

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2016
DELIVERED ON : 06.04.2016
CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Civil Miscellaneous Appeal Nos.168 and 169 of 2012

Sangeetha ... Appellant in both appeals
vs.

Jitendra Bhandari ... Respondent in both
appeals

Civil Miscellaneous Appeals filed under Section 19 of the
Family Courts Act, against the common judgment and decree dated
25.11.2011 made in F.C.O.P.Nos.1942 of 2008 and 218 of 2011 by
the Principal Judge, Family Court, Chennai.

For Appellant in both appeals : Mrs.K.Santhakumari

For Respondent in both appeals : Mr.V.T.Gopalan, Senior
Counsel
for Mr.P.Krishnan

S.VAIDYANATHAN, J.

Aggrieved by the order of dissolution of marriage dated
25.11.2011 passed by the Principal Judge, Family Court, Chennai
in F.C.O.P.Nos.1942 of 2008 and 218 of 2011, the appellant/wife
has come up with the above appeals.

2. Since the issue involved in both the cases is one and the
same, the appeals are taken up for disposal by a common judgment.

3. Background facts in a nutshell are as follows:

The marriage between the respondent/husband and the
appellant/wife was solemnized on 28.06.1998 at Vijayashree
Mahal, Anna Nagar, Chennai, as per customary rites. They both
belong to orthodox Jain community. From the wedlock, they have
two male children. The respondent/husband is running a shop
dealing with Electrical accessories and the appellant is a
house-wife. The respondent/husband initially filed a petition in
O.P.No.1942 of 2008 seeking divorce on the ground of cruelty.

Thereafter, the appellant/wife filed a petition in O.P.No.218 of 2011 praying for restitution of conjugal rights, which got dismissed. The Principal Family Court, Chennai took up both these petitions together and passed a common order dissolving the marriage on the ground of cruelty in favour of the husband. The aggrieved wife is before this Court now.

4. Before proceeding to analyze the correctness of the order of dissolution of marriage, for better appreciation of the case, contentions of both the husband and wife in their respective petitions, need to be looked into.

5. In the petition filed by the respondent/husband on 30.04.2008 for dissolution of the marriage, it was inter alia, stated as follows:

(a) After marriage, the appellant/wife often went to her parent's house and used to compel the respondent/husband to come out of his joint family. She is in the habit of troubling the respondent/husband to lend money to her parents and her relatives. Also, she used to threaten the respondent/husband that she will commit suicide and her attempt to commit suicide was thwarted by the respondent/husband more than once.

(b) On 05.11.2005, the appellant/wife demanded money from the respondent/husband and he in turn told her that he had already lent enough money to her parents and that he cannot give any money further to her family. Again on 06.11.2005, she asked for money from her husband, while he was in an angry mood. Immediately, the respondent/husband started for going out. While he reached the ground floor, where his driver was also standing, they saw the appellant/wife attempting to jump from their balcony, which is in the 2nd floor of the Apartment. Though the respondent/husband shouted at her not to jump, she jumped off the 2nd floor. Immediately, he took her to First Med Apollo Hospital and admitted her. The appellant/wife underwent treatment there and thereafter, the respondent/husband shifted her to Main Apollo Hospital and one Dr.Sajan Heggede told the respondent/husband that the appellant/wife had a fracture in the Spinal Cord. On 08.11.2005, the appellant/wife underwent operation on her Spinal Cord and was shifted to I.C.U. While so, police came for enquiry and the appellant/wife gave a statement that her gold bangle slipped and in an attempt to catch hold of the same, she slipped and fell from the 2nd floor.

(c) Thereafter, when the appellant/wife was admitted in Vellore Hospital, neither her parents nor her relatives took care of her and it is only the respondent/husband who looked after her in the hospital and their two children, who were studying in school. Even after such incident, the appellant/wife never used to speak with the respondent/husband smoothly. Thereafter, at the behest of the appellant/wife, she was shifted from Vellore Hospital to her parent's house and she was in the custody of her parents and their children were in the custody of the respondent/husband.

(d) According to the respondent/husband, differences arose between him and the appellant/wife right from the day of marriage. Moreover, she has sustained spinal cord and pelvic fracture and is in a vegetative state. The appellant/wife is in the habit of giving trouble to the respondent/husband by threatening him that she will commit suicide. As there is no possibility of reconciliation between them, the respondent/husband wanted to dissolve the marriage and filed a petition in O.P.No.1942 of 2008 seeking dissolution of marriage.

6. Denying the averments made in the petition for divorce, the appellant/wife filed a counter affidavit stating that there was no question of demanding any money by the appellant/wife and her parents from the respondent/husband, as the parents of the appellant/wife are themselves in a good and sound financial status. Further, it is her contention that the respondent/husband has not even discharged his marital obligations of taking care of the appellant/wife at the time of crisis and expending money on her ailment. She has further stated that on account of her fall and spinal injury, she is definitely not in a position to attend to her regular chores. This will certainly not entitle the respondent/husband to seek dissolution of marriage and that the injuries suffered by her on account of the fall is only for a short period and she is ready and willing to come back to her marital duties within a reasonable time.

7. The case was taken up for trial. The respondent/husband was examined as P.W.1; the appellant/wife was examined as P.W.2; one Pranav, the elder son of the appellant and the respondent, was examined as C.W.1 and one Gaurav, the nephew of the respondent/husband, was examined as C.W.2. On behalf of the respondent/husband, five Exhibits were marked, details of which are as follows:

Ex.P1	Legal Notice dated 20.04.2008 issued by the petitioner's counsel to the respondent
Ex.P2	Medical Reports (Series), dated 17.11.2005
Ex.P3	Marriage Certificate, dated 03.09.2002
Ex.P4	Marriage Photo
Ex.P5	Copy of Petition in O.P.No.218/2011

On behalf of the appellant/wife, no document was marked. The parties were cross-examined. The respondent/husband was cross-examined on 15.02.2010. In the cross-examination, he reiterated the statements made in his affidavit for divorce.

8. On 18.01.2011, the appellant/wife filed a petition in O.P.No.218 of 2011, wherein, it is stated as follows:

(a) The marriage between the appellant/wife and the respondent/husband was solemnized on 28.06.1998 and initially everything went on smoothly, but after sometime, the respondent started showing his anger towards the appellant. He is a very short-tempered person and whenever he is angry, he has no decency of words and language he uses. The worst thing is that even if he cools down, he never feels sorry for his words and deeds. Whenever the appellant/wife asked him as to why he is behaving in such a manner, he would say that his character is so and it is for her to adjust accordingly. The appellant/wife did try to adjust during her entire matrimonial life. She tried to mend his words, but he refused to listen to any of her requests.

(b) During the year 2003, after the birth of the second child, the appellant/wife's brother Deepak opened a Sports Centre in Vepery. At that point of time, the respondent/husband had volunteered Rs.10,000/- for its renovation, but later on, started abusing the appellant's brother for not returning the money. In November 2005, during Deepawali, he called the appellant's brother and shouted at him for non-payment of money. The appellant's brother immediately handed over money to his sister, which again kindled anger in the respondent. The appellant could not bear the abusive language uttered by the respondent against her family members. When the

appellant's brother came to know that the respondent expected him to come personally to hand over the money, he immediately met him and said sorry to the respondent/husband. He tried to convince him that he had no such intention to hurt him and make him angry. After her brother left, the respondent/husband shouted at her in anger and took his things to go to Kilpuak. The couple stayed at Vepery for a short time.

(c) On 05.11.2005, the appellant/wife was waiting for the respondent/husband to come home, till midnight. The next day morning, when he came home, he saw the appellant/wife waiting for him in the balcony. While so, she was holding her bangles in her hand. When the bangles fell down, in order to catch hold of them, she bent herself and in that process, she fell down from the balcony. The driver who was standing in the ground floor caught hold of her upper body, but the lower part of her body was hit hard on the floor. Then, she was taken to First Medical Hospital for treatment. The Doctors informed her that her lower spinal cord was injured seriously and she had a pelvis fracture. She underwent surgery on 08.11.2005. The respondent/husband was helpful to her at that time. The Police took statement about the incident. Later, she took one month bed rest at Kilpauk and was later readmitted in Apollo Hospital for five days.

(d) When the appellant wanted to meet her parents, the respondent took her to her parental home. He also took her to CMC Rehabilitation Centre for physiotherapy treatment. The appellant stayed there for three months and learnt to walk on Calipers with crutches. During that time, misunderstanding arose between the family members of the appellant and the respondent. When she was discharged from CMC, the respondent gave an ultimatum to her that if she wanted to live with him, she should sever her ties with her family members. The appellant/wife had no other choice but to accept it. After taking the appellant to home, the respondent took good care of her. But, slowly he started getting irritated for no reason and started shouting at the appellant. She was permitted to stay in the second floor, but the kitchen was in the ground floor. She was unable to cook or help her mother-in-law in the kitchen, but tried her level best to do household work.

(e) The appellant/wife had to drag herself from the second floor to the ground floor of the house to do the work, due to which she developed bed sore. Slowly, she started washing clothes, dusting bed sheets and cleaning toilets. At the initial stage itself, she requested to appoint a maidservant to take care of her, but the respondent failed to do so, for reasons best known to him. When she was suffering from severe fever, instead of taking her to the hospital, he called a physician and asked her to undergo treatment under him. Day by day, the respondent developed hatred towards the appellant and mentally tortured her for petty reasons and kept cursing the appellant's parents. He abused the appellant's mother and sister in vulgar language.

(f) In July 2007, when the appellant's health condition worsened, the respondent, instead of taking care of her, went out of station without informing the appellant. Hence, the appellant took permission of her mother-in-law to go to her parental home and called her mother and brother-in-law to take her for treatment. When the respondent came to know of the appellant's stay at her parental home, he got wild and told her that since she had gone out of the matrimonial home without his permission, he will not allow her to come back to her marital home. Further, he demanded divorce from the appellant and all her efforts to convince him went in vain.

(g) Due to regular treatment and care with love and affection at her parental home, bed sore and other problems got healed and she was able to move around the house with the help of a wheel chair and do her duties. Though the appellant's relatives and well-wishers tried to patch up things between the appellant and the respondent, the respondent was reluctant to join her. The respondent/husband started spreading false stories that the appellant's parents were demanding money from him. According to the appellant/wife, when her parents had given Rs.5,00,000/- as dowry besides gold, silver and other household articles at the time of her marriage with the respondent, he wantonly belittled the appellant and her family members by saying that they are after his money.

(h) According to the appellant/wife, her condition is better and she is capable of leading matrimonial life. Though she wanted to join her

husband, because of the divorce petition filed by her husband, she could not do so. Even now, the respondent/husband insists that she should give her consent for divorce, so that their children will live peacefully. He wanted to have a second marriage and lead a peaceful life with another woman. Though the appellant/wife needs financial support from her husband for her treatment, she has not claimed the same in the interest of joining her husband.

9. The Principal Family Court, Chennai, by a common order dated 25.11.2011 in F.C.O.P.Nos.1942 of 2008 and 218 of 2011, granted divorce to the appellant/wife. Relevant portion of the said order would read thus:

"25. Mental cruelty is a state of mind and feeling of one of the spouse due to the behavioural pattern by the other spouse. The major suicidal attempt on 06.11.2005, if viewed on the basis of record as well as on evidence, there is no alternative but to conclude that the respondent caused mental cruelty to her husband by her conduct.

26. In the instant case, mental cruelty is the conduct of the respondent which caused mental suffering or fear to the matrimonial life of the petitioner. Therefore, the apprehension on the part of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent wife cannot be termed as ordinary wear and tear of married life. It is extremely difficult for any person to live with his wife who had the tendency to commit suicide often.

...

33. The petitioner used to attend the court for few hearings in a old rusted wheel chair assisted by her father and a servant maid. At the request of the court, petitioner husband bought a new wheel chair and offered it to the respondent wife and the respondent wife was also kind enough to accept the offer. In this aspect of the matter, it is relevant to refer para 19 of the written submission filed on behalf of the petitioner husband. The submission of facts raised in para 19 is denied by the respondent wife. After filing of the written submission, when court posed a question to the petitioner as to whether he can pay Rs.10,000/- p.m. to his wife as maintenance

even though no petition has been filed by the wife for maintenance. The petitioner offered to pay Rs.5,000/-p.m. as maintenance. This was happened subsequent to the filing of written submission of both the parties. The respondent wife is a physically challenged person. Having considered her position, the petitioner is directed to comply with the assurance given to the court in respect of future maintenance admitted by him.

34. In view of the above analysis and evaluation of incidents on the basis of pleadings and evidence on record as well as on the basis of the law laid by the Hon'ble Supreme Court, there is no option open to the Court but to conclude that any rigid view to keep the marriage between the parties indissoluble in the name of stability would not serve any purpose of the marriage in the facts situation of the instance case. The consequences of preserving the unworkable marriage would put the parties into greater misery than separation. Hence, I am constrained to grant divorce on the ground of cruelty in favour of the petitioner.

35. ... In the result, the petition in F.C.O.P.No.1942/2008 is allowed as prayed for by granting an order of divorce on the ground of cruelty and thereby the marriage held on 28.06.1998 between the petitioner and respondent is hereby dissolved. "

10. Mrs.K.Santhakumari, learned counsel for the appellant/wife would contend that the finding of the Family Court against the appellant/wife in respect of the incident on 06.11.2005 is wholly unsustainable in view of the statement of C.W.1, the child of the parties to the effect that his mother, in her attempt to catch hold of the gold bangle that slipped off her hand, fell down accidentally from the balcony. Also, she would strenuously contend that the Family Court ought to have seen that the respondent/husband filed a petition for dissolution of marriage with a clear intention to get rid of the appellant/wife, who has been physically affected and to get remarried, even according to the admissions in his own evidence. According to her, the appellant/wife is always willing to live with her husband and she never even filed a petition seeking interim maintenance.

11. In support of her case, learned counsel has relied upon the following decisions:

(i) Subhash Chander Sharma vs. Anjali Sharma, II (2010) DMC 831

"24. However it is a catch situation as this ground can ease the way for many who are under the burden of a doomed relationship to a breather but at the same time it may give an opportunity to the ones trying to maneuver the alleys of law for their self conceited motives.

25. There has been a lot of brainstorming with regard to the efficacy and societal impact that this ground would have if it is made as a ground for divorce. On the recommendations of the Law Commission of India, the Legislature in its wisdom would amend the Hindu Marriage Act to bring within its fold the ground of irretrievable breakdown of marriage. However it is expected that watertight safeguards are introduced so as not to send the message that now divorce has become a cakewalk.

26. Henceforth, there are some key areas that need to be pondered upon. The ground of irretrievable breakdown of marriage cannot be resorted to as a strait jacket formula leading to the institution of marriage becoming so fragile that the wrong doer abuses it for his selfish ends leaving the other party in lurch. But it is only when the court is satisfied that the marriage has been wrecked beyond the hope of salvage and there is no chance of their coming together should the court open the deadlock of wedlock. "

(ii) Neelam Kumar vs. Dayarani, II (2010) DMC 198 (SC)

"13. We are not impressed by this submission at all. There is nothing to indicate that the respondent has contributed in anyway to the alleged breakdown of the marriage. If a party to a marriage, by his own conduct brings the relationship to a point of irretrievable breakdown, he/she cannot be allowed to seek divorce on the ground of breakdown of the marriage. That would simply mean giving someone the benefits of his/her own misdeeds. Moreover, in a later decision of this Court in Vishnu Dutt Sharma v. Manju Sharma, II (2008) DMC 167 (SC) = VI (2008) SLT 289 = (2009) 6 SCC 379, it has been held that irretrievable breakdown of marriage is not a ground for divorce as it is not contemplated under Section 13 and granting divorce on this ground alone would amount to adding a clause therein by a judicial verdict

which would amount to legislation by Court. In the concluding paragraph of this judgment, the Court observed:

"If we grant divorce on the ground of irretrievable breakdown, then we shall by judicial verdict be adding a clause to Section 13 of the Act to the effect that irretrievable breakdown of the marriage is also a ground for divorce. In our opinion, this can only be done by the Legislature and not by the Court. It is for the Parliament to enact or amend the law and not for the Courts."

(iii) Gourab Datta vs. Smt. Arundhuti Majumder (Datta),
AIR 2011 Gauhati 183

"24. As provided by Section 13 of the Hindu Marriage Act, a petitioner, seeking divorce is required to prove the existence of the grounds, provided in the said Section. In the present case, the only ground taken by the appellant was "cruelty" which is a ground seeking dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act, 1955. Here, the term "petitioner" indicates either the husband or the wife, as the case may be. A petitioner, in order to get a decree for dissolution of marriage on the ground of "cruelty", is required to prove that he or she has been treated with cruelty by the other side. As discussed above, there is not an iota of evidence to show that the appellant i.e. the husband was treated with cruelty by the respondent.

Therefore, on careful perusal of the entire evidence on record and in the light of the decisions cited above, we have no hesitation in holding that the appellant-husband failed to establish that he was treated with cruelty by the respondent-wife. Therefore, the appellant failed to substantiate the ground, taken by him, for seeking a decree for dissolution of marriage. In view of the above, we find no difficulty in holding that the learned trial Judge committed no error by refusing to grant the prayer for divorce. Therefore, we find no merit in this appeal requiring interference with the impugned judgment and order."

(iv) Jayashree vs. S.Suresh, (2012) III DMC 465 (DB)

"27. The other contention raised by the learned Senior Counsel appearing for the appellant, is that the petitioner is not entitled to get a decree in his favour in view of Section 23(1)(b) of the Hindu Marriage Act, 1955. Section 23(1)(b) of the Hindu Marriage Act stipulates that if the Court is satisfied that where the ground of divorce petition is cruelty, the petitioner has not in any manner condoned the cruelty, the Court shall decree such relief accordingly. In the present case, in paragraph No.12 of the petition, the petitioner has averred that he never took drastic steps of initiating proceedings to dissolve the marriage because he was interested in the welfare of his children and lived with the respondent for more than 10 years. It is also averred in paragraph No.5 of the petition, that the respondent used to leave the matrimonial home often and the petitioner would bring her back and live with her till she finally left the matrimonial home on 18.5.2004. Even if the allegations of cruelty mentioned in the petition, are taken as true for the sake of argument, the petitioner has condoned the cruelty by his acts in bringing her back to the matrimonial home and living with her. In fact, the respondent left the matrimonial home on 18.5.2004, and the petition seeking for divorce, has been filed in the month of July 2004. Hence as rightly contended by the learned Senior Counsel for the appellant, the petitioner is not entitled to get a decree in his favour in view of Section 23(1)(b) of Hindu Marriage Act."

(v) Darshan Gupta vs. Radhika Gupta, (2013) 9 SCC 1

"49. Towards the same end, the learned counsel for the appellant advanced yet another submission. The learned counsel representing the appellant sought dissolution of marriage on the ground that the matrimonial ties between the parties had irretrievably broken down. It was, therefore, the contention of the learned counsel for the appellant that this Court would be justified in annulling the marriage between the parties, especially when the parties have lived apart for more than 12 years. Inviting this Court's attention to the intervention at the instance of this Court, in compliance wherewith the parties had made a last-ditch effort to live together, and

had actually taken up residence in an independent flat in Hyderabad on 29-9-2011, it was pointed out that they could not persuade themselves into a relationship of cordiality. It was, therefore, sought to be suggested that there was no likelihood of the parties ever living together as husband and wife. It was accordingly submitted that this Court should consider the annulment of the matrimonial ties between the parties on the ground of irretrievable breakdown of marriage.

50. At the present juncture, it is questionable as to whether the relief sought by the learned counsel for the appellant on the ground of irretrievable breakdown of marriage is available to him. The reason for us to say so is based on a judgment rendered by this Court in *Vishnu Dutt Sharma v. Manju Sharma*, wherein this Court has held as under:

"10. On a bare reading of Section 13 of the Act, reproduced above, it is crystal clear that no such ground of irretrievable breakdown of the marriage is provided by the legislature for granting a decree of divorce. This Court cannot add such a ground to Section 13 of the Act as that would be amending the Act, which is a function of the legislature.

11. Learned counsel for the appellant has stated that this Court in some cases has dissolved a marriage on the ground of irretrievable breakdown. In our opinion, those cases have not taken into consideration the legal position which we have mentioned above, and hence they are not precedents. A mere direction of the Court without considering the legal position is not a precedent.

12. If we grant divorce on the ground of irretrievable breakdown, then we shall by judicial verdict be adding a clause to Section 13 of the Act to the effect that irretrievable breakdown of the marriage is also a ground for divorce. In our opinion, this can only be done by the legislature and not by the Court. It is for Parliament to

enact or amend the law and not for the courts. Hence, we do not find force in the submission of the learned counsel for the appellant.

13. Had both the parties been willing we could, of course, have granted a divorce by mutual consent as contemplated by Section 13-B of the Act, but in this case the respondent is not willing to agree to a divorce."

53. Since we were not agreeable with the contention advanced by the learned counsel for the appellant on the plea of irretrievable breakdown of marriage, the learned counsel sought the same relief, for the same reasons, by imploring us to invoke our jurisdiction under Article 142 of the Constitution of India, and to annul the marriage between the parties, as a matter of doing complete justice between the parties. Doing justice between the parties is clearly a constitutional obligation. This Court has been bestowed with the discretion "... to make such order as is necessary for doing complete justice in any cause or matter pending before it ...". The concept of justice, however, varies depending on the interest of the party. On most occasions, it is advisable to adjudicate matters in consonance with law. Whenever it is possible to do so on the touchstone of the Court's conscience, the determination rendered would simultaneously result in doing justice between the parties. All the same, since we have been called upon to annul the marriage between Darshan Gupta and his wife Radhika Gupta in order to do complete justice to the parties, we have ventured to thoughtfully examine the matter from the instant perspective as well.

54. In the context of doing justice it was suggested, that the appellant would be ready and willing to pay the respondent, whatever was considered appropriate by this Court. We are informed, that the appellant is financially well-to-do. We shall, therefore, keep in our mind the appellant's offer while examining the instant issue. We would, in our endeavour to determine the issue in hand, examine the matter by reversing the roles of the parties. We will examine the matter as if the wife had approached the Family Court

seeking divorce on the ground that her husband had suffered brain damage leading to cognitive deficiencies. Yet, despite the said deficiencies, his working memory had returned to "near normal" after treatment. And his mental condition was such that it would not have any effect on his matrimonial obligations. And the wife's family is agreeable to pay an amount to be determined by this Court (just as the husband Darshan Gupta has offered), so as to enable their daughter to break away, and find a more suitable match. Should she have been granted freedom from her matrimonial ties, in the given facts, in order to do complete justice to the parties? We would ask ourselves, whether the husband would have accepted such a plea, in the facts denoted above? In such situation, if this Court had, in exercise of its jurisdiction under Article 142 of the Constitution of India, granted compensation to the husband, and had dissolved his marriage on the pretext of doing complete justice between the parties, would the same be acceptable to the husband? We have no doubt in our mind, that on a reversal of roles, the husband, without any fault of his own, would have never accepted as just the dissolution of his matrimonial ties, even if the couple had been separated for a duration as is the case in hand. Especially, if the husband had, right from the beginning, fervently expressed the desire to restore his matrimonial relationship with his wife and to live a normal life with her."

12. Per contra, Mr.V.T.Gopalan, learned Senior Counsel appearing for respondent/husband would contend that the appellant/wife caused mental torture to the respondent/wife by often threatening him that she will commit suicide, thereby disturbing the harmony in the family. He would fairly submit that the respondent/husband has provided all facilities to the appellant/wife from the date of the injury till she left for her maternal home. It is his further contention that the appellant/wife filed a petition for restitution of conjugal rights only in the year 2011 and it is an afterthought. It clearly shows that she never had the intention to live with the respondent/husband and only in order to extort money and to defeat the divorce petition filed on account of cruelty, she has filed the petition for restitution of conjugal rights. Learned Senior Counsel vehemently argued that the order of divorce granted by the Family Court has to be confirmed on the ground of irretrievable breakdown of marriage.

13. To substantiate his stand that the appellant/wife has caused cruelty to the respondent/husband, learned Senior Counsel has relied upon the following decisions:

(i) a decision of this Court in the case of Sumitran Rober vs. Sophia, 2001 (3) LW 649,

"14. Arguing on the standard of proof of adultery in matrimonial cases, the learned counsel for the petitioner would urge that the standard of proof required in a criminal case cannot be applied for the proceedings in matrimonial cases and the petitioner who alleged adultery is only required to prove the allegations by preponderance of probability. It cannot be disputed that the allegations as to the adultery have to be proved by preponderance of probability. But it has to be necessarily stated that it is well established that the petition for divorce on the charges of adultery should not be allowed merely on suspicion and doubts expressed by the party approaching the court. As stated above, the petitioner has clearly averred in paragraph 11 of the petition that he became suspicious of the conduct of the respondent. In the instant case, the averments made in the petition and the evidence adduced are not sufficient to hold that the respondent has committed adultery. On the contrary the available evidence would throw suspicion and doubt over the petitioner's case whether an incident could have taken place on 29.04.1997 as urged by the petitioner's side. Thus on both grounds for not impleading the adulterer as co-respondent and on the ground of not proving the adulterous conduct of the respondent, the petition has to necessarily fail. The respondent has categorically admitted that at no point of time, the petitioner deserted herself. Under such circumstances, the request of the petitioner for restitution of conjugal rights in the counter claim cannot be considered. The above issues are answered accordingly."

(ii) Geeta Jagadish Mangtani vs. Jagdish Mangtani, 2005 (8) SCC 177

"5. We are of the view that these observations of the High Court are fully justified in the facts of the present case. One has to particularly note the fact that the parties knew even prior to marriage whatever they were

earning. The earnings of the wife from a government job before the marriage was more than double of that of the husband. With the knowledge of this fact the parties entered into matrimonial alliance. The marriage survived only for a brief period of about seven months. After 2-6-1993 till the exchange of notices and replies during September to December 1996 and filing of the divorce petition ultimately by the husband on 31-12-1996, there has been no attempt on the part of the wife to stay with the husband. She is a school teacher and it is common knowledge that in schools there are long vacations during summer months, more so, in government schools where the wife teaches. At least during those holidays she could have visited the husband at Ulhasnagar along with her son and stayed with him. There is nothing on record to show that any such attempt was ever made by her to visit the husband during this entire period. She has stated in her evidence that the husband used to come and stay with her during her vacations. This has been denied by the husband. Therefore, the conclusion is inevitable, that there was never any attempt on the part of the wife to go to her husband's house i.e. matrimonial home of the parties after she left on 2-6-1993. From this fact alone animus deserendi on the part of the wife is clearly established. She has chosen to adopt a course of conduct which proves desertion on her part. In the facts and circumstances of the case, it cannot be said that this desertion on the part of the wife was with a reasonable cause. Such a course of conduct over a long period indicates total abandonment of marriage and cannot be justified on the ground of monetary consideration alone as a reasonable cause to desert. It also amounts to wilful neglect of the husband by the wife. Therefore, the conclusion reached by the High Court appears to be absolutely correct in the facts and circumstances of the case. This appeal is accordingly dismissed with no order as to costs."

(iii) Naveen Kholi vs. Nellu Kohli, 2006 (4) SCC 558

"86. In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned

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

91. Before we part with this case, on consideration of the totality of facts, this Court would like to recommend the Union of India to seriously consider bringing an amendment in the Hindu Marriage Act, 1955 to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps."

(iv) Mayadevi vs. Jagdish Prasad, 2007 (3) SCC 136

"8. Learned counsel for the respondent on the other hand submitted that the instances highlighted by the trial court and analysed in great detail by the High Court clearly made out a case for dowry (sic cruelty) and no interference is called for in this appeal.

9. "10. The expression 'cruelty' has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the

conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

11. The expression 'cruelty' has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired

into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. (See Shobha Rani v. Madhukar Reddi.)”

12. To constitute cruelty, the conduct complained of should be 'grave and weighty' so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than 'ordinary wear and tear of married life'. The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

13. The court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the court to weigh the gravity. It has to be seen whether the

conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

14. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hypersensitive approach would be counterproductive to the institution of marriage. The courts do not have to deal with ideal husbands and ideal wives. It has to deal with a particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to matrimonial court."

(v) Rishikesh Sharma vs. Saroj Sharma, 2007 (2) SCC 263

"4. We heard Mr A.K. Chitale, learned Senior Counsel and Mr S.S. Dahiya, learned counsel for the respondent and perused the judgment passed by both the trial court and also of the High Court. It is not in dispute that the respondent is living separately from the year 1981. Though the finding has been rendered by the High Court that the wife last resided with her husband up to 25-3-1989, the said finding according to the learned counsel for the appellant is not correct. In view of the several litigations between the parties it is not possible for her to prosecute criminal case against the husband and at the same time continue to reside with her husband. In the instant case the marriage is irretrievably broken

down with no possibility of the parties living together again. Both the parties have crossed 49 years and living separately and working independently since 1981. There being a history of litigation with the respondent wife repeatedly filing criminal cases against the appellant which could not be substantiated as found by the courts. This apart, only child born in the wedlock in 1975 has already been given in marriage. Under such circumstances the High Court was not justified in refusing to exercise its jurisdiction in favour of the appellant. This apart, the wife also has made certain allegations against her husband, that the husband has already remarried and is living with another lady as stated by her in the written statement. The High Court also has not considered the allegations made by the respondent which have been repeatedly made and repeatedly found baseless by the courts.

5. In our opinion it will not be possible for the parties to live together and therefore there is no purpose in compelling both the parties to live together. Therefore, the best course in our opinion is to dissolve the marriage by passing a decree of divorce so that the parties who are litigating since 1981 and have lost valuable part of life can live peacefully for remaining part of their life.

6. During the last hearing both the husband and wife were present in the Court. The husband was ready and willing to pay a lump sum amount by way of permanent alimony to the wife. The wife was not willing to accept the lump sum amount but however expressed her willingness to live with her husband. We are of the opinion that her desire to live with her husband at this stage and at this distance of time is not genuine. Therefore, we are not accepting this suggestion made by the wife and reject the same."

(vi) S.Latha Kunjamma vs. Anil Kumar, 2008 (11) KLJ 49

"7. False, defamatory, scandalous, malicious, baseless and unproved allegations made against the spouse in the written statement may amount to cruelty. The irresponsible insinuation and allegations which were made during the course of litigation against the wife

cannot be brushed aside. Such a view was taken by the Rajasthan High Court in the decision reported in Parihar v. Parihar . Pushparani v. Krishan Lal is a case where the wife had in her written statement alleged that an illicit relationship existed between her husband and one Smt. Bindra Devi. When the husband appeared in the witness box the said statement was directly suggested to him in the cross-examination. This imputation was not ground pleaded in the petition by the husband it was held by the Delhi High Court that the allegations of adultery made by the wife in the written statement and at the time of cross-examination could be taken into consideration for granting a decree of divorce on the ground of cruelty. The learned Judge had followed the principle that cruelty subsequent to the institution of the petition could be taken into account to prevent multiplicity of proceedings.

16. No doubt, the burden must lie on the petitioner to establish her case. Proof beyond reasonable doubt is a higher standard proof in trials involving enquiry into issues of criminal nature. The ground of desertion upon which the petition for dissolution of marriage was filed does not require that the petitioner must prove her case beyond all reasonable doubt in matrimonial proceedings. The court below was therefore in error in holding that the proof adduced by the petitioner as PW1 is not sufficient proof for supporting the ground of desertion. The standard of proof required in matrimonial cases under the Act is not to establish the grounds alleged beyond reasonable doubt but merely one to find out whether the preponderance is in favour of the existence of the said fact alleged. "

(vii) Ravikumar vs. Julmidevi, 2010 (4) SCC 476

"19. It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a

matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty."

(viii) Pankaj Mahajan vs. Dimple @ Kajal, 2011 (12) SCC 1

"3. After the marriage, the appellant husband found that the respondent wife was acting in a very abnormal manner, as she used to abruptly get very aggressive, hostile and suspicious in nature. In a fit of anger, she used to give threats that she would bring an end to her life by committing suicide and involve the appellant husband and his family members in a criminal case, unless she was provided a separate residence. On one occasion, she attempted to commit suicide by jumping from the terrace but was saved because of timely intervention of the appellant husband.

35. It is well settled that giving repeated threats to commit suicide amounts to cruelty. When such a thing is repeated in the form of sign or gesture, no spouse can live peacefully. In the case on hand, the appellant husband has placed adequate materials to show that the respondent wife used to give repeated threats to commit suicide and once even tried to commit suicide by jumping from the terrace. Cruelty postulates a treatment of a spouse with such cruelty as to create reasonable apprehension in his mind that it would be harmful or injurious for him to live with the other party. The acts of the respondent wife are of such quality or magnitude and consequence as to cause pain, agony and suffering to the appellant husband which amounted to cruelty in matrimonial law."

(ix) K.Srinivasa Rao vs. D.A.Deepa, 2013 (5) SCC 226

"34. In the ultimate analysis, we hold that the respondent wife has caused by her conduct mental cruelty to the appellant husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court the respondent wife expressed that she wants to go back to the appellant husband, but, that is not possible now. The appellant husband is not willing to take her back. Even if we refuse

decree of divorce to the appellant husband, there are hardly any chances of the respondent wife leading a happy life with the appellant husband because a lot of bitterness is created by the conduct of the respondent wife.

35. In Vijaykumar (2003 (6) SCC 334), it was submitted that if the decree of divorce is set aside, there may be fresh avenues and scope for reconciliation between parties. This Court observed that judged in the background of all surrounding circumstances, the claim appeared to be too desolate, merely born out of despair rather than based upon any real, concrete or genuine purpose or aim. In the facts of this case we feel the same.

36. While we are of the opinion that decree of divorce must be granted, we are alive to the plight of the respondent wife. The appellant husband is working as an Assistant Registrar in the Andhra Pradesh High Court. He is getting a good salary. The respondent wife fought the litigation for more than 10 years. She appears to be entirely dependent on her parents and on her brother, therefore, her future must be secured by directing the appellant husband to give her permanent alimony. In the facts and circumstance of this case, we are of the opinion that the appellant husband should be directed to pay a sum of Rs 15,00,000 (Rupees fifteen lakhs only) to the respondent wife as and by way of permanent alimony."

14. We have heard the learned counsel on either side, gave careful consideration to their submissions, perused the decisions relied on by them and the material documents available on record.

15. The issue before us is whether the Court below is right in granting the decree of divorce against the appellant/wife on the ground of cruelty. Though, according to the respondent/husband, the appellant/wife sustained injuries on 06.11.2005 only as a result of an attempt to commit suicide, the version of the appellant/wife is that she fell down accidentally from the second floor balcony in an attempt to catch hold of the gold bangle that slipped from her hand. Admittedly, the appellant/wife suffered fracture in her spinal cord and pelvis and is now moving around only in a wheel-chair. Though the Family Court has come to a conclusion that only being frustrated

at the respondent's refusal to lend money to her parents, the appellant/wife indulged in suicidal attempt by jumping from the balcony of the second floor, whether the injuries sustained by her on 06.11.2005 is due to the "intentional jump" or the "accidental fall" from the balcony of the 2nd floor of her house, can be decided only by fair appreciation of evidence. Any prudent person will doubt the reason assigned by the respondent/husband for the suicide attempt of the appellant/wife.

16. It is seen that when the appellant/wife sustained injuries on 06.11.2005, she was immediately taken to hospital by her husband, wherein, the Doctors have reported that the appellant/wife sustained fracture on her spinal cord and pelvis. On 08.11.2005, the appellant/wife underwent operation on her Spinal Cord and shifted to I.C.U. It has to be noted that when the police came for enquiry, the appellant/wife gave a statement that her gold bangle slipped from her hand and in an attempt to catch hold of the same, she slipped and fell from the 2nd floor balcony. Also, in her affidavit for restitution of conjugal rights, the appellant/wife has stated that on 06.11.2005, when she was waiting in the balcony of her house for her husband to return, gold bangle slipped from her hands and in the attempt to catch hold of the same, she fell down and sustained injuries.

17. With regard to the said incident, the Court below examined the elder son of the appellant and the respondent, viz. Pranav, studying VII standard, as C.W.1. To the question as to how such accident occurred, he answered that his mother jumped from the balcony. When he was questioned as to why his mother jumped, he stated that since it was a Sunday, he, his brother Kush, his cousins Gaurav and Neerav and the children of his father's friends were all present in his house and that he is not aware of the reason of his mother jumping from the balcony. Again, when he was questioned as to how his mother fell the balcony, he stated that his mother fell down from the 2nd floor balcony of his house, in an attempt to catch hold of the bangle which slipped from her hand.

18. The other child witness, Gaurav, who is the nephew of the respondent/husband was examined by the Court below as C.W.2. He has stated that on the date of the alleged incident, he along with his brothers saw his aunt, i.e. the appellant herein, jumping from the balcony and denied the statement that she fell down in an attempt to catch hold of her bangle. He has also stated that he is not aware of the reason as to why his aunt jumped from the balcony. According to him, at the time of accident, he was inside the house of his Uncle, i.e. the respondent herein and only when he came down from the 2nd floor to his house at the ground floor, he saw his aunt falling from the balcony.

19. A careful analysis of the evidence of Gaurav would show that though he had been in the house of his Uncle, i.e. the respondent herein before the fall of the appellant, during the fall of the appellant, he came down to ground floor and witnessed the incident only from the ground floor. Therefore, he might not be aware as to whether she jumped or fell from the balcony. Whereas, Pranav, the son of the appellant and the respondent, who was in his house at the time of accident, has clearly stated that his mother fell down from the balcony in an attempt to catch hold of the bangle that slipped from her hand. Thus, it is crystal clear that Gaurav has not witnessed the fall of the appellant from the balcony and he is certainly not aware as to why and how she fell from the balcony. Hence, the evidence of Gaurav is contradictory and cannot be believed.

20. In the cross-examination, the respondent/husband has stated that he has not registered any complaint regarding the appellant's attempt to commit suicide and that he took the appellant/wife to Hospital for treatment. It is his further evidence that he appointed a servant-maid to take care of the appellant/wife and that on 24.07.2007, when his wife left for her parent's house, on 27.07.2007, over phone, he asked her to come back to her matrimonial house. The respondent/husband has also stated that the appellant/wife has mentally tortured him for petty reasons and there was curse, abuse and demand of Rs.5 crores for giving consent divorce. Thereafter, the demand was reduced to Rs.2.5 crores along with an Apartment in her name apart from the maintenance of Rs.10,000/- per month. The respondent/husband would submit that the intention of the appellant/wife is only to extort money from him and she had no intention to live with him and take care of her children.

21. Even assuming that the appellant/wife had attempted to commit suicide on 06.11.2005, what prevented the respondent/husband from informing the same to the police, when he has stated in his affidavit that the incident which took place on 06.11.2005 is not first of its kind and that the appellant/wife had attempted to commit suicide on earlier occasions also and that the said attempts were thwarted by him. He could have informed the police about her suicide attempt, which can easily be corroborated by the evidence of his family members, driver and neighbours. Moreover, the said incident had occurred after seven years from the date of marriage. So, this Court cannot assume that fearing police case under Dowry Prohibition Act, the respondent/husband has concealed her suicide attempt. Had the appellant/wife really jumped from the balcony with an intention to commit suicide, which it is stated, was witnessed by the husband, children and driver, definitely, the same could have been reported to the police. It is only Pranav, the elder son, who has in his evidence stated that his mother slipped and fell from the balcony. The evidence of the

child C.W.1 is in support of the mother. But, the fact remains that both the children are now living with their father and are not willing to go with their mother. The evidence of the son can be accepted, as he is accepted to be the eye-witness. Hence, this Court is not inclined to disbelieve the evidence of Pranav.

22. Misunderstandings are part and parcel of marital life. If there is no difference of opinion between the husband and wife, then it is certainly a news. Though, in the case on hand, the respondent/husband has stated that his refusal to lend money to the parents of the appellant/wife frustrated her to commit suicide on 06.11.2005, the same ought not have been accepted by the Court below. From the pleadings, it is seen that after the alleged incident, the respondent/husband had taken care of the appellant/wife for nearly two years and thereafter, on account of his leaving to Rajasthan, since there was no one to look after her, the appellant/wife had to move to her mother's house, which cannot be termed as desertion. If really there was a difference of opinion between the appellant and the respondent and there was an attempt to suicide by the appellant, the respondent would have given such information to the police and there is no reason for him to take care of her for more than two years. It may be true that the wife has not filed a petition for restitution of conjugal rights immediately, probably believing that the husband may join her. The very fact that he had appointed a servant-maid to take care of her shows his humanitarian attitude. Even assuming for the sake of argument that in order to avoid a police case, he has not disclosed that the appellant/wife has attempted to commit suicide, no prudent man will remain quiet, if it was a second attempt. There is no proof of repeated attempts of suicide as alleged.

23. Further, the observation of the Court below that the appellant/wife has not examined her father as a witness to rebut the contention of the respondent/husband with regard to lending of money, is not acceptable, as there is no proof to establish that money was lent in huge proportion and frequently.

24. The finding of the Family Court that there was a suicide attempt on 06.11.2005 and that the suicide attempt of the wife cannot be termed as an ordinary wear and tear of matrimonial life and that divorce has got to be granted on the ground of cruelty and merely because, a complaint has not been filed under Section 306 IPC does not mean that the offence under Section 13(1)(i-a) of the Hindu Marriage Act is wiped out, cannot be accepted, as the respondent/husband has not established his case properly with sufficient evidence. The evidence of the children, more particularly the evidence of their son, Pranav is very clear that the injuries suffered by his mother on 06.11.2005 is only due to an accidental fall. The finding that the wife jumped from the balcony in an attempt to

commit suicide cannot be accepted. At best, it can be said that it was a "fall". The respondent/husband has failed to establish his case. The conclusion of the court below on the basis of the available evidence is erroneous. The petition for restitution of conjugal rights after four years from the date of filing of the divorce petition is no ground to hold it against her for desertion.

25. Learned Senior Counsel appearing for the respondent/husband has mainly put forth his arguments on 'cruelty' and 'irretrievable breakdown of marriage' and has relied on decisions of the Hon'ble Apex Court and High Courts, to that effect. The allegation of the respondent/husband is that the appellant/wife has caused mental cruelty to him. Mental cruelty is the conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for the party to live with the other. In other words, mental cruelty must 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. The only judgment which may appear to support the case of the respondent/husband is the one rendered by the Apex Court in the case of Pankaj Mahajan vs. Dimple @ Kajal, (2011) 12 SCC 1, wherein, the wife had caused mental cruelty to the husband by often threatening him that she will commit suicide. That is a case, where mental cruelty alleged against the wife had been proved. But, in the case on hand, though it is strongly alleged that the appellant/wife had caused mental cruelty to the respondent/husband by often threatening him that she will commit suicide if he does not accede to her requests. Such an allegation has not been proved by the respondent/husband.

26. At this juncture, it is worth referring to the observation made by the Hon'ble Apex Court in the case of Padma Sundara Rao v. State of T.N., (2002) 3 SCC 533, which is reiterated hereunder:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

27. Thus, in view of the above observation made by the Apex Court in Padma Sundara Rao's case, the decision relied on by the learned Senior Counsel for the respondent/husband in Pankaj Mahajan's case will not be applicable to the case on hand. The inference drawn by this Court that the injuries sustained by the appellant/wife is certainly an "accidental fall", would go to show that there is no room for cruelty in this case. If the appellant/wife's attempt to commit suicide on 06.11.2005 is not first of its kind, the respondent/husband ought to have let in evidence to corroborate such incident of attempt to suicide. Failure on his part to do so shows that there is no 'mental cruelty' by the appellant/wife as alleged by the respondent/husband. Hence, the ground of 'cruelty' on which the Court below has answered in favour of the respondent/husband is erroneous and based on no evidence.

28. Coming to the point raised by the learned Senior Counsel for the respondent/husband that there is irretrievable breakdown of marriage, the same cannot be invoked in this case, as one of the parties, viz. the appellant/wife is interested in living with the respondent/husband, which is quite evident from the fact that she did not even think of filing a petition claiming monthly maintenance from her husband. That apart, irretrievable breakdown of marriage has not been incorporated as a ground for divorce under the Hindu Marriage Act, 1955 and this Court is unable to accept the contention of the learned Senior Counsel appearing for the respondent to grant divorce on the ground of irretrievable breakdown of marriage.

29. To save the marriage, several mediations were conducted by this Court between the appellant and the respondent. But, compromise could not be arrived at. In fact, even one of us (S.Vaidyanathan, J.) was a party to the mediation while sitting in a Division Bench with Justice S.Rajeswaran. This Court persuaded the children to go and stay with the mother and the same was accepted. In this case, after two years of mediation, the children, having grown up, are obsessed only with the father and they are not willing to go with the mother. Probably, keeping such distance from their mother must be due to the physical inability of the mother, as she is not in a position to look after them. Hence, this Court is left with no other option, but to come to a conclusion that the respondent/husband after taking care of the appellant/wife for two years and thinking that she might not recover, decided to get rid of her by filing a divorce petition.

30. In view of the foregoing discussion, this Court is of the view that there is no element of cruelty established against the appellant/wife and the marriage cannot be said to be irretrievably broken, as the appellant/wife is very much willing to live with the respondent/husband. Therefore, this Court

allows these appeals. The decree for dissolution of marriage and dismissal of the plea for restitution of conjugal rights passed by the Principal Judge, Family Court, Chennai vide judgment dated 25.11.2011 made in F.C.O.P.Nos.1942 of 2008 and 218 of 2011 are set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

aeb

To :
The Principal Judge,
Family Court, Chennai.

copy to:
The Section Officer, VR Section,
High Court Madras

+2 ccs to Mr.P.Krishnan Advocate sr.21727
+1 cc to M/s.K.Santhakumari Advocate sr.21705

C.M.A.Nos.168 & 169 of 2012

सत्यमेव जयते

aa04/05/2016

WEB COPY