treatment at various places. Considering the facts and evidence, the Apex Court dismissed the divorce petition. The facts of the above case are distinguishable from the facts of the present case. In the instant case, the respondent-wife is suffering from schizophrenia and the evidence of P.Ws.5 to 7 is consistent that the disease of schizophrenia is controllable but not curable except a stray admission of P.W.6 that there is a possibility of cure. But on overall consideration of entire material on record, the disease of the respondent-wife is incurable as per the evidence on record. In the judgment of the Apex Court relied on by the learned counsel for the respondent-wife, the fact-situation is different. Therefore, the principles laid down in the above two decisions cannot be applied to the present facts of the case.

44. The learned counsel for the petitioner-husband placed reliance on the judgment of the Apex Court in Vinita Saxena v. Pankaj Pandit. The facts of the above judgment are identical to the present facts and upheld the decree of divorce on the ground that the spouse is suffering from a schizophrenia which is incurable. The Apex Court discussed about the burden of proof in a petition filed under Section 13(1)(iii) of the Hindu Marriage Act, so also the consequences of disease of schizophrenia including the definition, symptoms, etc. On the strength of the material on record, the Apex Court, based on medical evidence, held that the trial Court failed to appreciate the uncontroverted evidence of the appellant who had proved the case on every count, and, at the same time, the High Court also failed to appreciate the absence of any evidence led by the respondent, the appellant's evidence had to be relied upon, and, on the basis of the evidence, the decree for divorce was bound to be granted in favour of the appellant. If the principle laid down in the above judgment is applied to the present facts of the case, the respondent-wife did not adduce any medical evidence to prove that she is not suffering from schizophrenia or psychopathic disorder and that her condition was improved to any extent which enables the petitioner-husband to live reasonably with her. In the absence of such evidence, the Court is bound to accept the evidence of P.Ws.1, 5 to 7 to establish that the respondent-wife is suffering from schizophrenia. Added to that, the totality of the conduct of the respondent-wife pleaded and proved by the petitioner-husband and supported by the evidence of neighbours clinchingly established that it is difficult for the petitioner-husband to live with the respondent-wife due to the acute disease.

45. The learned counsel for the petitioner-husband also placed reliance on another judgment of a Division Bench of this Court in T.Hari Kumar Naidu vs. Smt. Prameela, wherein the Division Bench of this Court held as follows: "It is true that the appellant-husband has to succeed on the strength of his case and not on the weakness of the respondent-wife. The learned trial Judge merely held that the burden lies on the appellant to prove his case beyond reasonable doubt, without noticing the relevant factor that the respondent herself having agreed for medical examination before the Court has not co-operated and subjected herself to medical examination so as to clear the doubt and show her bona fides that she was not suffering from Schizophrenia. Admittedly, in the instant case the moot point is whether the respondent is suffering from Schizophrenia and to decide the same it is just and necessary to take medical evidence on record, which is very much relevant, than the oral evidence adduced by the parties. The respondent-wife though agreed for medical examination, but before the Committee of Doctors, after some initial examinations, she promised to return by 15-11-1994, as she stated to attend the interview and also an undertaking to that effect was given by both, respondent-wife and her father to the Committee of Doctors, who informed the respondent and her father that in-patient observation was still not over and psychological testes were still under progress. The Committee of Doctors in clear terms stated that from the beginning the Committee felt that the Naidu (respondent herein) and her father were reluctant regarding, hospitalization and in-patient observation, though they were being informed that in-patient observation is essential for arriving at an opinion. In the above stated circumstances, the wife having not subjected herself to medical examination the Court below ought to have drawn adverse inference or presumption against the recalcitrant party. But the trial Court proceeded in a narrow perspective and dismissed the petition. The trial Court erroneously shifted the burden of proof on the appellant." 46. The specific principle laid down by the Division Bench of this Court in the above judgment is that the burden is upon the petitioner-husband who approached the Court seeking decree of divorce under Section 13(1)(iii) of the Act and that when wife is suffering from an incurable disease of schizophrenia, husband is entitled to decree of divorce and pointed out the observations of the Medical Committee of Dr. Pramod Kumar and granted decree of divorce. The principle laid down is directly applicable to the present facts of the case, and, thereby the petitioner-husband is entitled to a decree of divorce.

47. The learned counsel for the respondent-wife also has drawn the attention of this Court to another judgment of the Apex Court in Swarajya Lakshmi v. Dr. G.G.Padma Rao. But it is a case under Section 13(1)(iv) of the Hindu Marriage Act, 1955, which affords a ground to grant a decree of divorce and when one of the spouses is suffering from virulent and incurable form of leprosy. Therefore, the principle laid down therein cannot be applied to the present facts of the case.

48. Learned counsel for the petitioner-husband further drawn the attention of the Court to the judgments of the Division Benches of this Court in Vijaya Nagini v. Ram Naren Mothe and Kukatlappalli Meri Rani v. Kukatlappalli Paul Prakash. In Vijaya Nagini's (7 supra) case, the Division Bench of this Court, while deciding petition filed under Section 12(1)(b)&(c) of the Hindu Marriage Act, 1955, held that suppression of material facts while obtaining consent for the marriage is ground to seek annulment of marriage by a decree of nullity. Similarly, Kukatlappalli Meri Rani's (8 supra) case, the Division Bench of this Court, while dealing with the petition under Sections 10(1)(iii) and 19(3) of the Divorce Act, 1869, to declare that the marriage as null and void on the ground that his wife is a lunatic. But this contention was upheld by the Division Bench of this Court that both the decisions are about annulment of marriage. Consequently, the principles laid down therein will have no application to the present facts of the case.

49. As the petitioner-husband established that he is not reasonably expected to live with the respondent-wife, as she is suffering from schizophrenia, which is aggravated and she caused injuries to the body of the petitioner-husband also due to the said disease and while working as an Assistant Divisional Engineer in Electricity Department, it is difficult for him to lead marital life with the respondent-wife for discharging his duties in a department, which is dealing with a hazardous activity of supply of electricity. Therefore, it is not reasonable to expect to lead marital life with the respondent-wife. Hence, the trial Court rightly granted decree of divorce. Even after re-appraisal of the entire evidence on record by applying the same principles in Vinita Saxena's case (4 supra) and the judgment of a Division Bench of this Court in T.Hari Kumar Naidu's case (5 supra), we find that it is a fit case to grant decree of divorce under Section 13(1)(iii) of the Act, while upholding the decree passed by the trial Court. Accordingly, the finding of the trial Court is hereby confirmed holding this point in favour of the petitioner-husband (respondent herein) and against the respondent-wife (appellant herein).

Point No.2: 50. The petitioner-husband also claimed decree of divorce on the ground of cruelty. As discussed in the earlier paragraphs, respondent-wife is suffering from

schizophrenia and due to aggravated behaviour, delusions, hallucinations, the petitioner-husband was subjected to mental cruelty and the acts complained against her by the petitioner-husband clearly indicate that the petitioner-husband experienced untold mental agony while living with the respondent-wife. In fact, several omissions or commissions were attributed to the respondent-wife by the petitioner-husband and supported the same by adducing evidence by examining the neighbours. Nothing was elicited in the cross-examination of P.W.1 and other witnesses P.Ws.2 & 4 to disprove the omissions and commissions attributed to the respondent-wife amounting to cruelty, were not denied. Mere proof that the respondent-wife subjected the petitioner-husband to cruelty by itself is not a ground to grant a decree of divorce and it is obligatory on the part of the petitioner-husband to prove that the conduct of the respondent-wife would create reasonable apprehension in the mind of the petitioner-husband that it would be harmful and dangerous for him to live with the respondent-wife, then only, he is entitled to decree of divorce. We have already narrated the specific omissions and commissions of the respondent-wife amounting to cruelty in the earlier paragraphs and it is the turn to decide whether such acts would amount to cruelty, if so whether the conduct of the respondent created reasonable apprehension in the mind of the petitioner-husband that it would be harmful and dangerous for the petitioner-husband to live with the respondent-wife. 51. Cruelty is not defined under the Hindu Marriage Act, 1955, but it is an act of indifference to or delighting in another's pain. The Courts have described the cruelty in different cases differently depending upon the facts and circumstances of each case. Cruelty may be infinite variety. It can be subtle or brutal. It may be physical or mental. It may be by words, gestures or by mere silence, violence or non-violence. That is the reason why Courts have never tried to give an exclusive definition of cruelty in matrimonial law. However, to constitute cruelty the acts or omissions must be so serious to create reasonable apprehension in the mind of other spouse that it is unsafe for one spouse to live with the other. The legal concept of cruelty generally described as conduct of such character as to have caused danger to life, limb or health (bodily or mental) or as to give rise to a reasonable apprehension of such danger. Therefore, no hard and fast rule can be laid down as to what acts or conduct will amount to cruelty in any given case. What may amount to cruelty in one case may not be in another case. In deciding whether or not a particular state of affairs amounts to legal cruelty, the Court has to consider the social status, the environment, the education, the mental or physical conditions and the susceptibilities of the innocent spouse as also the custom and manners of the parties. Whether acts and conduct complained of constitute cruelty have to be construed in reference to the whole matrimonial relationship. It may be that various acts or conduct complained of, by itself and in isolation to each other, do not amount to cruelty, but in their overall effect they may have amount to cruelty. Therefore, it is obligatory on the part of Courts to take into consideration of cumulative effect of acts of one spouse and decide whether those acts or omissions amount to either physical or mental cruelty if those acts complained would cause mental agony. Such cruelty can be said to be a legal cruelty, which constitutes a ground to grant decree of divorce. Time and again, the Apex Court discussed about the acts which would amount to cruelty, precisely defined the word cruelty. 52. In Savitri Pandey v. Prem Chandra Pandey the Apex Court while deciding the matter for grant of divorce on the ground of cruelty and desertion held as follows: "Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts, which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, or suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of sensitivity of the petitioner and has to be adjudged on the basis of course of conduct which would, in general, be dangerous for a spouse to live with the other. The averments made in the petition and the evidence led in support thereof clearly show that the allegations, even if held to have been proved, would only show the sensitivity of the appellant with respect to the conduct of the respondent which cannot be termed more than ordinary wear and tear of the family life." 53. In Naveen Kohli v. Neelu Kohli the Supreme Court held as follows: "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 languages leading to constant disturbances of mental peace of the other party". "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 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 by words, gestures or by mere silence, violent or non-violent". 54. In Samar Ghosh v. Jaya Ghosh the Apex Court precisely gave illustrations of the acts amount to cruelty. The following are instances of human behaviour to amount to mental cruelty: 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) 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. 55. Keeping in mind the relevant consideration to decide the cruelty, it is our duty to decide whether the acts complained against the petitioner-husband by the respondent-wife amount to cruelty. The first and foremost contention of the petitioner-husband is that the respondent-wife used to blame him that his parents may practice of witchcraft against her son; the second contention is that she is always suspecting that she would be killed and sleeping inside the room bolting the doors from inside; and the third contention is that she poured chilli powder on his face and mixed Trinorm and Oleanz tablets with the food and served the same to the petitioner-husband, which resulted in serious illness, and on some other occasions, she used to pull his eyelids so that he cannot sleep well. All these acts attributed to the respondent-wife cumulatively established that the respondent-wife caused mental agony amounting to both physical and mental cruelty. The petitioner-husband is working as an Assistant Divisional Engineer in Electricity Department and some times attending to night shifts also. On account of the subjecting him to cruelty by the respondent-wife either due to her sufferance from schizophrenia or otherwise, it is difficult for him to discharge his duties effectively as an ordinary employee, more particularly, during night times. Even otherwise, on account of sufferance of the respondent-wife from schizophrenia, certainly, the petitioner-husband, being a highly educated employee, would be put to mental agony. The acts complained against the respondent-wife both in the petition and in the evidence, would certainly create reasonable apprehension in the mind of the petitioner-husband that it is harmful or dangerous to the petitioner-husband to live with the respondent-wife. In such case, the petitioner-husband is entitled to a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955. Hence, we find no legal infirmities in the finding of the trial Court even after re-appraisal of the entire evidence afresh by this Court. Hence, the finding of the trial Court is hereby confirmed holding this point in favour of the petitioner-husband (respondent herein) and against the respondent-wife (appellant herein). Point No.3: 56. Since we find that there is a reasonable cause for separate living of petitioner-husband from the respondent-wife in view of our finding on point Nos.1 and 2, the decree for restitution of conjugal rights cannot be passed. The trial Court rightly negated the relief under Section 9 of the Hindu Marriage Act, 1955, while granting decree of divorce on both the grounds under Sections 13(1)(ia) and 13(1)(iii) of the Hindu Marriage Act, 1955. The finding of the trial Court does not suffer from any legal infirmity calling interference by this Court. Hence, this point is held in favour of

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