

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 03.07.2015
% **Judgment delivered on: 24.07.2015**

+ **MAT.APP. 41/2011**

SMT SAHANA PAL Appellant

Through: Mr. Ranjan Mukherjee & Mr. S.
Bhowmick, Advocates along with
appellant in person.

versus

UK SAMANTA Respondent

Through: Ms. Beenashaw N. Soni, Advocate
along with respondent in person.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. This appeal, preferred under Section 28 of the Hindu Marriage Act, 1955 (HMA) assails the judgment/ order dated 30.08.2010 passed by Ms.Seema Maini, ADJ (3) North, Tis Hazari Courts, Delhi in HMA No.125/2009 preferred by the appellant/petitioner/wife under Section 13(1)(ia) of the HMA seeking a decree for dissolution of marriage on the ground that, after the solemnization of the marriage, the respondent/ husband treated the petitioner/wife with cruelty. The learned ADJ dismissed the divorce petition by the impugned judgment.

2. The marriage between the petitioner and the respondent was solemnized on 22.10.2006 as per the Hindu rites and ceremonies at Durga Bari, Greater Kailash Part-I, New Delhi. At the time of the marriage, the petitioner/ wife and the respondent/ husband were 41 and 48 years of age respectively. The respondent was a divorcee. For the petitioner/ wife, it was the first marriage.

3. The case of the appellant/ petitioner was that after the marriage, the parties cohabited as husband and wife. However, no issue was born out of their wedlock.

4. The petitioner averred that after the marriage, she was taken to Bombay (Mumbai) at the matrimonial house on 10.11.2006, after a short trip to *Kullu-Manali*. At the time of marriage, the respondent represented that he had no demand of dowry, or any other article. However, the father of the petitioner had given articles/ jewellery, etc, as the petitioner is his only daughter. After the marriage, the respondent started harassing and torturing the petitioner by stating that the items which were given at the time of marriage by the petitioner's father, were insufficient. Soon after the marriage, all the jewellery and other articles of the petitioner were taken by the respondent and the petitioner, believing that he is acting in good faith, gave her jewellery, cash, etc. to the respondent, which was still being kept and retained by him. The respondent would tell the petitioner that there were several other offers for marriage with him, from persons who were willing to give much more dowry than what was given by the petitioner's father. The petitioner also averred that the respondent used to abuse, and even beat the petitioner, during her stay at the matrimonial house for not

bringing sufficient dowry according to his wishes. The efforts of the petitioner to make the respondent understand that her father had given enough dowry in marriage, and to be satisfied with what was given by the petitioner's father was not heeded to, and his greed was not satisfied. He continued to harass and torture the petitioner mentally and physically and also abused the father of the petitioner.

5. The petitioner also averred that after some time of marriage, the respondent started insisting that the petitioner's house situated at Saket, New Delhi, which was in the name of the petitioner, be transferred to his name. On refusal of the petitioner to do so, the respondent abused the petitioner and her father by using filthy language. He did not show any respect either for the petitioner, or for her father. The torture and beatings grew to such an extent that the petitioner was forced to leave the matrimonial home at Mumbai on 24.11.2006 after staying there for only 14 days.

6. The petitioner states that after few days, the respondent came to Delhi and apologized for his behavior and promised that he would now behave in a proper manner towards the petitioner and assured that he would not repeat his earlier conduct. The petitioner being a Hindu devoted wife, believed the said version of the respondent and, accordingly, accompanied the respondent to Mumbai on 12.12.2006.

7. The petitioner states that during the journey from Delhi to Mumbai itself, the respondent again showed his true colours by ignoring the petitioner and not caring for her requirements of food, water and other things. On the railway station, the respondent snatched the luggage of the

petitioner and went to his house leaving the petitioner at the railway station. The petitioner was left crying at the railway station and after waiting for about 2½ hours, the respondent came back to the railway station and forcibly took the petitioner pulling her hands in front of the public. The petitioner had no other alternative but to accompany the respondent to the matrimonial home.

8. The petitioner further states that on reaching Mumbai, the respondent again started harassing, torturing and beating the petitioner by insisting that the property situated at Saket, New Delhi should be immediately transferred in his name. He even disclosed that he had married the petitioner only on account of the property held by the petitioner. This came as a shock to, and astonished the petitioner, as she never expected her husband to behave in that way. On refusal of the petitioner to transfer the said property in the name of the respondent, he used to beat her every now and then.

9. The petitioner states that the respondent used to go to his office locking the main door of the flat so that the petitioner may not go anywhere, or talk to any neighbor in his absence. He would even lock the door of the bathroom from outside when the petitioner was in the bathroom. During her stay at the matrimonial house, the petitioner was not allowed to talk to her father on phone. He would lock the telephone, so that the petitioner may not call anybody, including her ailing father. He would come back to the house drunk, and use foul language against the petitioner and her father. The petitioner states that she had to stay at the house the whole day, and could not call anybody even if there was an emergency.

10. The petitioner states that the respondent used to bring several girls along with him to the matrimonial house in the presence of the petitioner. The petitioner has disclosed the names of several of these girls. She stated that the respondent claimed that they were all ready to marry him. Sometimes these girls used to stay at the matrimonial house of the petitioner even during the night.

11. The petitioner states that the aforesaid behavior of the respondent revealed to the petitioner that the respondent had married the petitioner only for the sake of her property and because of dowry. He used to torture the petitioner and never showed any love and regard towards the petitioner. The torture and beatings increased day-by-day, and ultimately on 04.01.2007, the petitioner was turned out of the matrimonial house. She was not allowed to bring her jewellery articles, clothes, utensils, garments, etc. which are still with the respondent and despite several requests and demands, the respondent has not returned the same till date.

12. The petitioner states that she is residing with her old father at Saket, New Delhi. The petitioner states that even after her return to Delhi, the respondent on several occasions visited the parental house of the petitioner and stayed there forcibly. Even during the said stays, he expressed that the petitioner should ask her father to transfer the house at Saket in his name. The petitioner states that on 26.04.2007, the respondent came to the parental house of the petitioner in the evening, when the petitioner was not there, and only her father was there. When the petitioner came back, the respondent started quarrelling with the petitioner and her father. The petitioner refused the permission to the respondent to stay at the night, and on this, the

respondent became angry and pulled the petitioner by her hair and slapped her. Only after a lot of effort, the petitioner could get him out of her parental house. The respondent came back on the next morning in a drunken state and started shouting loudly and abusing the petitioner and her father in the presence of neighbours and labourers, who were present on the road. The situation became so disgraceful and shameful – because the respondent refused to leave, that finding no alternative, the police had to be called to save the petitioner and her father.

13. The petitioner states that the respondent has been threatening the petitioner and her father to implicate them in false criminal cases, and of dire consequences. He has even threatened the petitioner that if the property at Saket is not transferred in his name, he will not allow the petitioner to return to her matrimonial home. The petitioner states that the aforesaid conduct of the respondent amounts to physical and mental cruelty against the petitioner, due to which, it has become impossible for the petitioner to live with the respondent.

14. Upon being noticed, the respondent filed his written statement in March 2009. He denied all the allegations made by the petitioner/ wife against him. He stated that the petitioner voluntarily left the society of the respondent, and she had been living separately out of her own choice. The respondent stated that it was a simple marriage conducted at a temple without inviting any persons, except a Cameraman and a *Purohit*. He stated that no reception was held by the petitioner's father to avoid expenditure. He stated that he made payments to the Photographer and *Purohit*. He states that the entire expenses on marriage was only Rs.4,000/-, including the

offerings to the *Purohit*, which were paid by him. He stated that the match was arranged through an organization, namely 'Sycorian Matrimonial Services Limited', wherein an advertisement was issued at the petitioner's behest.

15. The respondent denied that the father of the petitioner gave any dowry articles, including jewellery, etc. or that the said articles are being kept and retained by the respondent. He states that he neither demanded any dowry prior to the marriage, nor after the marriage. He admits that the petitioner was taken to her matrimonial house at Mumbai on 10.11.2006 after a short trip to *Kullu-Manali*. He claims that the respondent gave several valuables such as costly sarees, gift items, jewellery and room decoration items to the petitioner and the expenses for the same were borne by him alone. He denies that quarrel took place between the parties in relation to the dowry items.

16. He also denies that he insisted that the petitioner transfers her property in his name. He states that the petitioner pressurized the respondent to come to Delhi to look after her old father, as he was residing alone in Delhi. He states that the petitioner and her father pressurized the respondent to become a '*Ghar Damad*', as the petitioner had no one in her family to look after her old father. He states that on account of the bad behaviour and doubtful nature of the petitioner and her father, none of her relatives or friends have maintained any relations with her, or her father. He states that the petitioner and her father had claimed that the brother of the petitioner, in collusion with other relatives, wanted to grab their house at Saket, which is now valued at Rs.2 Crores. He states that the intention of

the petitioner and her father was to keep the respondent as '*Ghar Damad*' to protect and maintain the house and also to look after them for their security, safety and maintenance.

17. The respondent denies that he ever apologized to the petitioner for his alleged behavior, or promised that he would behave in a proper manner with the petitioner, since there was no question of offering any apology, as no instance, as alleged, took place. He denied the allegations of the petitioner that she was not permitted to meet the neighbours and relatives while staying in the matrimonial house, or of locking her inside the bathroom.

18. The respondent stated that he opposed the entry of one Rajiv Ranjan Sinha, who was alleged to be the boyfriend of the petitioner, as the petitioner disclosed herself that "*she had sexual relationship with Mr. Rajiv Ranjan Sinha for years before the marriage*". He claimed that he had requested the petitioner to discontinue her physical relationship with Mr. Rajiv Ranjan Sinha "*who not only continued the physical relationship with the petitioner but also misguiding her each and every moment against the respondent and one of the root cause of creating problems in their matrimonial life*". He sought to place reliance on the telephone bills of the calls allegedly made by the petitioner from Mumbai to her father in Delhi.

19. The respondent claimed that he was a Chartered President of Lions Club and a life member of many organizations. He introduced the petitioner as his wife to his neighbours, friends, press reporters, photographers, advocates, etc. in both in Delhi and Mumbai. He stated that the names of the ladies disclosed by the petitioner, who were allegedly having

extramarital relationship with the respondent, were the persons to whom the petitioner was introduced in the respondent's circle. He further stated that *"In fact such doubt of grabbing house property is nothing but a dangerous allegation injected by Rajiv Ranjan Sinha into the mind of petitioner with a malafide intention to break the relationship of the petitioner with the respondent"*.

20. The respondent while denying that jewellery and valuable articles, household articles etc. belonging to the petitioner were lying with him, stated that the petitioner *"kept her all valuable jewellerys, utensils, garments and the valuable awards of the respondent, important certificates and business documents, documents of the house property of Mumbai belonging to the respondent, the gold and valuable of the mother of the respondent, etc. were theft and kept under lock and key by the petitioner at her house at Saket, New Delhi. As the respondent do not want any matrimonial dispute and still having love affection towards the petitioner, did not take any legal action against the petitioner"*. (Emphasis supplied)

21. The respondent does not deny that an unpleasant and untoward incident took place at the residence of the petitioner in Delhi on 25 – 26.04.2007. However, he has his own version of the said incident. In his version, the respondent has sought to put the blame on the petitioner and her father. He states that since 25.04.2007, the respondent is separated by the petitioner without any rhyme or reason.

22. The respondent denies that he has physically or mentally tortured, or harassed the petitioner, or that he has demanded dowry, house property, or

any other property from the petitioner. He denied that he has treated the petitioner with cruelty. He states that he has full love and affection for the petitioner and wants to stay with her to keep mental peace and harmony in his matrimonial life. However, he states that he is not ready to stay as '*Ghar Damad*' at Saket, New Delhi by selling his house at Mumbai, or leaving his business in Mumbai.

23. The petitioner moved an application dated 16.07.2008 under Section 24 of the HMA. This application was opposed by the respondent. In his reply to this application, he, *inter alia*, stated that "... ... *the boyfriend of the petitioner Mr. Rajiv Ranjan Sinha misleded the petitioner that the said Advocate took the signature of the petitioner in the documents for encroaching her house property in collusion with the respondent. Thereafter, the entire dispute arises between the parties*".

24. The application of the petitioner/ wife under Section 24 was disposed of vide order dated 01.08.2009. The petitioner was granted maintenance of an amount of Rs.6,500/- per month from the date of filing of the application together with litigation expenses of Rs.10,000/-. The respondent, however, did not comply with the said order. Since he had not appeared before the Court on 01.09.2009 despite repeated calls, he was proceeded ex-parte. On 01.10.2009, the respondent appeared and stated that he would move an application for setting aside of the ex-parte proceeding. However, he did not appear before the Court on 21.11.2009. The application was moved only later on 21.12.2009, and it was allowed on 14.01.2010 subject to payment of costs. However, he did not pay the maintenance.

25. The learned ADJ set aside the ex-parte proceedings against the respondent on 14.01.2010, and also framed the issues. The first issue was whether the petitioner has been treated with cruelty by the respondent, as alleged. The onus to prove the same was placed on the petitioner. The third issue framed was whether the petitioner has left the company of the respondent without any reasonable cause. The onus to prove this issue was placed on the respondent.

26. The petitioner examined herself as PW-1. She filed her affidavit by way of evidence (Exhibit PW-1/A), which is in consonance with her averments made in her petition. She was cross-examined by the respondent's counsel on 12.05.2010, whereafter she closed her evidence in affirmative on 21.07.2010.

27. Since no payment of awarded maintenance was made to the petitioner despite several opportunities, on 21.07.2010, the Court struck off the defence of the respondent and closed the right of the respondent to lead evidence. While passing this order, the learned ADJ observed that it is quite apparent that the respondent is deliberately flouting the orders of the Court and his conduct had been shown indulgence and latitude for nearly one year. The case was listed for final arguments on 16.08.2010.

28. Arguments were finally heard by the learned ADJ on 16.08.2010. Pertinently, none represented the respondent and no arguments were advanced on his behalf. The learned ADJ then proceeded to pass the impugned judgment dismissing the petitioner's petition under Section 13(1)(ia) of the HMA.

29. The submission of Mr. Mukherjee, learned counsel for the petitioner is that the impugned judgment is patently laconic and the findings returned by the learned ADJ border on perversity. He submits that even though the respondent filed his written statement denying the averments made in the petition with regard to the cruelty perpetrated by the respondent on the petitioner, and further went on to make serious allegations impinging on the character of the petitioner by accusing her of maintaining an adulterous relationship with one Rajiv Ranjan Sinha, he did not lead any evidence either to deny the substantial allegations made against him in the petition, or to prove his own allegation of adultery made against the petitioner. Moreover, his defence having been struck off, the written statement could not have been read or relied upon by the respondent.

30. Mr. Mukherjee submits that the petitioner was cross-examined by the respondent's counsel and he has referred to the said cross-examination to submit that the petitioner withstood the said cross-examination perfectly well, and there is nothing in the cross-examination of the petitioner to discredit her testimony in chief. Mr. Mukherjee submits that since the defence of the respondent had been struck off, the learned ADJ was not entitled to look into the same. However, on the basis of the written statement of the respondent – which was never substantiated by the respondent by leading any evidence, the learned ADJ dismissed the divorce petition.

31. Mr. Mukherjee submits that the learned ADJ gave undue weightage to the fact that the petitioner did not file any replication to the written statement of the respondent so as to refute the assertions of the respondent in his

written statement. In paragraph 22 of the impugned judgment, the learned ADJ, *inter alia*, observed “*The petitioner did not refute any of these assertions by filing any replication to the written statement*”. He submits that the non-filing of the replication does not tantamount to the petitioner admitting the averments of the respondent as contained in the written statement.

32. Mr. Mukherjee submits that despite the fact that the respondent did not lead any evidence in support of his defence, the learned ADJ disbelieved the petitioner’s assertion that the respondent demanded, post the marriage, dowry and was particularly interested in grabbing the petitioner’s property at Saket, New Delhi, by observing:

“Being a divorcee ones, it seems implausible that the respondent would have entered into the second marriage with an underline intention to disrupt the marriage with demands of dowry, gifts and the consequent torture of the petitioner / wife only on her incapability of fulfilling his demands. Admittedly, by the petitioner, she stayed in the matrimonial home at the first evoke, only for 14 days, and the respondent could have tortured for that demands, if true, would not have made the petitioner, who was a matured person of 41 years of age, to accompany the respondent at the matrimonial home, without much ado”.

33. The learned ADJ also did not believe the case of the petitioner that she was not kept in captivity by the respondent, by observing that the petitioner could have raised a hue and cry and called for help from the neighbours & the maid servant, and she could have made an attempt to run away from the house.

34. The learned ADJ while dealing with the case of the petitioner on the aspect of physical assault, torture and convention by the respondent observed as follows:

“The petitioner has stressed upon that she used to be locked in the house by the respondent with only a maid servant visiting the house from 8 a.m. to 9 a.m. However, if human psychology is kept in mind, it would transpire that a person who was o stressed and forced to live in captivity, being locked by the husband in the house for the entire day, would have made any desperate effort to escape from the captivity. The petitioner could have slammed on the doors, windows, shouted for the neighbours and if a maid servant was the only person coming into her contact, then she would have made an attempt to bring her owes into her knowledge either vocally or in writing. Even otherwise, if such a drastic stand was taken by the respondent in locking the petitioner inside the house for no rhyme or reason, nothing stopped the petitioner from raising hue and cry and making an attempt to run away from the house. The very fact that no such effort was made by the petitioner only goes to show that the allegations made by her are quite implausible and therefore lacks truthfulness. It is also hard to believe that admittedly, the respondent being an Engineer by profession, being awarded socially and living in Mumbai, would not be having the facility of a telephone in his house. Even though, the defence of the respondent was struck off and the evidence on which he was supposed to rely upon could not be taken on record technically, but at the same time, the assertions made by him in the written statement can not be ignored, and the factum of petitioner communicating with her father on phone is asserted emphatically and it has also been mentioned that phone records have also been filed as necessary annexures. It is to be noted that petitioner has not refuted any of these assertions by filing a replication to the written statement.”

35. Mr. Mukherjee submits that even though the respondent did not lead any evidence in his defence, the learned ADJ not only rejected the

petitioner's assertion with regard to the respondent having illicit relationship with other ladies, but also proceeded to make the following unjustified and unfounded observation:

“Rather the mentioning of 7-8 names of girls and imputing untoward relations of these girls, if they actually exist, with the respondent, is rather fortifying the assertions of the respondent that the petitioner was a suspicious woman, who always doubted the respondent's character.”

36. Mr. Mukherjee further submits that the learned ADJ fell into perversity while observing that the petitioner had not named Mr. Rajiv Ranjan Sinha in her petition. Merely because the petitioner had not filed the replication to the written statement of the respondent, wherein he claimed that Rajiv Ranjan Sinha was the paramour of the petitioner, and only on account of the fact that the petitioner admitted in her cross-examination that Rajiv Ranjan Sinha was a family friend from her father's side for about six months prior to her marriage, and he attended the award function in which the respondent was felicitated, the learned ADJ has sought to raise a presumption that the petitioner was in an adulterous relationship with him. On the said aspect, the learned ADJ observed that:

“It is to be noted that the name of Mr. Rajiv Ranjan Sinha has not been mentioned at all by the petitioner in her petition, even though, it found a mention in the written statement of the respondent. But thereafter, petitioner did not bother to refute any of the assertions. Admittedly, in the cross examination of the petitioner, the petitioner was acquainted with him only 6 months prior to her marriage. A 6 months acquaintance seems to be a short acquaintance for the person to be termed as a family friend. But the fact that he also attended the award

function in which the respondent was felicitated does seem untoward.”

37. Mr. Mukherjee further submits that the learned ADJ further fell into error by observing that it was the petitioner who treated the respondent with cruelty, by not allowing him to enter her parental house in Delhi and by not giving him the respect that was due, even though no evidence in support of his version had been led by the respondent in relation to the incident of 25.04.2007. The learned ADJ on this aspect observed as follows:

“It is admitted by the petitioner that on 25.4.2007, when she had again come to her parental house, she and her father did not allow him to enter the house. In this scenario, the very fact that on 25.4.2007, the respondent had once again come to Delhi at the parental house of the petitioner, the petitioner and her father's attitude in not allowing him to enter the house, rather shows that it was the petitioner who was cruel towards the respondent, by not giving him the respect that was due. It seems ironical that the petitioner who talks of being ashamed to say anything about her plight to the maid servant, would create a scene at her parental house by not allowing her husband to enter the parental house.”

38. Mr. Mukherjee further submits that the learned ADJ has rejected the petitioner's case and testimony of her being beaten up on several times on the ground that there was no record of the medical treatment and no person had witnessed the same, and that she had not sent any letter to her father, or family friend Rajiv Ranjan Sinha. There was no evidence that the respondent had demanded the petitioner to transfer the house at Saket in his name. The learned ADJ held that the allegations of the petitioner are vague, ambiguous and appear to be a figment of her imagination and do not inspire confidence. Mr. Mukherjee submits that the petitioner's evidence had gone

unrebutted. There was no reason for the learned ADJ to disregard the same. He further submits that it is not necessary that physical injuries caused by the husband on the person of the wife should necessarily result in medical treatment, or a recording in the form of a letter, or otherwise. He submits that the marriage between the petitioner and the respondent subsisted for very short durations. On the first occasion, the petitioner left the matrimonial house in just 14 days (i.e. between 10.11.2006 to 24.11.2006); and on the second occasion, the petitioner had stayed at the matrimonial house with the respondent at Mumbai for about three weeks (i.e. between 12.12.2006 to 04.01.2007). Thus, the period of the petitioner's stay in Mumbai, in the matrimonial house with the respondent, during which she suffered physical and mental torture at the hands of the respondent was so short that there was no occasion to record the acts of cruelty and ill-treatment meted out by the respondent to the petitioner in the form of letters to her father.

39. Mr. Mukherjee further submits that the impugned judgment is contradictory in itself. He submits that while deciding issue No.1 against the appellant, i.e. whether the petitioner has been treated with cruelty by the respondent, issue No.3 has been decided in favour of the appellant/petitioner. The said issue was "*whether the petitioner has left the company of the respondent without any reasonable cause? OPR*". He submits that since issue No.3 has been decided in favour of the appellant, the finding returned is that the appellant did not leave the company of the respondent without any reasonable cause. The appellant had good reasons for leaving the company of the respondent and returning from Mumbai on 04.01.2007.

Mr. Mukherjee submits that the finding on issue No.3 in favour of the appellant itself establishes the charge against the respondent that he had acted with cruelty towards the appellant, which justified the appellant's leaving the matrimonial home at Mumbai on 04.01.2007. Mr. Mukherjee further submits that the serious allegations made by the respondent in his written statement before the learned ADJ, as well as before this Court in reply to C.M. No.11012/2011 of the appellant having an adulterous relationship with Rajiv Ranjan Sinha is itself evidence of character assassination of the appellant. The said allegation is baseless and unfounded and the same tantamount to cogent severe mental cruelty to the appellant.

40. On the other hand, learned counsel for the respondent fully supports the impugned judgment. She submits that the appellant did not file replication to refute the averments made by the respondent in his written statement. Consequently, they are deemed to be admitted and do not require proof. She submits that the failure of the respondent to lead evidence, therefore, does not adversely affect the case of the respondent.

41. Learned counsel for the respondent further submits that the appellant has been calling the respondent to visit her and live with her from time to time. Even after the dismissal of the divorce petition by the impugned judgment, the respondent was called by the appellant to Delhi. The appellant came to Delhi on 26.09.2010 along with his friend – one Mr. Tambe, by an Air India flight. She submits that the parties spent time together and from 26.09.2010 onwards the respondent resided in the house of the appellant for 3-4 months continuously up to December 2010. During this period, the respondent purchased Mangal Sutra, Vermillion (Sindoor),

Conch-Bangle (Sankha), Jewellery Set, Sarees and also the dresses for her father on 30.10.2010. She submits that the appellant and the respondent joined the Durga Puja and Kali Puja celebrations and celebrated Diwali and Bhai Duj festival together in Delhi. The respondent also celebrated birthday of the respondent on 04.12.2010 at the residence of the appellant. During this period, they lived and cohabited together as husband and wife. Learned counsel submits that the appellant had during this period apologized for filing the divorce petition as “she was misguided by her boyfriend Rajiv Ranjan Sinha and her advocate”. Learned counsel submits that the facts have been brought on record in the reply filed by the respondent to application of the appellant to seek condonation of delay (C.M. No.11012/2011). The respondent submits that after the said cohabitation, the cause of actions pleaded by the appellant stands extinguished and no decree of divorce can be passed.

42. Learned counsel submits that the appellant, apart from making bald assertions of the respondent treating her with physical and mental cruelty, did not produce any evidence whatsoever, either by producing any medical record; any correspondence regarding the alleged acts of cruelty on the part of the respondent; any communication from the respondent demanding dowry after the marriage, and; any other witness to the alleged acts of cruelty. The learned ADJ rightly did not accept the self-serving and unsubstantiated statement of the appellant while dismissing the divorce petition.

43. In his rejoinder, Mr. Mukherjee submits that the appellant never resided with the respondent, as alleged, after dismissal of the divorce

petition. He submits that the appellant has filed a detailed rejoinder in C.M. No.11012/2011, vehemently denying all the allegations. He submits that the documents produced by the respondent with the reply to C.M. No.11012/2011 are forged and fabricated. He submits that the respondent, apart from producing a few photographs and few photocopies of vague bills, has not chosen to seek leave of the Court to lead any additional evidence. The documents now sought to be produced along with the reply to C.M. No.11012/2011, therefore, cannot be relied upon by the respondent, or looked into by the Court.

44. From the record, it appears that on 11.03.2015, the appellant stated before the Court that, without prejudice to the rights and contentions of the appellant, she is prepared to part company with the respondent without any financial implication. Consequently, the Court directed the respondent to remain present in Court. The respondent, however, did not appear and, consequently, the case was adjourned to 03.07.2015. On the said date, both the parties appeared. The Court interacted with the parties. The appellant claimed that there was nothing left in the marriage since they had lived for just about 2 weeks and 3 weeks together since their marriage, which was solemnized nearly 9 years ago. She further stated that the respondent has not even paid the maintenance, as directed by the Trial Court. She submitted that her two short stays of 2 week and 3 weeks with the respondent had left her with a bitter experience, as she realized that the only reason why the respondent married the appellant was that he was interested in her residential property at Saket, New Delhi. She submits that after the marriage, the respondent kept on insisting that the said property be disposed

of and the proceeds be taken to Mumbai. She stated that she did not want anything from the respondent, and she wants freedom from the formal relationship of husband and wife with the respondent.

45. On the other hand, the respondent stated that he still loves the appellant and he considers it his duty to protect and look after the appellant. He stated that as a husband, it is his duty to safeguard the appellant and keep her away from other influences. He stated that he is willing to overlook the past conduct of the appellant and to even now resume cohabitation with the appellant. He denied that he is interested in her property. He stated that at the time of marriage, he did not demand dowry and none was given. A simple marriage was held with no other celebrations, and he had borne the entire expenses.

46. As noticed above, the respondent/husband apart from filing his written statement, did not appear before the learned ADJ to defend himself. On account of his failure to pay the maintenance, as ordered by the Trial Court, his defence was struck off vide order dated 21.07.2010. The effect of the defence of the respondent being struck off would be that the respondent would not be entitled to rely upon the defence set up by him in his written statement and the Court would also not give any weightage to the same. In the present case, the respondent's defence having been struck off, it tantamounted to there being no written statement/defence on the record. In this regard, reference may be made to *Paradise Industrial Corporation v. Kiln Plastic Products*, (1976) 1 SCC 91. The Supreme Court in this decision, inter alia, observed as follows:

“.... The phrase "defence struck off" or "defence struck out" is not unknown in the sphere of law. Indeed it finds a place in Order XI Rule 21 of the Code of Civil Procedure.... In effect, both mean the same thing. Nobody could have misunderstood what was meant. Even when a defence is struck off the defendant is entitled to appear, cross-examine the plaintiffs witnesses and submit that even on the basis of the evidence on behalf of the plaintiff a decree cannot be passed against him,...”

47. Reference may also be made to ***M/s Babbar Sewing Machine Co. v. Triloknath Mahajan***, (1978) 4 SCC 188. In this case, the Supreme Court, while dealing with the provision contained in Order 11 Rule 21 CPC (which deals with the effect of non-compliance with order for discovery), inter alia, observed as follows:

“... ... A perusal of Order XI, Rule 21 shows that where a defence is to be struck off in the circumstances mentioned therein, the order would be that the defendant "be placed in the same position as if he has not defended". This indicates that once the defence is struck off under Order XI, Rule 21, the position would be as if the defendant had not defended and accordingly the suit would proceed ex parte. In Sangram Singh v. Election Tribunal 1955 (2) SCR 1 , it was held that if the court proceeds ex parte against the defendant under Order IX, Rule 6(a), the defendant is still entitled to cross-examine the witnesses examined by the plaintiff...”

48. These decisions have been followed in ***Modula India v. Kamakshya Singh Deo***, (1988) 4 SCC 619. The Supreme Court while dealing with a case falling under West Bengal Premises Tenancy Act, 1956, inter alia, observed:

“even in a case where the defence against delivery of possession of a tenant is struck off under Section 17(4) of the

Act, the defendant, subject to the exercise of an appropriate discretion by the court on the facts of a particular case, would generally be entitled:

(a) to cross-examine the plaintiff's witnesses; and

(b) to address argument on the basis of the plaintiff's case.

We would like to make it clear that the defendant would not be entitled to lead any evidence of his own nor can his cross-examination be permitted to travel beyond the very limited objective of pointing out the falsity or weaknesses of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses."

49. A Division Bench of this Court has applied the decision in **Modula** (supra) in **Kulbhushan Seth v. Seema Seth & Ors.**, 2008 (2) ILR (Del) 698. The defence of the appellant had been struck off by the learned Single Judge because the appellant failed to file an affidavit disclosing his gross salary. In appeal, the appellant sought to place reliance on **Modula** (supra) to contend that inspite of the defence of the defendant/appellant having been struck off, the Court was bound to look into his written statement. After setting out the above extract from **Modula** (supra), the Division Bench observed:

"5. A perusal of the above judgment of the Hon'ble Supreme Court makes it clear that the right of the defendant in such a situation is to cross-examine the plaintiff's witnesses and to address arguments on the basis of the plaintiff's case. It has also been held that in no circumstances the cross-examination can be permitted to travel beyond the legitimate scope and to convert itself virtually to a presentation of the defendant's case

either directly or in the form of suggestions put to the plaintiff's witnesses. In our view, this itself shows that the judgment of the Hon'ble Supreme Court does not support the plea advanced by the learned Counsel for the appellant and on the contrary supports the stand of the respondent that the appellant's written statement cannot be taken in account. Accordingly, there is no merit in the appeal".

50. In any event, a pleading is not evidence, and cases are required to be decided on the basis of evidence. The Court cannot proceed on the basis of a mere pleading, unless the same is admitted, and if disputed, is substantiated by acceptable evidence. Since the defence of the respondent had been struck off, the learned ADJ ought not to have looked into the same while rendering the impugned judgment.

51. A perusal of the impugned judgment shows that the learned ADJ has placed reliance on the written statement, merely on account of the fact that the appellant/petitioner did not file a replication to the written statement of the respondent. It is well-settled that a replication does not form part of the pleading. The divorce petition had been preferred by the appellant. The respondent had not preferred his own petition, either to seek divorce, or to seek restitution of conjugal rights on the basis of the averments contained in his written statement. The petitioner was, therefore, not obliged to file a replication to the said written statement, as she had to establish her own case of cruelty pleaded against the respondent, and it was for the respondent to defend that charge of the appellant/petitioner.

52. In **Anant Construction (P) Ltd. v. Ram Niwas**, 1994 (31) DRJ 205, this Court has observed, inter alia, as follows:

*“9. It is basic concept of pleadings that a defendant has to deny specifically every averment made in the plaint if he choses to dispute the same. As already stated, a non-specific or evasive denial in written statement may be taken as an admission of plaint facts. A failure to file WS would enable the Court pronouncing judgment against the defaulting defendant. However, a plaintiff is not to be treated similarly. **Every material averment made in the written statement is presumed to be denied by the plaintiff and for that purpose he need not file a replication.***

x x x x x x x x x x

21.1 The law of pleadings does not require a plaintiff to file a replication merely denying the allegations made in the written statement. Failure to file a replication cannot be treated as an admission of the plea in the written statement. *Veemsekhara v. Amirthavalliammal, MANU/TN/0147/1975 : AIR1975Mad51 , Laxmansing. v. Laxminarayan Deosthan. MANU/NA/0143/1947 : Air 1948 Nag 127, Bank of Behar Ltd v. Madhusudan Lal, Air 1937 Pat 4281.*

21.2 In Amarjeet Singh vs Bhagwati Devi 1982 (12) Rlr 156, this Court has held a pleading to mean plaint and written statement only. A plaintiff can claim relief on the basis of pleas in the plaint and not on pleas in the replication.

21.3 In Roshan Lal vs. Prem Prakash, MANU/BH/0010/1980 : Air 1980 Pat 59, it was held :

*"A subsequent pleading by way of defense to a set off or counter-claim can be filed by the plaintiff as a matter of right, but the provisions do contemplate the filing of other pleading as well but by the leave of the Court and invest the Court with the widest possible discretion. Either party may, with the leave of the Court file a supplementary written statement, but at the same time **the law does not compel the plaintiff to file any rejoinder to the allegations made in the written statement and the failure of the plaintiff to file such a rejoinder, cannot be treated as an admission of***

the plea in the written statement. The plaintiff is entitled to join issues with the defendant with respect to all those allegations which are made in the written statement and may lead evidence in rebuttal of those allegations notwithstanding the fact that he does not file any rejoinder."

21.4 *Moti Ram vs Baldev Krishan MANU/DE/0177/1978 : 15(1979)DLT90 is a single bend decision of this Court. It only says replication permitted by the Court to. be filed forms part of the pleading besides the plaint and the written statement, which strictly constitute pleading under Order 6 Rule I CPC. The High Court of Punjab has in Mateshwar Dayal Vs Amar Singh, 1983 P&H 197 and Jag Dutta V. Savitri Devi. MANU/PH/0016/1977 held that replication is a part of the pleadings and the plea raised therein cannot be overlooked. All these decisions were cited by the learned counsel for the petitioner. Suffice it to say that replication if allowed by the court becomes a part of the pleadings. To this extent there can be no dispute".*

x x x x x x x x x x

24. To sum up:

x x x x x x x x x x

(7) A mere denial of defendant's case by plaintiff needs no replication. The plaintiff can rely on rule of implied or assumed traverse and joinder of issue".

(Emphasis supplied)

53. In ***K. Laxmanan Vs. Thekkayil Padmini and Others***, (2009) 1 SCC 354, the Supreme Court held that pleadings, under Order VI Rule 1 CPC consist of only the plaint and the written statement. The plaintiff could have filed a replication in respect of the plea raised in the written statement, which if allowed by the Court, would have become the part of the pleadings.

But mere non-filing of a replication does not and could not mean that there has been admission of the facts pleaded in the written statement.

54. Despite the above stated legal position, the learned ADJ culled out the averments of the respondent contained in his written statement in paragraphs 10 to 13 in extenso. In paragraph 22 of the impugned judgment, the learned ADJ squarely places reliance on the averments made in the written statement despite the respondent's defence having been struck off and he, obviously, not having led no evidence in support of his defence, by observing, *inter alia*, as follows:

“22. Reverting back to the case in hand, the petitioner has alleged that she was subjected to immense torture, harassment and even physical beatings at the hands of the respondent in the matrimonial house in Mumbai, primarily on account of insufficient dowry. It is pertinent to note at this juncture, that in the written statement filed by the respondent, he had specifically denied that no such demands were ever made by him from the petitioner or her father. He had even asserted that the marriage was a simple marriage conducted in a temple where the entire expenses of Rs.4,000/- were also borne by him or that no gifts or articles were given by the father of the petitioner at the time of marriage. The petitioner did not refute any of these assertions by filing any replication to the written statement.

x x x x x x x x x x

Even though, the defence of the respondent was struck off and the evidence on which he was supposed to rely upon could not be taken on record technically, but at the same time, the assertions made by him in the written statement cannot be ignored, and the factum of petitioner communicating with her father on phone is asserted emphatically and it has also been mentioned that phone records have also been filed as

necessary annexures. It is to be noted that petitioner has not refuted any of these assertions by filing a replication to the written statement.”

(Emphasis supplied)

55. In my view, the manner in which the learned ADJ proceeded to deal with the case is completely flawed. The approach of the learned ADJ was erroneous in law. The learned ADJ should have tested the case of the appellant as set out by her in her pleadings on the strength of the evidence led by the appellant, and should not have been influenced by the defence set up by the respondent as the defence itself had been struck off and remained un-substantiated. The findings returned by the learned ADJ that “*Being a divorcee ones, it seems implausible that the respondent would have entered into the second marriage with an underline intention to disrupt the marriage with demands of dowry, gifts and the consequent torture of the petitioner/ wife only on her incapability of fulfilling his demands*”, is not supported by the evidence led in this case. The learned ADJ failed to appreciate that the respondent, being a divorcee, was more immune to the trauma and embarrassment associated with it, than the appellant, who was undisputedly, unmarried and clearly disclosed herself to be a virgin at the time of her marriage. In the Indian context, generally, a divorce affects the status and reputation of the woman much more adversely, than it affects a man. Socially, the embarrassment, shame and stigma attached to divorce compromises the situation of the woman much more, than the man. It is far more difficult for a divorced woman to get remarried, than it is for a divorced man. In *Naval Kishore Somani Vs. Poonam Somani*, AIR 1999 AP 1, the Court, *inter alia*, observed:

“18. The Indian woman is by nature willing to sacrifice for purposes of saving matrimonial life ”

56. In ***John Idiculla & Another Vs. State of Kerala & Another***, 2005 CrL.L.J. 2935, the Court observed:

“22. A girl in the family is normally disciplined at home to bear any hardship and suffering that may shoot up in the matrimonial life with high degree of patience, courage and strength for maintaining the matrimonial bond strong and firm. Her role in life as a wife is considered to be greater than that of a man as a husband and she is the one who is expected to make sacrifices to preserve the marriage for the sake of her children and family. This is the culture of this country. This is the tradition of this land. This is the concept which runs through every vein of Indian society.... ”

57. Thus, the woman has much at stake in the preservation of the marriage by making adjustments in the matrimonial home. There was no basis for the learned ADJ to observed that it was *“implausible that the respondent would have entered into the second marriage with underlying intention to disrupt the marriage with demand of dowry, gifts and consequent torture of the petitioner/ wife only on her incapability to fulfill his demands”*.

58. Similarly, the finding that if the appellant had been tortured during her first stay in the matrimonial home for 14 days, she would not have gone to her matrimonial home with the respondent once again, to say the least, borders on perversity. Parties to a marriage – and particularly the woman, try to preserve the relationship, and are open to giving it a second shot, and many more chances, in the hope that the relationship would work out. The parties to a marriage forget and forgive each other’s perceived mistakes and

conduct, to give another opportunity for the relationship to work. Merely because the appellant returned with the respondent to Mumbai on the second occasion, when the respondent himself came to pick her up and take her back, does not lead to the conclusion that she was not ill-treated, tortured, or not treated with cruelty during her first stay of 14 days. The Court below has overlooked the aspect that the appellant woman – for whom it was the first marriage at the age of 41 years would, want to work the relationship. She would not leave her matrimonial home all of a sudden after 14 days of staying together with the respondent at Mumbai, had it not been on account of some drastic circumstances and situations. The respondent did not bring on record any material to show that the appellant herself was responsible for her returning to Delhi, and that she did not have any genuine reason or grouse, resulting in cruelty, which may have led her to leave the matrimonial home.

59. As submitted by Mr. Mukherjee, there is a contradiction in the impugned judgment itself. On the one hand, it has been held that the appellant/petitioner has not established that she was treated with cruelty by the respondent while, on the other hand, issue No.3 has been decided in favour of the appellant – meaning thereby, that the appellant had not left the company of the respondent without a reasonable cause. The question arises as to what is that “reasonable cause” which prompted the appellant to leave her matrimonial home.

60. No doubt, the appellant did not lead evidence of any specific instance of the alleged cruelty meted out by the respondent while at Mumbai, in the form of communications to her father, or anyone else, and did not lead

evidence of other witnesses of her being treated with cruelty – namely the maid in the matrimonial home, or the neighbours of the matrimonial house, but that failure of the appellant has to be viewed in the light of the fact that she was in the matrimonial home for very short spell of 2 weeks and 3 weeks. She was in Mumbai, whereas her family was in Delhi. The divorce petition itself had been instituted about 18 months after the appellant had lastly separated from the respondent in January 2007. Thus, for her to gather and lead evidence of the maid servant – who was an employee of the respondent at the relevant time in December 2006 – January 2007, and of the neighbours with whom the appellant had no acquaintance, was difficult, to say the least. Pertinently, in her cross-examination, the appellant had stated that she has not disclosed regarding her confinement and being locked up in the house *“because the respondent used to be around when the maid used to come for work and therefore, I was not able to tell. I did not put my grievances on paper and handed over to the maid for communicating my grievances to any authority. Vol. I was too ashamed to write such kind of a letter. I did not make any complaint to the police station also. I left my matrimonial home for the last time on 04.01.2007. In Delhi, I made a complaint in CAW Cell against the respondent”*.

61. In relation to the incident of 25.04.2007, the appellant had deposed in her examination in chief:

“That on 26.4.07, the respondent came to the parental house of the deponent in the evening hours, when the deponent was not there and only her father was there. When the deponent came back, the respondent started quarreling with the deponent and her father. At that time, the deponent refused him the

permission to stay at night and on this the respondent became so angry that he pulled the hairs of the deponent and slapped her and only after a lot of efforts, the deponent could get him out of the parental house. The respondent again came there the next morning in the drunken state and started shouting loudly and abusing the deponent and her father in the presence of neighbours and the laborers who were at work on the road. The situation became so disgraceful and shameful, then the respondent refused to leave and finding no other alternative, police had to be called to save the deponent and her father”.

62. In her cross examination, the appellant, *inter alia*, stated:

“It is correct that on 24.04.07, the respondent had come to Delhi with the intention of taking me back to Mumbai but I did not agree. It is correct that when respondent came to Delhi on 25.04.07 and came to my parental house, I and my father were not allowing him to enter the house. Vol., however, the respondent pushed my father and came in. The respondent again came a day after in a drunken state and abused me and my father. I had made a complaint to the police at 100 number, and the police had arrived but thereafter, no concrete action was taken by the police”.

63. Pertinently, no suggestion was even put to the appellant that she was deposing falsely in relation to the incident of 25/26.04.2007. The testimony of the appellant with regard to the said incident has not been shaken at all, and is completely trustworthy.

64. The aforesaid incident of 25.04.2007 and 26.04.2007 stood established by the appellant, which demonstrates the violent tendencies of the respondent. Such conduct speaks volumes about the so-called love, affection, and respect that the respondent had for the appellant, or the respect that he bestowed on her father. Such conduct clearly constituted

cruelty under the law, since it led to the appellant suffering embarrassment, not only in front of her aged father – who was also pushed around and abused, but also in front of the appellant’s neighbours. It would have caused anguish and mental distress to the appellant, and would give cause to the appellant to genuinely develop fear from the respondent, and a sense of insecurity in his company.

65. In spite of the testimony of the appellant in this regard not being shaken, the learned ADJ returned the finding:

“..... the petitioner and her father’s attitude in not allowing him to enter the house, rather shows that it was the petitioner who was cruel towards the respondent, by not giving him the respect that was due. It seems ironical that the petitioner who talks of being ashamed to say anything about her plight to the maid servant, would create a scene at her parental house by not allowing her husband to enter the parental house.”

66. When the appellant had returned from Mumbai on 04.01.2007, obviously on account of serious marital discord – allegedly on account of the appellant being treated with cruelty, it could not be said that the appellant acted with cruelty, or was unjustified in not permitting the respondent to come to her parental house in Delhi. It has come in evidence of the appellant that the respondent forced his entry into her parental house, despite being refused entry by the appellant and her father. The respondent pushed the father of the appellant to get into the house. On the next day, he came in a drunken state and abused the appellant and her father. It was at this stage that the appellant had made a call to the police at number 100. How, in this background, the conduct of the appellant be termed as cruel

towards the respondent, is beyond the understanding of this Court to fathom. It was not the conduct of the appellant which was under scrutiny, as the respondent's defence had been struck off. It was the conduct of the respondent that required examination. Pertinently, the respondent neither sought the setting aside of the order striking off his defence, nor could have led his evidence in defence, nor appeared at the time of hearing of the divorce petition to advance his submissions. Yet the learned ADJ proceeded to make wholly unsubstantiated observations against the appellant which are contrary to the evidence brought on record.

67. Another instance of the learned ADJ proceeding on the basis of conjunctures and surmises is the assumption that the respondent being an Engineer by profession who was socially awarded and living in Mumbai, would have had the facility of a telephone at his house. There was no basis to make any such assumptions.

68. The approach of the learned ADJ in seeking to cast a doubt on the character of the appellant deserves to be denounced in the strongest terms. It had come in the evidence of the appellant, during her cross-examination, that Mr. Rajiv Ranjan Sinha was the appellant's family friend from the paternal side. She denied the suggestion that Mr. Rajiv Ranjan Sinha had accompanied her to an award function where the respondent was felicitated. She stated that Mr. Rajiv Ranjan Sinha was invited to the award function by her and the respondent jointly, though, at the respondent's instance and that Mr. Rajiv Ranjan Sinha had come to the award function separately. She denied the suggestion that Mr. Rajiv Ranjan Sinha was invited by her house every second day, or that he used to so come, which was objectionable to the

respondent. She had stated that being a family friend, he used to visit her parental home once in a month, but in her matrimonial home, Mr. Rajiv Ranjan Sinha was not a visitor even once.

69. She denied the suggestion that she had made a call to Mr. Rajiv Ranjan Sinha from Manali in order to call him there, or that Rajiv Ranjan Sinha used to call her at Manali. She also denied the suggestion that she used to go out at excursions with Rajiv Ranjan Sinha even after marriage or that she had informed the respondent in Manali that she was interested in marrying him.

70. Firstly, the said cross examination was beyond the case set up by the appellant/petitioner and was, therefore, liable to be struck off/ignored in the light of the settled legal position taken note in *Madula* (supra). Secondly, in the face of the aforesaid denials of her liaison with the said Mr. Rajiv Ranjan Sinha and her clear assertion that he was invited to the award function – wherein the respondent was felicitated, by the appellant and the respondent jointly, and on the insistence of the respondent, there was absolutely no basis or occasion for the learned ADJ to observe “*but the fact that he also attended the award function in which the respondent was felicitated **does seem untoward***” (Emphasis supplied). Apart from putting questions and suggestions to the appellant during her cross-examination in relation to the said Rajiv Ranjan Sinha (which too was not permissible), the respondent did not take steps to get his defence reinstated on record and thereafter to lead any evidence whatsoever to substantiate his grave and serious allegations of the appellant maintaining an adulterous relationship with the said Rajiv

Ranjan Sinha during the subsistence of the marriage between the parties. This aspect has been completely lost sight of by the learned ADJ.

71. The Supreme Court in *Vidyadhar Vs. Mankikrao*, AIR 1999 SC 1441, has observed as follows:

“16. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh and Anr., AIR 1927 PC 230 . This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh and Ors. and the Bombay High Court in Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh AAIR 1931 Bombay 97. The Madhya Pradesh High Court in Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat AIR 1970 MP225 also followed the Privy Council decision in Sardar Gurbakhsh Singh's case (supra). The Allahabad High Court in Arjun Singh v. Virender Nath and Anr. AIR1971All29 held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab & Haryana High Court in Bhagwan Dass v. Bhishan Chand and Ors. AIR 1974Punj and Har 7, drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box.”

72. I also find highly objectionable the reference to Rajiv Ranjan Sinha in the last sub-paragraph of paragraph 22 of the impugned judgment. The relevant extract from the said sub-paragraph reads as follows:

“The petitioner has alleged that she was beaten many a times but again no supportive evidence in the form of any medical treatment, no person having witnessed her beatings or through

letters from her father or even family friend Rajiv Ranjan Sinha could be adduced by her to fortify her stand.”

73. There was no occasion for the learned ADJ to bring in the name of Mr. Rajiv Ranjan Sinha while discussing the aspect that the appellant had not written a letter regarding her being beaten by the respondent. Rajiv Ranjan Sinha was a stranger to the marriage, though he was a family friend of the appellant from her father's side for six months prior to the marriage. The appellant had disclosed that she was ashamed to talk about her misery to others. Where, therefore, was the occasion for the appellant to inform Rajiv Ranjan Sinha of her being beaten by the respondent? The observation made by the learned ADJ is nothing short of a oblique insinuation, suggesting that the appellant had such a close personal relationship with Rajiv Ranjan Sinha that she could share her issues regarding her matrimonial life with him; confide in him, and; seek the shoulder of Rajiv Ranjan Sinha for the appellant to cry. The observations made by the learned ADJ are most unfortunate, and demonstrate the perverse approach adopted by her while dealing with this case.

74. Another important aspect which the learned ADJ has failed to consider is that even though the respondent made grave and serious allegations of the appellant being characterless, inasmuch as, she maintained adulterous relationship with Rajiv Ranjan Sinha even after her marriage with the respondent, the respondent did not lead any evidence to substantiate the same. I have set out hereinabove the allegations made by the respondent, not only in his written statement before the Trial Court, but also before this Court in his reply to C.M. No.11012/2011. It is well-settled that such grave

and serious allegations – which impinge on the character of the opposite party, if not substantiated, themselves constitute a mental cruelty. In this regard, reference may be made to ***Sudhir Singhal Vs. Ms. Neeta Singhal***, 85 (2000) DLT 419. In paragraph 15, this Court observed:

“15. In order to defend herself, the respondent could make statement of facts against the imaginary and irresponsible allegations and averments made in the petition. In a matrimonial suit merely because there are allegations and counter-allegations, a decree for divorce should not follow. But if totally unfounded allegations and aspersions on character, honour or reputation or status or health of the aggrieved party are made in the written statement, they would constitute matrimonial cruelty within the meaning of Sub-clause (i-a) of Section 13(1) of the Hindu Marriage Act.”

75. The submission of the respondent that after the dismissal of the divorce petition the parties had cohabitated for a couple of months as husband and wife is wholly unsubstantiated. These averments were made by the respondent in his reply to C.M. No.11012/2011. Along with this reply, the respondent sought to place on record photocopies of electronic tickets of the flight that he and his friend Mr. Tambe allegedly took from Mumbai to Delhi on 26.09.2010; of a few purported bills dated 13.10.2010 in respect of certain jewellery items; photocopy of invoices issued by Koutons Retail India Ltd. on 13.10.2010; photographs showing both the parties together in a temple/puja stated to be of 16.10.2010; photographs showing celebration of birthday on 04.12.2010, wherein both the parties are seen celebrating the occasion, and; photographs showing both the parties on a beach and in a jungle area. Even though the respondent filed a rejoinder emphatically denying the said allegations of the respondent, the respondent

chose not to seek leave of the Court to lead additional evidence under Order XLI Rule 27 CPC. Pertinently, the originals of the documents, and negatives of the photographs were not even placed on record. The cash memos do not contain the particulars – in whose name the same were issued. In these circumstances, it appears that the documents filed by the respondent are only an attempt to create a prejudice against the appellant and raise a doubt in the mind of the Court. The respondent has not ventured to seek leave to lead additional evidence; lead his evidence, and face cross-examination at the hands of the appellant. Consequently, the documents cannot be looked into for any purpose. The statement made by the respondent in Court, that he still loves the appellant and wants to protect and take care of her and her interest is absolutely contrary to his conduct. On the one hand, he projects himself to be an ideal husband, who is conscious of his responsibilities towards his wife and loves his wife, while on the other hand, he has not only made grave and serious unsubstantiated allegations impinging on her character, but he has also not paid the maintenance, as directed by the Trial Court under Section 24 of the HMA. It is not difficult for this Court to see through the double face maintained by the respondent.

76. In the present case, as noticed above, even though the parties have remained husband and wife for nearly 9 years, they have spent time together as husband and wife for only two spells of two weeks and three weeks. They separated on 04.01.2007, and have not lived together since. Thus, there has been a long period of continuous separation which leads to the conclusion that the matrimonial bond is beyond repair. Marriage has become a fiction though supported by a legal tie. Refusing to sever that tie

does not serve the sanctity of marriage. On the contrary, it shows scant regard for the feelings and emotions of the parties. This situation, by itself, leads to mental cruelty (See *Samar Ghosh Vs. Jaya Ghosh*, (2007) 4 SCC 511).

77. For all the aforesaid reasons, the impugned judgment is set aside and the petition preferred by the petitioner/ appellant under Section 13(1)(ia) of the HMA is allowed and decreed. A decree of divorce is passed dissolving the marriage between the parties under Section 13(1)(ia) of the HMA. The appellant shall be entitled to costs quantified at Rs.25,000/-.

(VIPIN SANGHI)
JUDGE

JULY 24, 2015
B.S. Rohella/ SR