

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FAMILY COURT APPEAL NO.209 OF 2007
WITH
CIVIL APPLICATION NO. 52 OF 2014
AND
CIVIL APPLICATION NO.270 OF 2015**

A] .. Appellant

Versus

B] .. Respondent

.....
Ms.Kokila Kalra, Advocate for the Appellant.
Mr. Sasidharan Nair, Advocate for Respondent.
.....

CORAM : A.S. OKA AND P.D. NAIK, JJ.

RESERVED ON : APRIL 14, 2016
PRONOUNCED ON : JULY 7, 2016

JUDGMENT (Per P.D. Naik, J.) :

Considering the controversy in the Appeal, we have
mashed the names of the parties and witnesses. The
appellant/wife has challenged the impugned judgment and order
dated 12th September, 2007 passed by the Family Court No.2,
Mumbai in Petition No.A-1371 of 2002. The said petition was
preferred by the respondent - husband seeking decree of divorce
under clauses (ia) and (ib) of Section 13(1) of the Hindu Marriage

Act, 1955 read with Section 26 of the Hindu Marriage Act, 1955 and Section 7(1) of the Family Court Act, 1984.

2 The aforesaid petition preferred by the respondent – husband was partly allowed. The marriage solemnized on 15th February, 1998 between the appellant (wife) and the respondent (husband) herein was dissolved by a decree of divorce. The Family Court further passed an order rejecting the prayer of the respondent – husband for custody of the child. The Family Court also directed the husband to pay Rs.4,000/- per month to the wife and Rs.3,000/- per month to the minor son towards their permanent maintenance payable from the date of the order. The claim of the Stridhan was however rejected. The said judgment and order dated 12th September, 2007 passed by the Family Court No.2, Mumbai is under challenge in this Appeal as stated hereinabove.

3 The brief facts as narrated in the divorce petition filed by the respondent – husband seeking divorce are as follows:

- (a) The marriage between the parties was solemnized on 15th February, 1998 at Dadar, Mumbai in accordance with Hindu

vedic rites and religious. One issue was born out of the said wedlock on 14th January, 1999 namely Shlok alias Vedant.

- (b) The parties cohabited together at Vasai, District - Thane till 30th January, 2000. The respondent husband noticed that the wife was aloof not only with him but also with the other family members. The appellant - wife was non-cooperative and remained away from cordial relationship with the respondent - husband as well as with his family members. The appellant - wife never showed any interest towards the relatives of the respondent - husband. She always thought very high about herself and her maternal family because she was from political background.
- (c) The respondent - husband had disclosed every fact and his responsibilities towards his family members to the appellant - wife at the time of marriage. It was pointed out that the husband being the male person, he has to maintain his handicapped father, mother and three unmarried sisters. It was further stated that the respondent - husband always tried to convince the wife about her duties

towards his family members. It was further stated that the wife failed to realize her duties and deprived the husband and his family members from enjoying normal peaceful life by insulting them in front of her maternal family members more specifically her brother namely "S".

- (d) The wife showed her true colours and started harassing the husband for the reasons best know to her and without any fault of his or his family members. She wanted to live separately and, therefore, went on making complaints against each of the family members of the husband. She was very adamant and was of demanding nature. She used to pick up unnecessary fights. She was repeatedly visiting her parental home and she never stayed continuously in her matrimonial house for more than two weeks. She also avoided her responsibilities and duties as a daughter-in-law and wife and towards the relatives of the husband. On 10th November, 1998 the appellant - wife left the matrimonial home by informing that she would return in case the husband arrange a separate residence. She also threatened that in case the husband failed to do so, they will have to face dire consequences.

- (e) The wife gave birth to a male child on 14th January, 1999. The husband immediately rushed to the hospital to see the new born child and to share the joy, but the wife and her family members restrained him from seeing the newly born child and told him that he should live separate from the family members. After long persuasion by the husband, the appellant wife he was allowed to take the child for 10 to 15 minutes and thereafter was forcibly driven out from the hospital.
- (f) The respondent tried his level best to convince the wife that he cannot reside separately and there is no one other than him to support his family. However, the wife insisted upon a separate residence. Whenever the husband tried his level best to avail the access to meet the child at the parental place of the wife, he was denied the same. The wife also succeeded in threatening and using the muscle power of her family members who are connected with the underworld. The mother-in-law of the husband threatened him that he should take a separate flat otherwise she would compel his sisters to lead a life of prostitute. The husband anticipated danger to his life and the life of the family members and

under the pressure arranged a separate flat on rental basis and started residing there from September 1999 till 30th January 2000. However, the things did not change. The wife did not allow the family members of the husband to have access to the child. The wife use to give calls to her parents making false complaints against the husband and his family members.

- (g) On 29th January, 2000 the father of the husband was attending a meeting of their community at Parel, Mumbai. At that time about 10 to 12 gangsters entered the premises and compelled the respondent's father to come out of the said premises. They started threatening him and forced him to meet one Dileep Kulkarni from Dagadi Chawl on 30th January, 2000. They also threatened that they would spoil the life of the married sisters of the husband. The father of the respondent - husband and other family members had undergone extreme mental and physical trauma at the hands of the wife and her family members. The husband's father was compelled to visit Dagadi Chawl to meet the persons referred to hereinabove. However, instead of the person named hereinabove, the uncle of the appellant's

wife was waiting for the father of the husband. He was taken to a dark room and was abused, assaulted and threatened. The brothers of the appellant - wife were also present at the time of the said incident.

- (h) The conduct of the wife and her family members had adverse effect on the mental condition of the husband and his family members. The wife also lodged a false complaint under Section 498-A of the Indian Penal Code against the husband and his family members. The conduct of the wife was very cruel and amounted to mental and physical cruelty. The relatives of respondent wife having connections with the underworld/gangsters did not spare the married sisters of the husband who were required to leave their house. On account of the said threats and on apprehending danger to their life, the husband and his family members were compelled to leave their residence. The threat perception was such that they required to leave the State for safety reason. On the basis of several grounds which include the aforesaid factual aspects, the husband sought a decree of divorce by preferring the aforesaid petition. The said petition was preferred on 27th

September 2002. The husband had also prayed for custody of the child.

4 The appellant wife countered the grounds raised in the petition for divorce by filing the written statement in the said proceedings. She denied the allegations made therein. In the written statement, the wife had contended that the allegations made against her are false and the same is made with an intention to malign the appellant wife and her family members. She stated that during her pregnancy nobody in the family members of her husband cared for her. They did not come to meet the appellant wife and the new born child except once the husband had visited the hospital on the next date of her delivery. They did not attend the naming ceremony of the son. She further stated that the husband never wanted her to join the matrimonial home as she was considered as an additional burden in the family. She denied all the allegations made in the divorce petition in toto. She further stated that on account of the harassment and demand for money, the appellant wife filed the complaints with the authorities. She also denied having any connection with the underworld/gangsters. She also referred to the financial status of the respondent husband.

5 The Family Court vide order dated 7th March, 2006 was pleased to frame the following issues :

1. Does petitioner prove that the respondent treated him with cruelty ?
2. Does petitioner prove that the respondent has deserted him for a continuous period of more than two years immediately preceding the presentation of the petition ?
3. Whether the petitioner is entitled for decree of divorce as prayed for ?
4. Is petitioner entitled to permanent injunction restraining the respondent and/or her relatives and/or her agents and/or servants from entering the premises situated at "Sneh Apartment", 8/3, Dhuri Complex, Omnagar, Vasai (West), Thane and within the vicinity of petitioner's serving place ?
5. Whether the petitioner or the respondent is entitled to have permanent custody of the minor son Shlok @ Vedant ?

6. Is respondent entitled to claim permanent maintenance from the petitioner for herself and the minor son ? If yes, at what rate ?
7. Is respondent entitled to return of her personal belongings, valuables and ornaments lying in the matrimonial house ?
8. What order and costs ?

6 The respondent husband examined himself in support of his petition. He also examined his sister "P1" and "P2" as witnesses in support of his petition. He also filed affidavit of examination-in-chief of P3. But he did not entered the witness box. The appellant wife examined herself as well as her mother R1 and R2 in support of her defence.

7 The Family Court, as stated above, proceeded to allow the petition partly. The marriage of the petitioner and respondent was dissolved by a decree of divorce. However, the prayer for custody of the child was rejected. The wife thereby preferred the present Appeal. She has also filed Civil Application

No.52 of 2014 in this proceedings seeking direction to pay the arrears of maintenance. She also preferred Civil Application No.270 of 2015, seeking enhancement of the maintenance to her and the minor son. She has also prayed for permanent accommodation.

8 The Family Court on consideration of the evidence addressed by the parties answered the issues framed in the said proceedings as follows:

	<u>ISSUES</u>	<u>FINDINGS</u>
1	Does petitioner prove that the respondent treated him with cruelty ?	In the Affirmative
2	Does petitioner prove that the respondent has deserted him for a continuous period of more than two years immediately preceding the presentation of the petition ?	In the Affirmative
3	Whether the petitioner is entitled for decree of divorce as prayed for ?	In the Affirmative
4	Is petitioner entitled to permanent injunction restraining the respondent and/or her relatives and/or her agents and/or servants from entering the premises situated at "Sneh Apartment", 8/3, Dhuri	In the Negative

Complex, Omnagar, Vasai (West), Thane and within the vicinity of petitioner's serving place ?

- 5 Whether the petitioner or the respondent is entitled to have permanent custody of the minor son Shlok @ Vedant ? In the Negative
- 6 Is respondent entitled to claim permanent maintenance from the petitioner for herself and the minor son ? If yes, at what rate ? Yes @ Rs.4,000/- to her and @ Rs.3,000/- to child
- 7 Is respondent entitled to return of her personal belongings, valuables and ornaments lying in the matrimonial house ? In the Negative
- 8 W What order and costs ? As per final order

9 It was not disputed that the marriage was performed on 15th February, 1998 at Mumbai as per Hindu Vedic rites and customs. It is also not disputed that after the marriage the parties cohabited at Vasai, District - Thane and a child was born out of the said wedlock on 14th January, 1999. It is not in dispute that till January 2000 they resided together.

10 The Family Court after considering the evidence

brought on record recorded a conclusion that the husband was subjected to cruelty and has succeeded in making out the ground for divorce. While coming to the said conclusion, the Family Court had made the following observations:

- (a) Though it was argued at the instance of the respondent - wife that the husband had performed the marriage on account of her political connection, in the cross-examination the wife has admitted that the husband never took any benefit of her political relations and, therefore, there is no substance in the said submission.
- (b) It was submitted at the instance of the wife that the husband wanted to go abroad and, therefore, he was in need of Rs.2.25 and her brother had paid an amount of Rs.2.5 lac to him. The husband has denied of demanding any such money or any payment is being made to him. However, he admitted in his cross-examination that he had forwarded a letter to the brother of the respondent - wife which is at Exhibit - 58. On perusal of the letter it can be said that there is no reference in the said letter about any demand of money being made by the husband.

- (c) If for a while it is considered that the brother of the wife had paid the amount as alleged to the husband, then certainly she would have placed reliance upon some documents to support the said contention. The wife has not examined her brother before the Court to show that the amount of Rs.2.5 lac was paid to him to the husband. She did not file any documents to show that such an amount was parted to the husband. Therefore, it is difficult to come to the conclusion that the brother of the wife has paid an amount of Rs.2.5 lac to the husband.
- (d) The wife had examined her friend Rajani before the Court to bring on record that on 15th January, 1999 when she was in the hospital, the husband came and wanted to take the child along with him. The husband has denied the said fact. If actually such an incident had occurred then certainly the same would have been pleaded in the written statement filed by the wife. However, the said witness stated before the Court for the first time. It is difficult to come to the conclusion that any father will take away newly born child from the hospital and, therefore, the statement of the wife has no force.

- (e) It was submitted at the instance of the wife that it was decided when her brother gave money to the husband that he would arrange a separate room and, therefore, the brother had arranged a flat for them and they started living together in the said flat. However, according to the husband he himself arranged the flat near her parents' house and they started residing there. In the cross-examination the wife has admitted that the husband had arranged the flat on rental basis and he was paying the rent. She had no knowledge as to how much deposit was given for the said rented flat. If any amount is paid by her brother, then she would certainly had a knowledge of the deposit as to how much amount her brother had paid and, therefore, there is no substance in the contentions of the respondent - wife.
- (f) The petitioner husband has examined his sister Sushma vide Exhibit - 65 before the Court who has duly supported the version of the petitioner husband about the behaviour of the respondent wife and her quarrelsome nature. The said witness has stated that in September 1999 they started residing at Vasai and as her father was assaulted,

they shifted to Hyderabad. She further stated that in October 2000, the wife traced out her at Malad and in February 2001 she lodged the complaint under Section 498-A of the Indian Penal Code.

- (g) The petitioner husband has also examined his cousin P2 vide Exhibit-66 with a view to support his evidence and also to bring on record the threats given by the relatives of the wife to them.
- (h) It was submitted at the instance of the respondent wife that in the year 2001 they had visited Tuljapur, but, in her cross-examination the wife has admitted that the husband was absconding for one year and after January 2000 they were separated from each other. Thus, there is no reason for the respondent to go with the wife to Tuljapur in the year 2001.
- (i) The respondent wife examined her mother vide Exhibit - 79 who has stated that from time to time money was given to the petitioner/husband and it was to the tune of Rs.5 lac. However, no document is filed on record to show that the

money was given to the husband from time to time and, therefore, it is difficult to come to the conclusion that the husband was ill-treated her on account of money. Both the parties were making allegations against each other on the issue of cruelty. The wife has filed several cases against the husband. The husband has also lodged complaints to the police. The wife has failed to prove before the Court that the husband used to ill-treat her and demanded money. She had admitted in her cross-examination that "AG" is her maternal uncle and, therefore, she has relations with the political persons. Such a lady would not keep mum if there is any ill-treatment or there was demand of money.

- (j) The husband and wife residing separately since last more than 6 to 7 years. Both of them are making allegations against each other. According to the husband, the wife has ill-treated him. According to him, she was not willing to give divorce to him. It was submitted at the instance of the husband that the behaviour of the wife has caused great mental torture to him. It was submitted that whenever she used to quarrel with the husband, the wife used to go to her parents house. She has not disputed that she resided

with him for 17 days after the marriage in the matrimonial home. The filling of the false complaint with the police amounts to mental cruelty. Although they were resided separately from the joint family, she lodged the complaint. She has not filed any documents on record to show that the husband and his family members threatened her and, therefore, the husband has proved that the respondent wife has treated him with cruelty and, therefore, issue no.1 was answered in the affirmative.

- (k) So far as the issue no.1 of desertion is concerned, it can be said that the parties are living separately since last more than two years from the institution of the petition, the petitioner husband has to prove that the wife has deserted him with an intention to bring the cohabitation to an end permanently. At the same time the respondent has to prove that she was not the consenting party and she was compelled to leave the matrimonial house. According to the respondent, on 30th January, 2000 she was assaulted by the petitioner and according to the petitioner husband when his father was assaulted in Dagadi Chawl, the father informed him to leave the house immediately and,

therefore, they left the house and went to Hyderabad. If the respondent wife wanted to cohabit with the husband then certainly she would have made efforts to cohabit with him. However, she lodged a complaint with the police against the respondent and his family members and they were arrested by the police. Therefore, it can be said that it is the respondent wife who has deserted the petitioner husband and, therefore, issue no.2 answered in the affirmative.

- (1) So far as the custody of the child "V" is concerned, it is not disputed that the parties hardly resided together after the birth of the child. According to the respondent wife, the child does not recognize the petitioner husband as his father. The husband had moved an application in the year 2005 for access which was refused. If the petitioner husband had love and affection towards the child then certainly he would have claim the custody or would have keep mum for a long period of time. The respondent wife is taking due care of the child. She is a better position to look after the child. The child needs the love of the mother. It is the mother who can understand the emotions of the

child and not the father. The child is attached to her mother and since last more than seven years the child is residing with her. In the circumstances, it can be said that the petitioner husband is not entitled to have the custody of the child.

- (m) As far as the minor child is concerned, it is the duty of the father to look after the minor child and, therefore, the child is entitled for the maintenance. The flat Sneh Apartment was recorded in the joint name of the petitioner husband and his parents. He admitted that he has purchased the flat in different locality in Vasai exclusively in his name in the year 2005. On perusal of the income of the husband, it can be seen that the wife is entitled for a maintenance of Rs.4,000/- per month.
- (n) The claim of the respondent wife for Stridhan is rejected. It is not disputed that till January 2000 they resided in the rented flat and since 30th January, 2000 they started residing separately. It was submitted by the petitioner husband that police has taken search of his home but no Stridhan was found. It can be seen that the respondent

wife lastly left the house and did not return after 30th January, 2000 and, therefore, it is difficult to come to the conclusion that all the articles are in the custody of the petitioner husband.

- (o) The petitioner husband has prayed for restraining the respondent wife and/or her relatives and/or her agents or servants from entering the premises situated at “Sneh Apartment” 8/3, Dhuri Complex, Omnagar, Vasai (West), Thane. It is the matrimonial home of the respondent wife and she cannot be restrained to enter the said premises and, therefore, the respondent husband has not allowed to have injunction restricting the wife from entering the said premises.

11 The learned counsel for the appellant wife in support of the present Appeal has reiterated the submissions made before the trial Court. It is submitted that the trial Court has failed to take into consideration the evidence on record in proper prospective. It is submitted that the petitioner husband therein had not proved the case of either physical or mental cruelty. It is further submitted that the evidence put forth by the petitioner husband before the Family Court is not sufficient to bring the

case within the purview of cruelty as required by law for granting divorce on the said ground. It is further submitted that the petitioner has also failed to establish his case that the respondent wife has deserted him. It was submitted that on the contrary the petitioner husband treated her with physical and mental cruelty. The husband has caused harassment amounting to cruelty. The husband used to demand money from time to time. Since the demands were not fulfilled, the wife was assaulted from time to time. It is further submitted that it is the husband who has disappeared leaving behind the respondent wife and the minor child and in fact had deserted her. It is submitted that although the respondent wife was subjected to cruelty and desertion, the learned Family Court has given the findings otherwise. It is submitted that the witnesses examined by the petitioner husband had failed to establish the case. It is submitted that in the cross-examination of the said witness who are examined in support of the petition, the respondent wife has succeeded in formulating the contention of the petitioner. It is further submitted that the oral evidence of the witnesses examined by the petitioner is not supported by any documentary evidence. In fact, the respondent wife has made complaints to the police station against the petitioner and his family members which supports the stand of

the respondent wife that she was ill-treated at the instance of the petitioner husband and his family members. It is submitted that the conclusions arrived at by the learned Family Court are contrary to law. It is also submitted that the findings of the trial Court are unsupported by any evidence and, in fact, the evidence on record is contrary to the said findings. It is submitted that the incident as alleged by the petitioner husband does not amount to acts of cruelty. It is submitted that the submissions of the petitioner husband are afterthought and which are not supported by any concrete evidence. The learned counsel for the husband supported the impugned judgment.

12 We have perused the evidence on record. The petitioner has examined himself and other witnesses in support of his petition. It can be seen that the petitioner has been able to establish his case of cruelty and desertion in support of his petition. For the reasons we are recording, we do not find any reason to interfere with the findings of the Family Court. It can be seen that the Family Court has passed a well reasoned order which is supported by the evidence on record. The evidence of the petitioner husband and the evidence of his sisters clearly establish that the respondent wife had caused cruelty to the

husband. It is brought on record that the respondent wife had political connections and that her relations were connected to underworld. The petitioner has succeeded in proving that they were living under constant fear. The petitioner has pointed out that his father was forced to visit Dagali Chawl wherein he was threatened of dire consequences, and was abused as well as assaulted. The petitioner has proved that on account of danger to their life, they were required to shift their residence from the State of Maharashtra and, therefore, had to settle down at Hyderabad. This fact clearly establishes that they were continuously under fear. The reasons given by the Family Court is well founded. We agree with the findings recorded by the Family Court. On the contrary, the evidence put forth by the respondent wife in support of her case does not affect the case of the petitioner/husband. The claim of the respondent wife that the petitioner had demanded the amount of money from time to time has not been established. The Family Court has rightly rejected the said claim on the ground that there is no documentary evidence to support the same. The Family Court has also categorically observed that the respondent wife has not examined her brother who had purportedly parted with the amount of Rs.2.5 lac to the petitioner husband. Therefore, the

Court could have been justified in drawing an adverse inference for keeping back the witness though available. It is also rightly observed by the Family Court that the mother of the respondent wife who has been examined in support of her, has orally stated that the amount parted to the petitioner husband was to the tune of Rs.5 lac. However, she has not produced any evidence in support of the said contention. It is also observed by the Family Court that on account of the threats to the life of the petitioner husband and his family members they were required to leave the State of Maharashtra and shift to another State. It is also observed that the respondent wife had not made any efforts to cohabit to the petitioner husband. We also find that the order with regard to the issue of the custody of the child as well as the for injunction in relation to the premises is well founded. In any case, the respondent husband has not challenged the same before this Court.

13 The respondent husband had examined himself by filling the affidavit in lieu of examination-in-chief before the Family Court. He had brought on record all the instances which according to him amounts to cruelty. The said witness was cross-examined at the instance of the wife. However, we find that his

evidence is not at all shaken in cross-examination. The petitioner husband then examined P1. On perusal of her evidence, it can be seen that she has brought on record various instances showing the fear under which the family was surviving. She has clearly supported the evidence of the petitioner husband. She has deposed that there was danger to their life and after their father was assaulted, they left the State and shifted at Hyderabad. She further deposed that on account of the highhandedness of the respondent wife they had to undergo sleepless nights in the fear of danger to their lives. When she came back to Mumbai in October 2000, the respondent wife and her people traced her out at Malad and, thereafter a complaint under Section 498-A of the Indian Penal Code was lodged against all of them. She was arrested along with her husband and were kept in police custody. She further deposed that the brutal conduct on the part of the respondent wife and his family members made adverse effect on every family members and each family member was acting under extreme mental and physical tension. She also stated that the respondent wife had troubled the other sister and brother-in-law who was residing at Mysore and in that regard a complaint was lodged by her brother-in-law against the respondent wife. The said witness was cross-examined at the instance of respondent

wife. In the cross-examination the respondent had brought one vital fact on record which is in paragraph 18 of her evidence. It has come on record that one report was lodged by the mother of the said witness against the respondent wife with Vasai police station. The petitioner husband then examined P2 in support of his petition. The said witness was acquainted with the family of the petitioner husband being a close relative. She has reiterated the conduct of the respondent wife. She had stated that her family was continuously tortured to find out the whereabouts of the petitioner husband and his family members. She has also stated that her brother was assaulted at the instances of the family of the respondent wife. It was also stated that they had lodged complaint with the police on account of the said harassment. She was cross-examined at the instance of the respondent wife. In paragraph 11 of the cross-examination, it was brought on record that the said witness and her mother had lodged the reports with the police against the respondent therein. The petitioner thereafter had filed an affidavit of P3 in support of his petition. However, the evidence of the said witness had been rightly discarded by the Family Court as the witness was not available for the cross-examination.

14 The respondent wife had examined herself by filling affidavit of evidence. She has given instances of ill-treatment purportedly meted out to her at the instance of the petitioner husband. She had denied the allegations made against her by the husband. She was cross-examined at the instance of the petitioner husband. In her cross-examination in paragraph 33 the respondent wife has stated that AG is her maternal uncle. However, the petitioner husband has not taken any advantage of this relationship. In paragraph 34 she deposed that she had never made any complaint against the petitioner husband to the Railway Authorities. However, she was shown Exhibit - 78 which is a letter written by her to the Central Railway CST Mumbai with respect to the complaint against the petitioner husband. She admitted the said document being written by her. In paragraph 36 of her evidence, she has stated that the petitioner husband started demanding money from her. The amount was paid in cash and therefore she does not have any documentary evidence. She lodged the complaint with the police with respect to such demand of money. She stated that her brother S paid the amount as demanded by the petitioner husband. However, she stated that she do not have any documentary evidence of the payment. In paragraph 39 she stated that the letter at Exhibit - 58 was

written by the petitioner husband to her brother S and the same was handed over to her by the brother. The said letter infact did not contain any demand of money for the purpose of migration to New Zealand. In paragraph 40, she stated that one UD was the owner of the flat which was taken on rent for their residence. For the period of about three or three and half months she stayed along with the child at the said premises. However, she stated that she was not aware as to about what was the amount of the deposit for the said flat. She admitted that she does not have any document to support her submission that the flat was taken on rent and that the amount of rent was paid by her brother. She further admitted in paragraph 44 of her cross-examination that after the marriage she was appointed as S.E.O. Today also she is the S.E.O. After the marriage she joined the political activities. She was Vice president of N.C.P. at Chinchpokali. Today also she is working on the said post. In paragraph 45, it was deposed that the petitioner was absconding about a year after 5th April, 2000 and, she had no contact with him. Therefore, he came back and was on visiting terms with her. The incidents after he come back amount to cruelty according to her. In March 2002 she lodged a report in the police station against the petitioner husband and her sisters. The petitioner was arrested before 2002 by Vasai

Police under Section 498-A of the IPC. In paragraph 51, the witness has admitted that she has not filed any document on record to show that she and her mother has given money to the petitioner husband for investment in C.U. Marketing Company.

15 The respondent wife further examined her mother R1. She deposed about payment of Rs.2,50,000/- to the petitioner husband in the year 1999 as he had sent a letter to her son S. In cross-examination she stated that she is not having any document to show that she gave an amount of more than Rs.5 lac to the petitioner. The respondent also examined friend R2 who deposed about the incident which had occurred allegedly after the birth of the son. She stated that the petitioner husband picked up the child when he visited the hospital after the delivery. She further stated that she restrained him from doing so. However, in cross-examination she admitted that she has not narrated the incident in the hospital. She also admitted that the respondent has not lodged any complaint. It is also pertinent to note that the said incident is not reflected in the written statement filed by the respondent wife.

16 On perusal of the aforesaid evidence, it is Crystal

clear that the petitioner has established the ground of cruelty as well as desertion in support of his petition for divorce. It is also required to be noted that in the cross-examination of the petitioner and his witnesses, certain facts are brought on record at the instance of the respondent which also supports the claim of the petitioner husband. We are satisfied from the evidence on record as referred hereinabove that the Family Court has rightly accepted the claim of the petitioner and has dissolved the marriage by passing a decree of divorce. We do not find any reason to take a contrary view.

17 In several decisions of the Hon'ble Apex Court as well as this Court, the term cruelty has been defined and has been explained. On perusal of the evidence, it is apparent that the incident brought on record by the respondent/husband amounts to an act of physical and mental cruelty within the meaning of law. In the case of **V. Bhagat Vs. D. Bhagat**¹, the Apex Court observed that the mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. Mental cruelty must

¹ (1994) 1 SCC 337

be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. In the case of ***Savitri Pandey Vs. Prem Chandra Pandey***², the Apex Court has made observation on the issue of “Desertion”. It is observed that “Desertion” for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without other's consent and without reasonable cause. Desertion means withdrawal from the matrimonial obligations i.e. not permitting or allowing and facilitating the cohabitation between the parties. In the case of ***K. Srinivas Rao Vs. D.A. Deepa***³, the Apex Court has observed that where marriage is beyond repair on account of bitterness created by acts of either of the spouses or of both, Courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they have dried up, there is hardly any chance of their springing back to life on

² (2002) 2 SCC 73

³ AIR 2013 SC 2176

account of artificial reunion created by Court decree. In the present case, the husband and his family members were harassed. They were threatened, abused and assaulted. They were continuously under the threat of danger to their life and were required to leave the city and settle down at Hyderabad. It is also stated that attempts were made to trace them and even harassment was caused to the other acquaintance of the husband to find out whereabouts of his family members. It is, therefore, clear that the incident amounts to cruelty and, hence, the husband was entitled for a decree of divorce. As observed in the earlier paragraph, the petitioner has also established the case of desertion which is accepted by the Family Court.

18 For the reasons aforesaid, we find that there is no substance in the Appeal preferred by the appellant and we do not think it necessary to interfere in the impugned judgment and order passed by the Family Court. Hence, the Appeal is dismissed.

19 No order as to costs.

20 In view of the dismissal of the Appeal, Civil

Application Nos.52 of 2014 and 270 of 2015 do not survive and the same are disposed of.

21 The appellant wife is at liberty to approach appropriate Court for seeking any reliefs as sought in the said applications.

(P.D. NAIK, J.)

(A.S. OKA, J.)