

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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C.M.A.No.1066 of 2012

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JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

The estranged couple do not have any children. While their post-marriage life together was for a brief period of five months from 17.02.2005 to 31.07.2005, they are living apart for the past nearly a decade from August, 2005 onwards. It is not as if the petitioner has sought divorce in a rush of blood or in a fit of anger. It was, evidently, a well thought out and a conscious decision for H.M.O.P. No.26 of 2010 was filed by her, nearly five years after she started living away from the respondent from August, 2005 onwards. During the hearing of this appeal the respondent-wife, who obtained a decree of divorce from the Court below, filed an affidavit before this Court stating that she was willing to forego all claims of alimony and maintenance from the appellant-husband and to eschew all allegations made in the order under appeal, if he was willing for a divorce by mutual consent. The respondent also expressed her desire to leave her past behind, re-marry and start life afresh. The appellant-husband refuses to let go, and insists on an adjudication of the appeals on merits.

Should a 36 year old woman, who wants nothing more from her spouse except to be let alone, continue to remain shackled in a loveless and unhappy marriage? Would absence of "irretrievable breakdown of marriage", as a ground for dissolution of marriage under the Hindu Marriage Act, disable this Court from setting her free? I think not. I have had the advantage of perusing the judgment prepared by my Learned brother. I regret my inability to agree. I would not have ventured to differ from his weighty opinion, but for the fact that it would result in the respondent-wife not only being denied the opportunity to start life afresh in the marital company of another and beget children, but also in being forced to live in misery forever.

The appellant in C.M.A.No.1066 of 2012 was the respondent in

H.M.O.P.No.26 of 2010 before the Senior Civil Judge, Gudur, SPSR Nellore District. The respondent in C.M.A. No.1066 of 2012 filed the petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 seeking dissolution of their marriage by a decree of divorce. Parties shall, hereinafter, be referred to as they were arrayed in H.M.O.P.No.26 of 2010 before the Court below.

In her petition, the petitioner stated that she married the respondent on 17.02.2005; at the time of her marriage 15 sovereigns of gold, Rs.5.00 Lakhs in cash and Rs.1.00 lakh worth of articles were given by them to the respondent through his sister; after marriage, the respondent took her to the USA where they stayed in the house of his brother Sri Muniprasad Reddy; the respondent used to harass her physically and mentally in the U.S.A to bring Rs.10.00 Lakhs as additional dowry; he threatened to give divorce and marry again if she failed to do so; he was not employed in the USA; she convinced the respondent and returned to India promising to give Rs.10.00 Lakhs; on their return to India on 30.07.2005, they went to Sullurpet and later to Vendodu; it was then that he disclosed the death of her brother and sister-in-law; even after he went to his native place at Srikalahasti, the respondent continued to demand payment of Rs.10.00 Lakhs; and she should, therefore, be granted divorce both on the grounds of cruelty and desertion.

In his counter, filed in reply thereto, the respondent contended that he married the petitioner on 17.02.2005 at Gudur; their marriage was also registered one month thereafter; after marriage, both he and the petitioner went to the USA on 28.05.2005 where he was employed; after reaching there, he came to know that the petitioner's elder brother Sri Ranga Reddy died in a car accident on 31.05.2005, and later her sister-in-law also died; as she wanted to see her mother and family members, he took her back to India on 30.07.2005; they went to Sullurpet and stayed at his brother-in-law's house for two days; they then went to the petitioner's village ie Vendodu on 31.07.2005; the petitioner did not join him thereafter; both his mother and grandmother went to Vendodu, and requested the petitioner to join him; the petitioner promised to join him four or five days later; she then

gave a report to the Police; there was mediation in the presence of elders; the petitioner's brother-in-law Sri Venugopal Reddy sent a person by name Kumar, and demanded payment of Rs.20.00 Lakhs to send the petitioner; he had earlier filed O.P. No.16 of 2007 for restitution of conjugal rights; and the petitioner, even before the Lok Adalath in O.P.No.16 of 2007, had refused to join him.

The petitioner examined herself as P.W.1 and marked Exs.A1 and A2. Ex.A1 is the wedding card and Ex.A2 is the marriage photo of the petitioner and the respondent. The respondent examined himself as RW.1 and marked the certified copy of the deposition of the petitioner (as RW.1 in H.M.O.P. No.16 of 2007) as Ex.B1.

In her evidence as PW.1, the petitioner stated that the respondent took her to the USA, and they stayed at his brother's house; he used to move around the city without a job; when she questioned him about his employment, he started harassing her both physically and mentally; he threatened divorce if she failed to get Rs.10.00 Lakhs as additional dowry; she convinced him that, if they returned to India, additional dowry would be provided; on that condition alone was she permitted to come to India; she went to her mother's place and stayed there; and her mother was unable to meet such unlawful demands as she lacked the capacity to pay additional dowry. In cross-examination she denied the suggestions that the respondent was employed in Seiman Bell Laboratories and Canon prior to his marriage, and he had a H1B Visa; after coming to know of the death of her brother and sister-in-law, the respondent took her to India after he obtained leave; the respondent took her to India as she forced him to do so; she gave a complaint under Section 498-A of IPC to stop the respondent from going to the USA; and, in her deposition (as RW.1 in O.P. No.16 of 2007), she stated that she was in touch with her relatives while she was in the USA.

The petitioner also stated, in cross-examination, that she came to know of her brother's death only when she returned to India at Chennai Airport through her sister; after her marriage in India she doubted that the

respondent was fit for marriage; and she did not immediately reveal it to her brother and other relatives. She admitted that, in O.P. No.16 of 2007, she had stated that she came to know of the death of her brother at Vendodu through the respondent; and she did not take her husband to any hospital for treatment regarding his fitness for marriage.

In his examination in chief as RW.1, the respondent denied that he had demanded additional dowry. He stated that he was employed at Omniscient Systems, Philadelphia, USA on H1B Visa; he took the petitioner to the USA on 28.05.2005; when they reached there, they got the sad news of the death of the petitioner's elder brother in a car accident on 30.05.2005, and the death of her sister-in-law a few days later; he had informed the said fact to the petitioner and, as she wanted to meet her mother and family members, he brought her to India on 30.07.2005; the petitioner filed the complaint in C.C.No.51 of 2006; the petitioner's sister made advances, and invited him to her house at Sullurpet when her husband was away; she asked him to give money to her husband as he was trying to set up a Cable TV in SHAR, and was short of investment; he informed the petitioner's brother-in-law, who told him that he, himself, had sent his wife to him; he should give him money as told by his wife, otherwise they would not send the petitioner with him; even during Lok Adalat, in O.P. No.16 of 2007, the petitioner had refused to come and join him; the petitioner never acted as a dutiful wife, and had deserted him; and he had never deserted her at any point of time.

In cross-examination, the respondent denied the suggestions that he had no job in the USA; he did not allow the petitioner to talk with her relatives over phone apprehending that she would inform them that he had no job; and he did not inform the petitioner of her brother's death while they were in the USA, and she came to know of it when she returned to India. While admitting that the petitioner was his second wife, the respondent denied that he had suppressed his first marriage or that he had no job when he took the petitioner to the USA.

Ex.B1, marked by the respondent, is the deposition of the petitioner

(as R.W-1 in H.M.O.P. No.16 of 2007 - a petition filed by the respondent in H.M.O.P. No.26 of 2010 seeking restitution of conjugal rights). In her evidence as R.W-1, in H.M.O.P. No.16 of 2007, the petitioner stated that, at the time of her marriage to the petitioner, she was given stridhana of 15 sovereigns of gold; Rs.5,00,000/- in cash and Rs.1,00,000/- worth articles were given to the respondent through his sister; he had represented to her, her uncle and aunt that he was employed in the USA; after marriage he took her to his younger brother's house in the USA; when she questioned him as to why he was not doing any job, he began harassing her both physically and mentally; he also demanded that she bring additional dowry of Rs.10,00,000/-, otherwise he would divorce her and marry again; though he was aware of it, he did not even inform her about the death of her brother and sister-in-law; she finally convinced him that, if both of them returned to India, she would be able to pay Rs.10,00,000/- after going to her village; she also agreed to repay Rs.60,000/- incurred for travel to India; only when they reached Vendodu, did he disclose the death of her brother and sister-in-law; he asked her not to disclose the harassment meted out by him as the family was already mourning the death of her brother and sister-in-law; two days thereafter, he again came to Vendodu and asked her to pay Rs.10,00,000/- as promised by her in the USA, otherwise he would divorce her; later the respondent's mother and grandmother came to Vendodu, and asked her to pay Rs.10,00,000/-; they informed her that, otherwise, she may remain in the village itself and he would divorce her and marry again; and, on account of the threats of divorce made by him and his mother, she had to disclose to her relatives regarding the harassment meted out to her in the USA.

In cross-examination as R.W-1 in H.M.O.P. No.16 of 2007, the petitioner stated that she spoke to her sister and brother-in-law in the USA just before returning to India; her sister and brother-in-law did not inform her about the death of her brother; the respondent did not have any job in the USA, and he kept her in his brother's house for two months; after they got down at Chennai from the USA, they went to the house of Karunakara Reddy, the father-in-law of the petitioner's brother; they then came to

Sullurpet on the same night; on the next day they went to her parents house; he did not lead any conjugal life with her during the five month period in India, as well as in the USA; and she was not ready to join the respondent as he had harassed her for the five month period when she stayed with him. She denied the suggestions that the respondent had informed her about the death of her brother immediately after receiving the news; he had tried to bring her to India but could not do so as he had availed six months leave prior to marriage and he was not granted leave; she had knowledge of his possessing H-1 visa; she and her brother-in-law had demanded that he pay Rs.20,00,000/- for her to join him; and the respondent was fit to lead conjugal life and he had obtained a medical certificate to that effect. On being asked by the Court below, why she did not lead a conjugal life with the respondent, she stated that he was unfit to lead a conjugal life with her.

In its order, in H.M.O.P.No.26 of 2010 dated 01.08.2012, the Court below observed that, after marriage, both the petitioner and the respondent went to the USA on 28.05.2005 and returned to India on 30.07.2005; after they went to the USA, the petitioner's elder brother Sri Ranga Reddy died in a car accident; a few days thereafter, the petitioner's sister-in-law also expired; it was also not in dispute that the petitioner filed a complaint under Section 498-A IPC; after the case was registered, a charge-sheet was filed in C.C. No.51 of 2006 on the file of the Judicial Magistrate of First Class, Gudur; and the respondent had also filed a petition in OP No.16 of 2007 for restitution of conjugal rights.

The Court below noted the petitioner's contention that the respondent harassed her physically and mentally, and demanded additional dowry after they reached the USA; he did not disclose the death of her brother and sister-in-law till they reached India; and he had no job in the USA. The Court below noted the petitioner's denial that the respondent had informed her of the death of her brother and sister-in-law in the USA; of having demanded Rs.20.00 Lakhs; and of his inability to bring her to India after her brother's death, as he had availed six months leave prior to their marriage, and did not get further leave. The Court below also noted

the admission of the petitioner that they had booked return tickets to the USA when they came to India; and, though she doubted the respondent's fitness for marriage, she did not reveal it to her brother and relatives.

The Court below took note of the contention of the respondent that the petitioner did not join him; and her brother-in-law Sri T. Venugopal Reddy had sent word that Rs.20.00 lakhs should be paid to them in order to send the petitioner to join him. The Court below noted the admission of the respondent, during his cross-examination, that both he and the petitioner had stayed in his brother's house in the USA; and the petitioner was his second wife. The Court below also noted the respondent's denial of demanding Rs.10.00 Lakhs as additional dowry, failing payment of which to have threatened to give divorce and marry again; to kill the petitioner if she did not pay the said amount; of his bringing back the petitioner to India on her promise to give Rs.10.00 Lakhs and pay Rs.60,000/- as travelling charges; suppression of his first marriage in order to marry the petitioner; of having filed a petition for restitution of conjugal rights to escape criminal liability; of not having any job for the past five years; and of having threatened the petitioner physically or mentally.

The Court below held that, though a suggestion was put to PW.1 (the petitioner) that the respondent had a job in the USA, the respondent did not produce any evidence in proof thereof; he did not choose to examine his brother in the USA with whom he had stayed; it was for the respondent to prove that he had a job in the USA on the date of the marriage; though PW.1 deposed that there was no conjugal relationship between them, no suggestion was put to her on that aspect; and the petitioner had deposed that the respondent did not inform her of the demise of her brother and sister-in-law, who had died just a few days after they had gone to the USA, till they reached India. The Court below held that it was not possible for the petitioner to produce evidence that the respondent had harassed her, and had demanded additional dowry during their stay in the USA; while the respondent could have produced evidence to the contrary or examine his brother in the USA, he chose not to do so;

the evidence of the petitioner could be believed, as there was no need for her to spoil her marital relationship; the petitioner's contention, that she had no conjugal life, since the date of marriage, stood un rebutted; she had started living separately shortly after marriage; except for his self-serving statement that the petitioner's brother-in-law had asked him to pay Rs.20.00 Lakhs, no evidence had been adduced by the respondent in this regard; and, as the petitioner and the respondent were living separately since 2005, the marriage should be dissolved by a decree of divorce on the ground of cruelty.

I. "CRUELTY" UNDER SECTION 13(1)(i-a) OF THE HINDU MARRIAGE ACT: ITS MEANING AND SCOPE:

Under Section 13(1)(ia) of the Hindu Marriage Act, any marriage solemnised after the commencement of the Act may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has, after the solemnisation of the marriage, treated the petitioner with cruelty. The word "cruelty" is not defined under the Hindu Marriages Act, and has been used therein in relation to human conduct, or human behaviour, in respect of matrimonial duties and obligations. To amount to cruelty, there must be such wilful treatment which has caused suffering in body or mind either in fact or a genuine apprehension such as to render the continued living together of the spouses harmful. Cruelty may be mental or physical. Mental cruelty can cause even more serious injury than physical harm and create, in the mind of the injured, such apprehension as is contemplated in Section 13(1) (i-a) of the Hindu Marriages Act. (**Vinita Saxena v. Pankaj Pandit**^[1]^[1]). Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse, caused by the conduct of the other for a long duration, may justify an inference of mental cruelty. Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness, causing injury to mental health, may also amount to mental cruelty. (**Malathi Ravi v. B.V.Ravi**^[2]^[2]; **Samar Ghosh v. Jaya Ghosh**^[3]^[3]).

There is no limit to the kind of conduct which may constitute cruelty. New types of cruelty may crop up depending upon human behaviour and the capacity to tolerate the conduct complained of. (**Sheldon v. Sheldon**^[4]; **N.G. Dastane v. S. Dastane**^[5]; **Shobha Rani v. Madhukar Reddi**^[6]). As to what constitutes mental cruelty, to satisfy the requirements of Section 13(1)(i-a), would not depend upon the numerical count of such incidents, but by the intensity, gravity and impact meted out even once, and the deleterious effect of it on the mental attitude necessary for maintaining a conducive matrimonial home. (**Vinita Saxena**¹). Some instances of human behaviour which may be relevant in dealing with cases of mental cruelty, though only illustrative and not exhaustive, are (1) acute mental pain, agony and suffering as would not make it possible for the parties to live with each other; (2) the situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other; (3) the feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of the other for a long time; (4) sustained unjustifiable conduct and behaviour of one spouse acutely affecting the physical and mental health of the other. (**K. Srinivas Rao v. D.A. Deepa**^[7]; **Samar Ghosh**³; **Naveen Kohli v. Neelu Kohli**^[8]; **Malathi Ravi**²).

Mental cruelty and its effect cannot be stated with arithmetical exactitude. The inference of mental cruelty must be drawn from attending circumstances. (**Malathi Ravi**²). Cruelty is evident where one spouse has so treated the other, and has manifested such feelings, as to cause reasonable apprehension in the other's mind that it will be harmful or injurious for the latter to live with the former. (**K. Srinivas Rao**⁷). Cruelty may be intentional or unintentional. There may be cases where the conduct complained of itself is per se unlawful or illegal. In such cases the impact or the injurious effect on the other spouse need not be enquired into, and cruelty is established if such conduct is either proved or admitted. Even a gesture or an ironic overlook may sometimes be cruel.

(**Vinita Saxena**¹; **Vidhya Viswanathan v. Kartik Balakrishnan**^[9]^[9]).

Cruelty may be of any kind and any variety. It may be different in different cases. There may be instance of cruelty by the unintentional but inexcusable conduct of any party. The cruel treatment may also be the result of a cultural conflict between the spouses. In such cases, even if the act of cruelty is established, the intention to commit cannot. The context and the set up, in which the word 'cruelty' has been used in Section 13(1) (i-a), is that intention is not a necessary element in cruelty. (**Shobha Rani**⁶; **Gollins v. Gollins**^[10]^[10]).

It is not possible to accept the premise that "cruelty", in matrimonial proceedings, requires or involves, of necessity, the element of malignity, though it cannot be doubted that, if malignity be in fact established, it would be highly relevant to a charge of cruelty. The question whether one party to a marriage has been guilty of cruelty to the other or has treated the other with cruelty does not, according to the ordinary sense of the language used by Parliament, involve the presence of malignity (or its equivalent); and it follows that the presence of intention to injure on the part of the spouse charged, or proof that the conduct of the party charged was "aimed at" the other spouse, is not an essential requisite for cruelty. The question in all such cases is whether the acts or conduct of the party charged were "cruel", according to the ordinary sense of that word, rather than whether the party charged was himself or herself a cruel man or woman. (**Gollins**¹⁰; **Shobha Rani**⁶).

The concept of cruelty has, in its application, varied from time to time, from place to place, from society to society, and from individual to individual. In considering the question, whether the act complained of was a cruel act, the culture, temperament, (**Malathi Ravi**²; **Vinita Saxena**¹), upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system etc must be borne in mind. (**Samar Ghosh**³; **Malathi Ravi**²). A set of facts stigmatized as cruelty in one case may not be so in another. The cruelty alleged may largely

depend upon the type of life the parties are accustomed to, or their economic and social conditions. It may also depend upon the values to which they attach importance. (**Shobha Rani**⁶; **Navin Kohli**⁸; **Vinita Saxena**¹).

The general rule in determining “cruelty”, that the matrimonial relations must be considered in its entirety, is of special value when the acts complained of are not of physical violence, but of injurious reproaches, complaints, accusations or taunts. It may be mental - such as indifference and frigidity towards the wife, denial of company to her, and abstinence from sexual intercourse without reasonable cause. One partner in the marriage, however mindless of the consequences, should have behaved in a way which the other spouse could not, in the circumstances, be called upon to endure; and that misconduct should have caused a reasonable apprehension of mental injury. The court must examine whether the sum total of the reprehensible conduct was cruel, from the point of view of a reasonable man or woman, after taking into consideration any excuse which the respondent may have in the circumstances, and then decide whether the conduct is such that the complainant ought not be called upon to endure. (**Vinita Saxena**¹).

Cruelty is a question of fact and degree. If cruelty is mental, the enquiry must begin with the nature of cruel treatment, and then proceed to the impact of such treatment on the mind of the spouse. Whether it has caused a reasonable apprehension, that it would be harmful or injurious to live with the other, is ultimately an inference to be drawn taking into account the nature of the conduct and its effect on the complaining spouse. The absence of intention matters little, if the act complained of could, otherwise, be regarded as cruelty. Intention is not a necessary element in cruelty. Relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment. (**Navin Kohli**⁸; **Shobha Rani**⁶). If the intention to harm, harass or hurt can be inferred by the nature of the conduct, cruelty is easily established. There may, however, be instances of cruelty by the unintentional but inexcusable conduct of any

party. (**Navin Kohli**⁸). Before coming to a conclusion, the judge must consider the impact of the personality and conduct of one spouse on the mind of the other, and examine all incidents and quarrels between the spouses from that point of view. In determining what constitutes cruelty, regard must be had to the circumstances of each particular case, keeping always in view the physical and mental condition of the parties, their character and social status. (**Vinita Saxena**¹; **Halsbury Laws of England Vol.12, 3rd edition page 270**).

The Court, dealing with a petition for divorce on the ground of cruelty, has to bear in mind that the problems before it are those of human beings. It is difficult to lay down a precise definition, or to give an exhaustive description of the circumstances which would constitute cruelty. It must, however, be of the type as to satisfy the conscience of the Court that the relationship between the parties has 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 or distress. (**Navin Kohli**⁸).

II. “CRUELTY” MUST BE EVALUATED ON THE PECULIAR FACTS AND CIRCUMSTANCES OF THE CASE BEFORE THE COURT – NO UNIFORM TEST OR STANDARD CAN BE PRESCRIBED:

What then are the tests to be applied to determine whether the complaining spouse has been treated with cruelty by the other necessitating dissolution of their marriage under Section 13(1)(ia) of the Hindu Marriage Act? Can the standards of matrimonial life of yester-years be applied to present day society? There has been a marked change in life around us. In matrimonial duties and responsibilities in particular, there is a sea change. When a spouse complains of cruelty, the Court should not search for any particular standard in life. Judges and lawyers should not import their own notions of life. There may well be a generation gap between Judges and the parties to the lis. (**Shobha Rani**⁶; **Navin Kohli**⁸; **Vinita Saxena**¹). The Court, in matrimonial cases, is also not concerned with ideals in family life. It has only to understand the spouses concerned as nature made them, and consider their particular grievance. (**Shobha**

Rani⁶; Gollins¹⁰). No uniform standard can ever be laid down for guidance as to what constitutes “mental cruelty”. (**Samar Ghosh³; Vidhya Viswanathan⁹**).

Human ingenuity knows no bounds. The human mind is extremely complex and human behaviour is equally complicated. What is cruelty in one case may not amount to cruelty in another. This apart, the concept of mental cruelty cannot remain static. It is bound to change with the passage of time. What may be mental cruelty now may not remain so after passage of time or vice versa. There is no straitjacket formula or a fixed parameter for determining mental cruelty in matrimonial matters. (**Samar Ghosh³; Malathi Ravi²**). In matrimonial affairs we are not dealing with objective standards. It is not a matrimonial offence to fall below the standard of a reasonable man (or a reasonable woman). We are dealing with this man or this woman. (**Gollins¹⁰; Shobha Rani⁶**). The Court has to deal, not with an ideal husband and an ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures. (**N. G Dastane⁵; Shobha Rani⁶; Vinita Saxena¹; Navin Kohli⁸**).

Each case presents its own peculiar factual matrix, and the existence or otherwise of mental cruelty will have to be judged on the facts of each case. (**K. Srinivas Rao⁷; Samar Ghosh³**). Each case has to be decided on its own merits. (**Navin Kohli⁸; Shobha Rani⁶**). The prudent and appropriate way to adjudicate a case of mental cruelty would be to evaluate it on its peculiar facts and circumstances. (**Samar Ghosh³; Malathi Ravi²**). Mental cruelty should be determined on examining the facts of the case as a whole, and the matrimonial relations between the spouses. (**Vinita Saxena¹; Vidhya Viswanathan⁹**). What is cruelty is a matter to be decided in each case having regard to the facts and circumstances of each case. (**V. Bhagat v. D. Bhagat**^[11]^[11]).

Bearing these aspects in mind, let us now briefly note the sequence of events, leading upto the filing of H.M.O.P.No.26 of 2010. The petitioner married the respondent on 17.02.2005. Their marriage was registered one month thereafter. Both the petitioner and the respondent left for the USA on 28.05.2005. Two days thereafter, the petitioner's elder brother died in a car accident in India on 31.05.2005. Her sister-in-law also died shortly afterwards. Both the petitioner and the respondent returned to India on 30.07.2005 and went to the petitioner's village. The petitioner did not join the respondent ever since. She filed a complaint against the respondent under Section 498-A IPC which was registered as Crime No.96 of 2005. After investigation a charge-sheet, in C.C. No.51 of 2006, was filed. The respondent filed H.M.O.P.No.16 of 2007 seeking restitution of conjugal rights. The petitioner, thereafter, filed H.M.O.P.No.26 of 2010 seeking dissolution of the marriage both under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act.

The petitioner's complaint regarding the conduct of the respondent which, according to her, amounts to cruelty is that he had married her suppressing his earlier marriage; though 15 sovereigns of gold, Rs.5.00 Lakhs in cash and Rs.1.00 Lakh worth of articles were given at the time of marriage, to the respondent through his sister, he later demanded that she bring additional dowry of Rs.10.00 Lakhs on threat of divorce and remarriage with another; he did not have any job in the USA; though he was aware of the death of her brother and sister-in-law soon after it took place, he did not inform her for two months thereafter till they came back to India; and he did not lead a conjugal life with her, during the five months they lived together, as the respondent was unfit to do so.

III. DEGREE OF PROOF IN MATRIMONIAL DISPUTES – IS PREPONDERANCE OF PROBABILITIES:

We are not concerned with a criminal offence either under the Dowry Prohibition Act or under the Indian Penal Code, but with matrimonial conduct which constitutes cruelty as a ground for dissolution of marriage. Such cruelty, if not admitted, requires to be proved on the preponderance of probabilities as in civil cases, and not beyond

reasonable doubt as in criminal cases. (**Shobha Rani**⁶). The concept, of 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. The Court has merely to examine the probabilities of the case. Legal cruelty has to be found, not merely as a matter of fact, but as to its effect on the mind of the complainant spouse because of the acts or omissions of the other. In the case of mental cruelty there may not 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 manner that one has to consider the evidence in matrimonial disputes. (**A. Jaychandra v. Aneel Kaur**^[12]^[12]; **Navin Kohli**⁸).

Mental cruelty is difficult to establish by direct evidence. It is, necessarily, a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse, caused by the conduct of the other, can only be appreciated on assessing the attending facts and circumstances in which the couple have been living. Inferences must be drawn from attending facts and circumstances taken cumulatively. It would not be proper to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient, by itself, to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record, and then draw a fair inference whether the petitioner has been subjected to mental cruelty due to the conduct of the other. (**Parveen Mehta v. Inderjit Mehta**^[13]^[13]; **Navin Kohli**⁸).

IV. BURDEN IS ON THE PERSON, WHO ALLEGES THAT A FACT IS NOT TRUE, TO DISPROVE THE FACT:

It is clear from the evidence on record that, after marriage, the respondent took the petitioner to his brother's house in the USA where they lived together for two months till they returned to India on 30.07.2005. Except to assert in the petition, and reiterate in her oral evidence, that the

respondent used to harass her physically and mentally in the U.S.A. to bring Rs.10 lakhs as additional dowry and had threatened to divorce her and marry again if she failed to do so, the petitioner could not have produced any other evidence to substantiate these contentions as these incidents are said to have taken place when they resided in the USA. in the respondent's brother's house. A fact which is not proved does not, necessarily, mean that it is false. A fact is "not proved" when it is neither proved nor disproved. On the other hand, a fact is said to be disproved when, after considering matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. The word "disproved" is akin to the word "false". What is 'disproved' is normally said to be false. A fact not proved is not necessarily a fact disproved. A fact which is not proved may be true or may be false. A doubt lingers about its truth. Merely because it not proved, does not mean that it is not true. A fact is disproved, normally, by the person who claims that an alleged fact is not true. The burden is always on the person, who alleges that the fact is not true, to disprove the fact.

(Garikapati Suresh Babu v. Garikapati Prasanna Kumari^[14]; Naval Kishore Somani v. Poonam Somani^[15]).

V. COURT CAN DRAW AN ADVERSE INFERENCE AGAINST A PARTY WHO WITHHOLDS EVIDENCE BEFORE THE COURT:

Section 114 of the Indian Evidence Act, 1872 relates to a presumption regarding existence of facts. Illustration (g) thereunder provides that "the Court may presume that evidence, which could be and is not produced, would, if produced, be unfavourable to the person who withholds it". This illustration is based on the well-known maxim *omnia praesumuntur contra spoliatorem*. If a man wrongfully withholds evidence, every presumption to his disadvantage consistent with the facts admitted or proved will be raised against him. This provision enables the Court to draw an adverse inference against a party who refuses to, and to draw a presumption against a person who can, make evidence available to the Court. The adverse inference that may be drawn by any Court is from the

circumstances in each case, and having regard to the refusal of a party to let the best evidence being brought before the Court. (**T.Hari Kumar Naidu v. Smt. Prameela**^[16]).

The petitioner asserted that the respondent did not have any job in the USA. She denied the suggestion, during her cross-examination, that the respondent was employed in Seiman Bell Laboratories and Canon prior to his marriage, and he had a HIB visa. Contrary to what he had suggested to the petitioner, that he was employed in Seiman Bell Laboratories and Canon, the respondent, during his examination as R.W-1, stated that he was employed at Omniscent Systems, Philadelphia, USA on HIB visa. While the petitioner could not have proved the negative, the respondent could have produced evidence to show that he was, in fact, employed in any of these companies or that he had a HIB visa. Other than his self-serving testimony, the respondent chose not to produce any evidence in support of the said plea, either oral or documentary.

As noted hereinabove, the petitioner went along with the respondent to the USA on 28.05.2005 and, just a couple of days thereafter, her brother died in a car accident on 31.05.2005. The petitioner claimed that the respondent had kept her in the dark of this fact, till they came back to India on 30.07.2005. It is her case, both in her petition and in her deposition as P.W-1 in H.M.O.P. No.26 of 2010 and as R.W-1 in H.M.P.O.P. No.16 of 2007, that the respondent brought her back to India only on her assurance that she would pay Rs.10.00 Lakhs as additional dowry including the travelling expenses of Rs.60,000/-. Both in the counter filed in HMOP No.26 of 2010, and in his cross-examination as P.W-1, the respondent admits that, after reaching the USA, he came to know of the death of the petitioner's elder brother in a car accident on 31.05.2005 and later of her sister-in-law's death. The law of evidence does not require admitted facts to be proved. (**T.Hari Kumar Naidu**¹⁶).

In his evidence in H.M.O.P. No.26 of 2010, the respondent stated that he had informed the petitioner of the death of her brother and sister-in-law and, as she wanted to meet her mother and family members, he

brought her to India on 30.07.2005. During her cross-examination (as R.W-1 in H.M.O.P. No. 16 of 2007) the petitioner denied the suggestion that the respondent had informed her of the death of her brother immediately after receiving the news or that he had tried to bring her to India but could not do so as he had availed six months leave prior to marriage but was not granted leave. The respondent did not even produce evidence regarding his being employed in the USA, let alone documentary proof of having been sanctioned leave for six months prior to his marriage. During his cross-examination as R.W-1 in H.M.O.P. No.26 of 2010, it was suggested to the respondent that he did not allow the petitioner to talk with her relatives over the phone apprehending that he had no job. If he had really informed her of her brother's death, soon after he learnt of it, the petitioner would have spoken to her mother and sister over the phone, and the respondent could have produced telephone bills to show that the petitioner had telephonic conversations, with her mother or sister, from the USA. to India. No such evidence was adduced by the respondent.

It is no doubt true that, both in her petition in H.M.O.P. No.26 of 2010 and in her evidence as R.W-1 in H.M.O.P. No.16 of 2007, the petitioner stated that it was only at Vendodu (after they reached India) that the respondent had informed her of the death of her brother and sister-in-law. However, during cross-examination in H.M.O.P. No.26 of 2010, she stated that she learnt of her brother's death, only after she returned to India, at Chennai Airport from her sister. A couple of days after she left with the respondent to the USA on 28.05.2005, her brother died in a road accident on 31.05.2005 and her sister-in-law died soon afterwards. The petitioner returned with the respondent to India only two months thereafter on 30.07.2005. Whether it was at Chennai Airport or at Vendodu that she came to know of her brother's and sister-in-law's death, it does appear that the petitioner was kept in the dark of this tragedy for around two months. The adverse impact, of such callous behaviour by her husband, on the mind of a newly wed woman is not difficult to perceive.

During his cross-examination, the respondent admitted that he was married earlier. While the petitioner alleges that he had suppressed the

fact of his earlier marriage when he married her, the respondent contends otherwise. While both in her evidence as RW.1 in H.M.O.P. No.16 of 2007, and as PW-1 in H.M.O.P. No.26 of 2010, the petitioner stated that the respondent was unfit to lead a conjugal life, and during cross-examination as R.W-1 in H.M.O.P. No.16 of 2007 that the respondent did not lead any conjugal life with her during the five months they lived together, a suggestion was put to her during her cross-examination as RW.1 in H.M.O.P. No.16 of 2007 that the respondent was fit to lead conjugal life, and he had obtained a medical certificate to that effect. While the petitioner denied the suggestion, the respondent has chosen not to produce the medical certificate, which he claims to have obtained, as proof that he was fit to lead a conjugal life with the petitioner.

The respondent has also made serious allegations of sexual advances by the petitioner's sister; and of the petitioner's brother-in-law having encouraged his wife to have an affair with him. Making unfounded indecent and defamatory allegations against the relatives of the spouse, in the pleadings, would also amount to causing mental cruelty to the other spouse. (**K. Srinivas Rao**⁷). Such unsubstantiated allegations by the respondent, of sexual advances by the petitioner's sister, would also have had an adverse impact on the petitioner.

The aforesaid incidents relate to demand of additional dowry of Rs.10.00 Lakhs by the respondent; his failure to inform her in the U.S.A, of her brother and sister-in-law's death, for two months till they came back to India on 30.07.2005; suppression of the fact that he was married earlier before he married her; his not having any job in the USA; and his being unfit to have a conjugal relationship with her. Would not a cumulative effect of all these incidents amount to cruelty? The petitioner was 25 years old when she got married. The adverse impact of these incidents on the mind of a newly married woman would cause a genuine apprehension that living together with the respondent was harmful. A young girl from a village marries a person she believes was employed in the USA. Would not her dreams and aspirations, of a comfortable marital life abroad, have

been shattered when she came to know of his earlier marriage, and his not being employed in the U.S.A? This, coupled with the unjust demand for additional dowry; withholding information from her in the U.S.A for more than two months, of her brother's death in a car accident in India and her sister-in-law's death a few days thereafter; and, absence of a sexual relationship during the five months they lived together, would have undoubtedly caused a reasonable apprehension in the petitioner's mind that the respondent had acted with cruelty.

VI. IN DETERMINING THE RELIEF TO BE GRANTED, THE CIRCUMSTANCE OF IRRETRIEVABLE BREAKDOWN OF MARRIAGE SHOULD BE BORNE IN MIND:

During the course of hearing of this appeal, the petitioner filed an affidavit dated 11.11.2014 stating that the Court below had specifically recorded the fact that there was no conjugal life between her and the appellant since the day of their marriage; she was living separately from the appellant ever since five months after marriage; the appellant did not produce any evidence to rebut her allegation of harassment and demand of additional dowry of Rs.10,00,000/- in the USA, and his not having informed her about the death of her brother and her sister-in-law; she was 36 years old and, except for about five months during the subsistence of the marriage, she and the appellant have not lived together ever since 31.07.2005; more than nine years have elapsed since their marriage and separation; she did not wish to continue her marital relationship with the appellant; she has no intention of persecuting the appellant and/or his family members in the event the divorce granted by the Court below is confirmed by this Court, as her marriage has been fixed elsewhere pursuant to the decree of divorce granted by the Court below; she intends to leave her past behind, and move forward with her life; the Additional Judicial Magistrate of I Class, Gudur had, by order in M.C.No.1 of 2010 dated 24.10.2014, granted her Rs.5,000/- per month as alimony; she did not wish to claim the same from the appellant either in arrears or in future, if the annulment of their marriage dated 17.02.2005 is confirmed by this Court, and a decree of divorce is granted; she has been advised that the

Supreme Court, in **Samar Ghosh**³, had held that it may fairly be concluded that, where there has been a long period of continuous separation, the matrimonial bond is beyond repair and the marriage becomes a fiction; and this Court may be pleased to record her submission and her no objection for eschewing all the adverse findings by the Court below, recorded in the judgment in H.M.O.P. No.26 of 2010 dated 14.08.2012, and confirm the decree of divorce.

While irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, in cases where, on account of the bitterness between the parties, the marriage is beyond repair it must be taken to be an irretrievable breakdown of marriage and a weighty circumstance, among others, necessitating severance of the marital tie. While scrutinizing the evidence on record to determine whether the grounds alleged are made out, and in determining the relief to be granted, the circumstance of irretrievable breakdown can certainly be borne in mind. (**K. Srinivasa Rao**⁷; **V. Bhagat**¹¹; **Navin Kohli**⁸).

On being asked whether the respondent was willing for the grant of a decree of divorce by mutual consent, in view of the petitioner's undertaking not to claim any alimony either past or in future and her no objection for eschewing all the adverse finding recorded by the Court below against the respondent in the judgment under appeal, Sri C. Masthan Naidu, Learned Counsel appearing on his behalf, sought time to obtain instructions. Thereafter the Learned Counsel, on instructions, stated that the respondent was not agreeable for grant of divorce by mutual consent and the appeal be adjudicated on its merits. Even at this stage, the respondent is not agreeable for grant of divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that he is hell bent on making life a miserable hell for the petitioner, even if that entails his suffering in solitude. This adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt that the respondent-husband is bent upon treating the petitioner-wife with mental cruelty. The marriage between the parties has broken down irretrievably,

and there is no chance of their coming together or living together again. (**Navin Kohli**⁸). The emotional substratum in the marriage has completely disappeared, and setting aside the order of the Court below would only result in perpetual bitterness. (**Navin Kohli**⁸). There is no acceptable way in which the parties can be compelled to resume life with the consort, and nothing is gained by trying to keep the parties tied forever to a marriage that, in fact, has ceased to exist. (**Navin Kohli**⁸).

VII. A LONG PERIOD OF CONTINUOUS SEPARATION WOULD JUSTIFY THE CONCLUSION THAT THE MARRIAGE IS BEYOND REPAIR?

As against the five months, during which the petitioner and the respondent lived together from 23.02.2005 till they came back to the India by the end of July, 2005, the petitioner and the respondent have been living apart for the past nearly 10 years. While arriving at the conclusion, whether the cruelty complained of is such as to cause injury to the mental health of the petitioner, regard must also be had to the possibility or otherwise of the parties ever living together in case they are already living apart. (**V. Bhagat**¹¹). Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. In such cases the marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law, in such cases, does not serve the sanctity of marriage. On the contrary, it shows scant regard for the feelings and emotions of the parties. (**K. Srinivas Rao**⁷; **Samar Ghosh**³; **Naveen Kohli**⁸; **Malathi Ravi**²). When the matrimonial relation has, for a long period, ceased to exist de facto it should, unless there are special reasons to the contrary, cease to exist de jure also. It is not generally in the interests of the parties, or in the interest of the public, that a man and woman should remain bound together as husband and wife in law when, for a considerable period, they have ceased to be such in fact. In cases of such a long separation, the essential purpose of marriage is frustrated and its further continuance is, in general, useless. (**Navin Kohli**⁸).

Husband and wife staying apart, and living separately for several years, creates an unbridgeable distance between the two and, if the Court were refuse to sever the tie, it may lead to mental cruelty. (**K. Srinivas Rao**⁷). Public interest demands not only that the married status should as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond salvage, public interest lies in the recognition of that fact. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that, in fact, has ceased to exist. (**Navin Kohli**⁸). A good part of the lives of both the parties has been consumed in this litigation, and yet the end is not in sight. The allegations made against each other, in the petition and the counter, by the parties shows that their living together is out of question and rapprochement is not in the realm of possibility. (**V. Bhagat**¹¹; **Navin Kohli**⁸).

VIII. A HUMANE APPROACH SHOULD BE ADOPTED IN ADJUDICATING MATRIMONIAL DISPUTES:

Marriage involves human sentiments and emotions and, if it has dried-up, there is hardly any chance of its springing back to life on an artificial reunion created by the court's decree. When parties are not willing a marriage, which is dead for all practical purposes, cannot be revived by the court's verdict. (**K. Srinivas Rao**⁷; **V. Bhagat**¹¹; **Navin Kohli**⁸). The parties have been living separately for the past 10 years, and their matrimonial bond is beyond salvage. The marriage remains only in name. Public interest, and the interest of all concerned, lies in declaring defunct de jure what is already defunct de facto. To keep up the sham is conducive merely to immorality, and is potentially more prejudicial to the public interest than a dissolution of the marriage itself. (**Navin Kohli**⁸; **K. Srinivas Rao**⁷).

In adjudicating matrimonial disputes the Court cannot fetter itself with hyper-technicalities. While the effort must be to save a marriage from

collapse, the Court must not fight shy to dissolve a marriage which is “dead” for the entire world to see. After an exhaustive legal battle before the Court below the petitioner, with a view to leave her bitter past behind and move on with life, is willing not only to give up her claims of alimony and maintenance (past and present) but also to eschew all adverse findings recorded against the respondent by the Court below. Should this Court not be humane, and set her free from her marital misery? Judged by the standards of present day life, a young woman would not, nor can she be expected to, endure harassment in domestic life whether mental, physical, intentional or unintentional. Her sentiments should be respected in making adjustments for grievances arising from temperamental disharmony. (**Vinita Saxena**¹).

Humane aspects, which the Court should consider, include that the petitioner was 25 years of age when she got married; the couple lived together for merely five months; the respondent, not being gainfully employed ever since their marriage, did not provide for her; the marriage between the parties does not appear to have been consummated as the petitioner alleges that the respondent was not in a position to fulfil his conjugal obligations; parties have been living separately for the past nearly ten years, ever since August, 2005; the parties have crossed the point of no return; a workable solution is certainly not possible; at this stage, the parties cannot reconcile and live together putting their past behind; they have been fighting a legal battle from the year 2007; and the petitioner has expressed her intention to put the past behind, and start life afresh marrying again. The irrefutable conclusion, to be drawn from the aforesaid facts, is that the appellant and the respondent can no longer stay together as husband and wife. These aspects are sufficient for the Court to relieve the petitioner from the shackles and chains of a failed marriage, and let her live life like any other normal human being. (**Shobha Rani**⁶; **Vinita Saxena**¹; **Durga P. Tripathy v. Arundhati Tripathy**^[17]^[17]; **Navin Kohli**⁸).

Human problems can be best resolved by adopting a humane

approach. Not to grant a decree of divorce, in the instant case, would be disastrous. There may be a ray of hope for the parties, if a decree is granted, that with passage of time they may be able to start life afresh, (**Navin Kohli**⁸), finding happiness in the company of another. The petitioner is now around 36 years of age. Granting her a decree of divorce, would enable her to lead a marital life with another. Failure to untie the marital knot, and setting aside the judgment and decree of the Court below dissolving their marriage, would only compound the misery which she has been undergoing for the past nearly a decade.

I see no reason therefore to interfere with the order of the Court below in H.M.O.P. No.26 of 2010 dated 14.08.2012. C.M.A. No.1066 of 2012 fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

Date:12.03.2015

MRKR/CS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL MISCELLANEOUS APPEAL No.1066 of 2012

JUDGMENT:(per Hon'ble Sri Justice M.Satyanarayana Murthy)

Aggrieved by the order dated 14.08.2012 passed in H.M.O.P.No.26 of 2010 on the file of the Senior Civil Judge, Gudur (for short, 'the trial Court'), respondent therein preferred this appeal.

For convenience of reference, the ranks given to the parties in HMOP No.26 of 2010 will be adopted through out the judgment.

The petitioner (wife) filed petition against the respondent (husband) under Section 13 (i) (ia) and (ib) of the Hindu Marriage Act, 1955 (for short 'the Act') seeking decree of divorce by dissolving their marriage, alleging

that their marriage was performed on 17.02.2005, at Vanajakrishna Kalyana Mandapam, Gudur, Nellore District, according to Hindu rites and customs by the respondent/ petitioner's junior paternal uncle and his wife by name Maddali Narayana Reddy and Saraswathamma. After one month, the marriage was registered in Sub-Registrar's office, Gudur. At the time of marriage, an amount of Rs.5,00,000/- in cash and Rs.1,00,000/- worth of house hold articles were given to the appellant/ respondent and 50 sovereigns of gold jewellery was presented to the respondent/ petitioner. In the month of May, 2005, the respondent/ petitioner and appellant/ respondent went to USA and stayed in the petitioner/ respondent brother's house but as the appellant/ respondent was roaming in the city without any employment, the respondent/ petitioner questioned about his employment, then the appellant/ respondent started harassing the respondent/ petitioner, both physically and mentally demanding additional dowry of Rs.10 lakhs with a threat to divorce the respondent/ petitioner. He also obtained the signatures of the respondent/ petitioner on blank papers and threatened her that she has to face dire consequences, if she failed to meet the demand for payment of additional dowry.

The respondent/ petitioner and appellant/ respondent returned to India, even thereafter, the appellant/ respondent continued the same harassment towards the respondent/ petitioner but she did not disclose the same to anybody on account of threat. The respondent/ petitioner, having no other alternative, went to her parents' house to Vendodu Village and requested her mother to provide Rs.10 lakhs as demanded by the appellant/ respondent, but she expressed her inability to pay Rs.10 lakhs. Thus, she failed to fulfill the unlawful demand of the appellant/ respondent. The acts of the appellant/ respondent caused severe mental agony to the respondent/ petitioner and as such the appellant/ respondent subjected the respondent/ petitioner to cruelty both physically and mentally.

Despite the efforts of respondent/ petitioner's mother and mediators, the appellant/ respondent left the respondent/ petitioner at her parents' house, did not lead marital life and deserted the respondent/ petitioner

without any reasonable cause. In the above circumstances, the respondent/ petitioner prayed to grant a decree of divorce on both the grounds, under Section 13 (1) (ia) and (ib) of the Act.

The appellant/ respondent filed counter denying material allegations of the petition while admitting the marital relationship between the respondent/ petitioner and appellant/ respondent and denied the alleged payment of dowry of Rs.5 lakhs and presentation of house hold articles worth of Rs.1 lakh.

The appellant/ respondent denied the alleged harassment of respondent/ petitioner while staying at his brother's house in USA and the subsequent harassment after return to India demanding additional dowry of Rs.10 lakhs, while contending that he was carrying on real estate business, own and possess assets of Ac.0.96 cents in S.No.341/3B and Ac.1.92 cents in S.No.341/2, 341/3A, 341/4B and earning Rs.50,000/- per month from real estate business and the joint family of appellant/ respondent own and possess Ac.10.00 cents of land and building worth more than Rs.10 lakhs at Srikalahasti town and having sufficient means to maintain the respondent/ petitioner.

The appellant/ respondent contended that he was employed at Omniscient Systems, Philadelphia, USA on HI-B Visa. Therefore, he took the respondent/ petitioner to USA on 28.05.2005. After arriving at USA, they received news about the death of respondent/ petitioner's elder brother Ranga Reddy and his wife, in road accident on 31.05.2005. Later, the respondent/ petitioner wanted to see her mother and family members, the appellant/ respondent brought her to India on 30.07.2005. On arrival in India, they went to the respondent/ petitioner's brother-in-law's house i.e., P.Venugopal Reddy, at Sullurpet and stayed there for two days and, later, went to Vendodu Village. The appellant/ respondent requested the respondent/ petitioner many times to join him at Srikalahasti but she did not join him. Mother of the appellant/ respondent also went to Vendodu village, along with his mother to invite the respondent/ petitioner to Srikalahasti but the respondent/ petitioner postponed to visit Srikalahasti, saying that she would come after four or five days but she did not join the respondent at Srikalahasti.

The respondent/ petitioner filed a complaint before SHO, Gudur on 19.10.2005 and the same is registered as Crime No.96 of 2005. Later filed charge sheet, registered as CC No.51 of 2006, which is pending before the Judicial Magistrate of First Class, Gudur. The respondent/ petitioner also filed pauper O.P No.8 of 2007 before the Senior Civil Judge, Gudur, at the instigation of her brother-in-law –P.Venugopal Reddy and sister—P.Revathi, who were residing at DOS Colony, Sullurpet, Nellore District.

The appellant/ respondent further contended that respondent/ petitioner's sister—P.Revathi was visiting the appellant/ respondent, whenever he was staying with his wife in Vendodu village and Srikalahasti and tried to get closer and friendly with him; when the appellant/ respondent objected for the same, she stated that her husband himself has sent her. She invited the appellant/ respondent to her house in Sullurpet, when her husband was away, but the appellant/ respondent did not agree and avoided her. The said P.Revathi is shrewd and business minded person and asked the appellant/ respondent to advance money to set up cable TV in SHAR, as her husband was short of money, but the appellant/ respondent did not yield to the demand of said P.Revathi. For all these grievances, she developed grudge against the appellant/ respondent and threatened that she would not let her sister, the respondent/ petitioner herein to join and lead marital life with him. When the appellant/ respondent informed about the same to P.Venugopal Reddy, he replied that he himself sent his wife to him. For all these reasons, the appellant/ respondent was subjected to cruelty by the respondent/ petitioner in different ways at the instance of her brother-in-law –P.Venugopal Reddy and her sister P.Revathi.

The appellant/ respondent further submitted that he has great love and affection towards respondent/ petitioner and ready to take her back, forgetting the incidents referred above, to lead marital life. Despite the mediation, the respondent/ petitioner did not join the respondent to lead marital life. The respondent/ petitioner failed to act as dutiful house wife and deserted the appellant/ respondent, hence he filed H.M.O.P. No.16 of 2007, under Section 9 of the Act, seeking decree for restitution of conjugal

rights and the matter was placed before Lok-Adalat but the respondent/ petitioner refused to join the appellant/ respondent before the Lok-Adalat. Hence, the respondent/ petitioner is not entitled to claim decree of divorce, dissolving the marriage between respondent/ petitioner and appellant/ respondent, and prayed to dismiss the petition.

During course of trial, the respondent/ petitioner herself was examined P.W.1 and marked Exs.A1 and A2; appellant/ respondent himself was examined as RW.1 and marked Ex.B1.

Upon hearing argument of both the counsel, considering oral and documentary evidence, the trial Court granted decree of divorce dissolving the marriage between respondent/ petitioner and petitioner/ respondent.

Aggrieved by the decree and decreetal order passed by the trial Court, the appellant/ respondent preferred the present appeal on various grounds, mainly contending that none of the acts complained against the appellant/ respondent were proved by the respondent/ petitioner and, in the absence of any evidence, granting decree of divorce is erroneous and the trial Court did not consider the counter field by the appellant/ respondent in O.P No.16 of 2007, for restitution of conjugal rights. Therefore, the trial Court committed an error in passing an order dissolving the marriage between the respondent/ petitioner and appellant/ respondent and prayed to set aside the decree and decreetal order passed by the trial Court in HMOP No.26 of 2010, by allowing this appeal.

Learned counsel for the appellant/ respondent contended that none of the acts complained against the appellant/ respondent were proved by adducing any cogent and satisfactory evidence but the trial Court on surmises, giving much credence to the evidence of PW.1, granted decree of divorce. In fact, the respondent/ petitioner herself subjected the appellant/ respondent to cruelty by filing criminal cases and civil suit; still the appellant/ respondent with a fond hope that the respondent/ petitioner will join him to lead martial life filed O.P No.16 of 2007, under Section 9 of the Act seeking decree for restitution of conjugal rights. If the total circumstances, including conduct of both the parties, are taken into consideration, the trial Court would not have granted the decree of divorce dissolving the marriage between the respondent/ petitioner and appellant/

respondent but committed an error in passing the decree.

Per contra, learned counsel for the respondent/ petitioner would contend that the age of the respondent/ petitioner is below 40 years and she is not able to continue her marital tie with the respondent/ appellant and, that apart, due to long gap of marital relation, the respondent/ petitioner and appellant/ respondent cannot live together to lead marital life. If the conduct of both the parties is taken into consideration, it is difficult to keep the matrimonial tie alive and the respondent/ petitioner filed an affidavit before this Court stating that she is living separately from the appellant/ respondent and does not wish to continue the marital relationship with the appellant/ respondent any more as she had no intention to prosecute the appellant/ respondent or his family members and her marriage is also fixed with someone and that, in view of long period of continuous separate living, requested this Court to confirm the decree granted by the trial Court.

Considering rival contentions, perusing material available on record including the order under challenge, the points that arise for consideration are as follows:

1) *Whether respondent subjected the petitioner to cruelty, creating reasonable apprehension in her mind that it is harmful or dangerous for her, to live with the respondent, if so, is the marriage between the petitioner and respondent be dissolved granting decree of divorce under Section 13 (i) (ia) of the Hindu Marriage Act?*

2) *Whether the respondent is living separately for more than two years, preceding to the date of presentation of petition, without any reasonable cause, if so, is the petitioner entitled to decree of divorce on the ground of desertion under Section 13 (1) (ib) of the Hindu Marriage Act?*

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Point No.1:

The main contention raised by the respondent/ petitioner for grant of divorce is that the respondent/ petitioner and appellant/ respondent went to USA stayed at the house of appellant/ respondent's brother; the appellant/ respondent was roaming on roads in USA without any employment, when she questioned, the appellant/ respondent harassed her both physically and mentally demanding additional dowry of Rs.10 lakhs from her

parents.

The next contention is that the appellant/ respondent obtained her signatures on blank papers and threatened her with dire consequences in case her mother did not agree for payment of additional dowry after return to India. Even after reaching India, the appellant/ respondent continued his threat for payment of Rs.10 lakhs as additional dowry and left her at her parents' house at Vendodu Village, which acts amount to cruelty.

The appellant/ respondent while denying those allegations contended that he had informed about the death of her elder brother and his wife in the road accident and when she wanted to see her mother, she was brought back to India and stayed at Sullurpet for two days and, later, went to Vendodu Village, where, mother of the respondent/ petitioner is staying. Thereafter, she did not join the appellant/ respondent to lead marital life at Srialahasti despite demands made by appellant/ respondent but she gave a complaint to police and the same was numbered as CC No.51 of 2006, against appellant/ respondent and his family members, which is pending on the file of the Judicial Magistrate of First Class, Gudur and also filed a pauper O.P No.8 of 2007 on the file of the Senior Civil Judge, Gudur and, thus, the petitioner/ respondent herself subjected the appellant/ respondent to cruelty but still the appellant/ respondent is interested to lead marital life, despite the harassment stated above, filed O.P No.16 of 2007 under Section 9 of the Act for restitution of conjugal rights.

In view of the rival contentions, it is the duty of this Court to find out whether those acts or omissions attributed to the appellant/ respondent are true, if so those acts would amount to cruelty, creating reasonable apprehension in the mind of the respondent/ petitioner that it is harmful or endangerous for her to live with the appellant/ respondent, so as to grant decree of divorce under Section 13 (1) (ia) of the Act.

The specific allegations made by the respondent/ petitioner against the appellant/ respondent are that though the brother of the respondent/ petitioner and his wife died in the road accident on 31.05.2005, the appellant/ respondent did not inform the same to the respondent/ petitioner and it amounts to cruelty but there is no factual foundation to the plea, in

the petition. Hence, failure to inform about the death of respondent/ petitioner's brother and his wife is not a ground to grant decree of divorce, on the ground of cruelty.

The second contention of the respondent/ petitioner is that the appellant/ respondent was roaming on the roads without any employment in USA; when she questioned the same, she was harassed by the appellant/ respondent physically and mentally demanding Rs.10 lakhs as additional dowry from her parents and obtained her signatures on blank papers. In the entire pleadings, the petitioner did not disclose the details of harassment including the date, place and type of harassment except a bald allegation that she was subjected to physical and mental harassment by the appellant/ respondent demanding additional dowry. In the absence of any details of such physical or mental harassment, it is difficult to grant a decree, believing that the acts attributed to the appellant/ respondent would amount to cruelty.

When the respondent/ petitioner filed a petition under Section 13 (1) (ia) of the Act, the burden is upon her to establish the acts and omissions attributed to the appellant/ respondent amounting to cruelty.

To substantiate her contentions, the respondent/ petitioner herself was examined as PW.1 and, as usual, she filed her affidavit under Order XVIII Rule 4 of CPC reiterating the allegations made in the petition. In the cross examination, several suggestions were put to her that the appellant/ respondent did not demand for payment of additional dowry of Rs.10 lakhs and admitted that she did not give any complaint to the police in USA, against appellant/ respondent, as she is a foreigner in USA though she is a post graduate in Commerce. Taking advantage of this admission, the counsel for the appellant/ respondent would contend that no harassment, either physical or mental, took place at USA for her failure to meet the unlawful demand for additional dowry. Undoubtedly, the respondent/ petitioner, who is a post-graduate in Commerce, did not complain to the police at USA, where the incident of harassment allegedly took place. If really, she was subjected to either physical or mental cruelty, nothing prevented her to give complaint in USA against the appellant/ respondent for subjecting her to cruelty and if really, the appellant/ respondent

demanded additional dowry, even after she came back to India, she did not give complaint to police immediately but gave report to the police on 19.10.2005, though they returned to India on 30.07.2005. If really, the respondent/ petitioner was subjected to cruelty for her failure to meet the illegal demand for payment of additional dowry by the appellant/ respondent, nothing prevented her to give report to the police immediately after returning to India on 30.07.2005. But having kept quiet for more than two months 19 days, she gave report to the SHO, Gudur against appellant/ respondent and his mother, which was registered as Crime No.96 of 2005. The long delay in submitting the complaint to PS, Gudur creates any amount of suspicion about the alleged harassment. Even otherwise, the copy of complaint and charge sheet in CC No.51 of 2006 are not brought on record by the petitioner/ respondent or the appellant/ respondent for perusal, to find out whether the allegations made in the complaint were on account of alleged cruelty or harassment. If really, the respondent/ petitioner was subjected to cruelty, she would have given complaint in normal course of events, unless, she was prevented by any justifiable cause but no explanation was offered for her failure to give a complaint to police against the appellant/ respondent both at USA and in India immediately after their arrival to India on 30.07.2005. If the total conduct of the respondent/ petitioner is taken into consideration, the alleged harassment both physical and mental is not believable.

One of the contentions of the respondent/ petitioner that the respondent obtained her signatures on blank papers is not substantiated by any material. Therefore, the allegations made in the petition that she was subjected to cruelty by the respondent/ petitioner both in USA and in India for her failure to fulfill the unlawful demand of payment of additional dowry are baseless and not supported by any evidence on record. Basing on the allegations made in the petition, it is difficult for this Court to grant decree of divorce. The alleged incident took place in the year 2005 whereas the present petition was filed before the trial Court on 04.03.2010. This long delay of 5 years in filing the petition for grant of divorce creates any amount of suspicion about the acts and omissions attributed to the appellant/ respondent.

The trial Court while discussing the evidence on record concluded that the respondent/ petitioner is residing at Vendodu village since 2005, after her return to India, subjected her to cruelty on assumption that any Hindu wife would not make such allegations against her husband, unless, she was subjected to cruelty, but these observations are not warranted; on the other hand, the trial Court believed several allegations without any factual support in pleadings but the trial Court believed that the appellant/ respondent on false representation married the respondent/ petitioner and that the respondent/ petitioner is the second wife to him but those allegations are not relevant considerations for deciding the real controversy between the parties and the trial Court is supposed to record findings basing on the pleadings and supporting evidence, if any, to establish the allegations made in the petition but the trial Court went on discussing many things and ultimately concluded that the respondent/ petitioner was subjected to cruelty by the appellant/ respondent, but, the said fact is not established by cogent and satisfactory evidence.

The material on record clearly discloses that the respondent/ petitioner herself gave report to the police against the appellant/ respondent and the same is registered as Crime No.96 of 2005 and charge sheet is filed, registered as CC No.51 of 2006 against the appellant/ respondent and his mother. Despite filing of both civil and criminal cases against the appellant/ respondent, he filed O.P No.16 of 2007 on the file of Senior Civil Judge, Gudur claiming a decree for restitution of conjugal rights under Section 9 of the Act. The respondent/ petitioner filed the present petition three years after filing petition by the appellant/ respondent. If really, the respondent/ petitioner subjected the appellant/ respondent to cruelty, he would not have sought for restitution of conjugal rights; on the other hand, filing of HMOP No.26 of 2010 after five years from the date of alleged cruelty and three years after filing of O.P No.16 of 2007 by the appellant/ respondent, under Section 9 of the Act, creates any amount of suspicion about the cruelty attributed to the appellant/ respondent by the respondent/ petitioner.

The word '*cruelty*' is not defined anywhere under the Hindu Marriage Act but it varies from case to case and person to person. While

deciding the alleged cruelty to grant a decree under Section 13 (1) (ia) of the Act, the Courts have to take into consideration, various circumstances as held by the Apex Court in **Naveen Kohli vs. Neelur Kohli**^[18]^[18], where the Supreme Court ruled as follows:

“To constitute cruelty, the conduct complained of should be ‘grave and weighty’ so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with 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, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty. 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 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.”

In a recent judgment of the Apex Court in **Samar Ghosh v. Jaya Ghosh**^[19]^[19] while deciding the matter of divorce on the ground of cruelty reiterated the same principle and gave illustrations which amount to

cruelty and the counsel for respondent/ petitioner relied on illustration No.xiv, the same is extracted hereunder:

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

Taking advantage of illustration No.xiv, learned counsel for the respondent/ petitioner contended that when there is long period of continuous separation and the matrimonial bond is beyond repair, thereby, the marriage becomes a fiction though supported by a legal tie, the Court kept shall not refuse granting decree of divorce.

Even in **Samar Ghosh** (supra) there is long separation between the petitioner and respondent but in the present case factually the separation was only two years and the appellant/ respondent with a fond hope to restore family ties filed the petition O.P No.16 of 2007 under Section 9 of the Act for restitution of conjugal rights. Filing of petition by the appellant/ respondent under Section 9 of the Act itself goes to show that the appellant/ respondent had an intention to restore the family ties and live together with the respondent/ petitioner to lead marital life. Hence, the concept of long separate living when the marital tie is beyond repair is not applicable to the present facts of the case, for the reason that it was only on account of the respondent/ petitioner's failure to join the appellant/ respondent to lead marital life, despite his filing petition under Section 9 of the Act. Thus, the person who is guilty of wrong is not entitled to take advantage of her own wrong to obtain a decree of divorce in view of Section 23 (1) (a) of the Act. Hence, basing on illustration No.xiv laid down by Apex Court in **Samar Ghosh** (supra), this Court is unable to grant decree of divorce under Section 13 (1) (ia) of the Act.

Learned counsel for the appellant/ respondent would further contend that when the respondent/ petitioner made serious allegations against the appellant/ respondent subjecting him to cruelty, it is a ground to grant decree of divorce under Section 13 (1) (ia) of the Act, drawn the

attention of this Court to a judgment of Apex Court in **K.Srinivas Rao vs.**

D.A.Deepa^[20]^[20], wherein the Apex Court held as follows:

“Cruelty depends upon the circumstances of the case and when there is evidence where one spouse so treated the other and manifested such feelings in other as to cause reasonable apprehension in the mind of other that it would be harmful or injurious to other spouse is sufficient to grant decree of divorce under Section 13 (1) (ia) of the Act.”

Here the respondent/ petitioner gave complaint against her husband—appellant/ respondent and his mother, which is registered as CC No.51 of 2006 pending on the file of the Judicial Magistrate of First Class, Gudur and she also filed a suit for grant of maintenance by filing pauper O.P No.8 of 2007 before Senior Civil Judge, Gudur. The principle laid down in **K.Srinivas Rao** (supra) is of no assistance to the respondent/ petitioner to claim decree of divorce as it is the petition filed by husband and when wife made such allegations by submitting a complaint and when calendar case ended in acquittal, husband can claim divorce. Therefore, the decision is of no use to substantiate the contention of the respondent/ petitioner.

On overall consideration of material available on record, it is evident that the respondent/ petitioner herself did not lead marital life with appellant/ respondent, despite filing a petition in O.P No.16 of 2007 under Section 9 of the Act and she also failed to establish either physical or mental cruelty which created reasonable apprehension in her mind that it is harmful or injurious for her to live with appellant/ respondent. In the absence of proving cruelty coupled with an apprehension referred above, the trial Court is not expected to grant decree of divorce but the trial Court granted the decree, without considering the evidence on record and without reference to law declared by Apex Court in proper perspective. Hence, finding of the trial Court is erroneous on the face of the record and it is hereby set aside holding this point in favour of appellant/ respondent and against the respondent/ petitioner.

POINT No.2:

One of the grounds urged by the respondent/ petitioner for grant of divorce is desertion. Undoubtedly, if one spouse is living separately,

without any reasonable cause and against the consent of the other, with an intention to put an end to marital cohabitation, permanently, it amounts to desertion. But in the present case the respondent filed O.P No.16 of 2007 under Section 9 of the Act seeking decree for restitution of conjugal rights, alleging that the respondent/ petitioner herein has withdrawn from the conjugal society, without any reasonable cause but the trial Court dismissed the petition and the same is now challenged in the other appeal in CMA No.37 of 2013. When both the petitions are pending before the trial Court, the trial Court would have recorded common evidence and pronounced common judgment but, for different reasons, the trial Court proceeded to decide both the matters separately and pronounced orders. Further, the material on record established that the appellant/ respondent herein made each and every effort to restore the matrimonial ties and even filed O.P under Section 9 of the Act. If the appellant/ respondent had an intention to put an end to marital relationship, permanently, he would not have filed an application under Section 9 of the Act and filing of the petition for restitution of conjugal rights shows bonafides of the appellant/ respondent that he is interested to restore the marital ties and did not desert the respondent/ petitioner, without any reasonable cause, with an intention to put an end to marital cohabitation permanently.

The word '*desertion*' is not defined under the Hindu Marriage Act, separately, but under the explanation to Section 13 (1) (ib) of the Hindu Marriage Act, the word '*desertion*' is explained as follows:

“In this sub-section, the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party of the marriage, and its grammatical variations and cognate expression shall be construed accordingly.”

To grant decree of divorce under Section 13 (1) (ib) of the Act, it is necessary for the respondent/ petitioner to establish that the appellant/ respondent is living separately without any reasonable cause for a period of not less than two years immediately prior to filing of the petition. In

Savitri Pandey Vs. Prem Chandra Pandey ^[21] the Supreme Court

defined the word '*desertion*' as contained under Section 13(1)(b) of the Hindu Marriage Act, which is as follows:

“‘Desertion’, for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other’s consent and without reasonable cause. In other words, it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations, i.e., not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalizes the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. If a spouse abandons the other in a state of temporary passions for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion.”

In another decision of the Apex Court, in ***Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi***^[22], the Apex Court defined the word 'desertion' and held as follows:

“‘Desertion’ in the context of matrimonial law represents a legal conception. It is difficult to give a comprehensive definition of the term. The essential ingredients of this offence in order that it may furnish a ground for relief are:

- 1. the factum of separation;***
- 2. the intention to bring cohabitation permanently to an end – animus decidendi;***
- 3. the element of permanence which is a prime condition requires that both these essential ingredients should continue during the entire statutory period.”***

In the earliest decision of the Apex Court in ***Bipinchandra Jaisinghbai Shah Vs. Prabhavati***^[23], the Apex Court held that if a

spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion

In ***Lachman Utamchand Kirpalani Vs. Meena @ Mota***^[24]^[24], the Larger Bench of the Apex Court held that the desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without the other's consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there: (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly, two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved, inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.

If the law declared by the Apex Court in the decisions cited *supra*, is applied to the present facts of the case, the evidence on record did not establish the requirements, as laid down by the Larger Bench of the Apex Court, to construe the act of the appellant/ respondent as desertion, which is a ground to grant divorce, for the simple reason that the appellant/ respondent himself filed a petition in O.P No.16 of 2007 under Section 9 of the Act, which is subject matter of CMA No.37 of 2013, three years prior to filing of the petition under challenge.

Therefore, I find no ground to sustain the decree passed by the trial Court on the ground of desertion under Section 13 (1) (ib) of the Hindu Marriage Act as the trial Court did not insist the respondent/ petitioner to prove the essential requirements to construe the conduct of the appellant/ respondent amounting to desertion as held in ***Lachman Utamchand Kirpalani (supra)*** and the law declared in the subsequent judgments by

the Apex Court. Therefore, the finding of the trial Court is hereby set-aside holding this point in favour of appellant/ respondent and against the respondent/ petitioner.

In view of the findings on point Nos.1 & 2, the decree and order of the trial Court are erroneous and not based on any legal evidence. Therefore, the decree and decretal order passed by the trial Court are deserves to be set-aside.

In the result, the Civil Miscellaneous Appeal is allowed setting aside the judgment and decree dated 14.08.2012 passed in H.M.O.P No.26 of 2010 by the learned Senior Civil Judge, Gudur.

Pending miscellaneous petitions in this appeal, if any, shall stand dismissed in consequence. No order as to costs.

M.SATYANARAYANA MURTHY, J

12th March, 2015.
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**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

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C.M.A. No.37 of 2013
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ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The appellant herein is the petitioner in H.M.O.P. No.16 of 2007. He filed a petition against the respondent, under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights. The Learned Senior Civil Judge, Gudur, by his order in H.M.O.P. No.16 of 2007 dated 14.08.2012, dismissed the petition. Aggrieved thereby the present appeal.

The respondent herein had filed H.M.O.P. No.26 of 2010, before the Court of Senior Civil Judge, Gudur, seeking dissolution of her marriage with the appellant by grant of a decree of divorce under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act. By his order in H.M.O.P. No.26 of 2010 dated 14.08.2012, the Learned Senior Civil Judge, Gudur allowed the petition under Section 13 (1)(i-a) of the Hindu Marriage Act, and dissolved the marriage between the parties granting a decree of divorce.

Aggrieved thereby, the appellant preferred C.M.A.No.1066 of 2012.

As I have dismissed C.M.A.No.1066 of 2012, confirming the judgment and decree passed by the Learned Senior Civil Judge, Gudur, in H.M.O.P. No.26 of 2010, dated 14.08.2012 dissolving the marriage between the appellant and the respondent herein, the appellant in this CMA is not entitled to be granted a decree of restitution of conjugal rights under Section 9 of the Hindu Marriage Act.

C.M.A. No.37 of 2013 is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

RAMESH RANGANATHAN, J

Dated: 12.03.2015

MRKR

**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

CIVIL MISCELLANEOUS APPEAL No.37 OF 2013

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JUDGMENT: (Per Hon'ble Sri Justice M. Satyanarayana Murthy)

Aggrieved by the dismissal order dated 14.08.2012, passed in Hindu Marriage Original Petition No.16 of 2007 by the Senior Civil Judge, Gudur, SPSR Nellore District (For short, 'the trial Court'), the unsuccessful petitioner therein preferred this appeal.

2. For convenience of reference, the ranks given to the parties in H.M.O.P. No.16 of 2007 will be adopted throughout this judgment.

3. The petitioner-husband, filed Petition against the respondent-wife under Section 9 of the Hindu Marriage Act, 1955 (for short, 'the Act') for restitution of conjugal rights, alleging that their marriage was performed on 17.02.2005, at Vanaja Krishna Kalyana Mandapam, by the junior paternal uncle of respondent, Maddali Narayana Reddy and his wife, Saraswathamma, as per Hindu rites and customs, and the same got registered in the Sub-Registrar's Office, Gudur. Thereafter, the petitioner and respondent went to U.S.A., on 28.05.2005, where the petitioner is alleged to have been employed in Omniscient Systems, Philadelphia. After arriving at U.S.A. the petitioner came to know that the elder brother of the respondent, Ranga Reddy, died in a road accident on 31.05.2005; later, her sister-in-law also died. The petitioner informed the said news to the respondent. As the respondent became very sad and wanted to see her family members, the petitioner brought her back to India on 30.07.2005

and proceeded to Sullurpet, stayed therein and, later, went to the village of the respondent, Vendodu, on 31.07.2005. Since then, the respondent is staying with her mother, did not join him to lead marital life.

4. As the respondent did not join the petitioner, the petitioner sent his mother, Rukminamma and his grand mother to Vendodu village and requested her to join the petitioner and the respondent promising to join sooner but did not join him and, on the other hand, gave report to the Police against the petitioner and his mother, which is registered as a case in Crime No.96 of 2005 for the offence punishable under Section 498-A of I.P.C., subsequently registered as C.C. No.51 of 2006, pending on the file of the Court of Judicial Magistrate of I Class, Gudur. Thereafter, the respondent also filed Pauper O.P. No.2 of 2006 and 8 of 2007, which were dismissed by the trial Court.

5. It is further alleged that P. Revathi, respondent's sister, used to visit the house of petitioner at Vendodu and Srikalahasti villages, whenever he was staying with the respondent and tried to move closely with him; when the petitioner raised an objection, she disclosed that she was coming to him at the direction of his husband and several times invited him, when her husband was away and, finally, asked a favour to advance money to her so that they can setup cable T.V. business in SHAR but the petitioner disagreed and avoided her. For all these reasons, she developed grudge against the petitioner and threatened him that she would not let her sister join him to lead marital life. Thereafter, when the petitioner revealed about these incidents to Venugopal Reddy, brother-in-law of the respondent, he affirmed what his wife said and asked the petitioner to do the favour. Subsequently, a mediation took place in the presence of elders by name Kumar, who was sent by Venugopal Reddy, and demanded Rs.20,00,000/- to send the respondent but the petitioner could not meet his demand; since then she is living separately with her mother at Vendodu, without any justifiable cause, withdrawing from his conjugal society, hence the Petition under Section 9 of the Act seeking to grant a decree for restitution of conjugal rights.

6. The respondent filed counter admitting their marital relationship,

presentation of Rs.5,00,000/- towards dowry, 15 sovereigns of gold and household articles worth Rs.1,00,000/- to the petitioner; her proceeding to U.S.A. along with the petitioner and their stay in the house of the younger brother of petitioner, Muniprasad Reddy, for some time and resisted the claim of petitioner raising the following contentions:

a) The petitioner used to harass her, physically and mentally, demanded her to bring Rs.10,00,000/- as additional dowry otherwise, threatened to divorce her and marry again and forcibly obtained her signatures on blank papers;

b) The petitioner was not an employee in U.S.A. and she convinced the petitioner to provide the demanded amount after going to India and when they reached India, the petitioner directed her not to disclose the alleged harassment and threatened to kill her in case it is disclosed to anybody and due to fear of death she did not disclose the said fact to anyone. The petitioner went to his native place Srikalahasthi leaving her at Sullurpet, promising to come back within two days to take her to his native place Srikalahasthi; believing his words, the respondent did not disclose the harassment meted out in U.S.A. Two days thereafter the petitioner again went to Vendodu and asked her to pay Rs.10,00,000/-, as promised by her in U.S.A., with a threat to divorce her. Later, on one day, the petitioner's mother Rukminamma and her mother came to Vendodu as if to see the respondent and demanded payment of Rs.10,00,000/- and threatened to remain her in the village itself if she did not meet their demand. Thus, the petitioner subjected the respondent to mental cruelty and on account of such cruelty, both physical and mental, she is living separately and that the petitioner is not entitled to decree for restitution of conjugal rights and prayed to dismiss the Petition.

7. Basing on the above pleadings, the trial Court framed the following sole point for consideration:

Whether there are any grounds to allow the petition for restitution of conjugal rights?

8. During course of enquiry, on behalf of the petitioner, PWs.1 to 3 were examined and Ex.A-1 (*sic*) was marked. On behalf of the respondent, RWs.1 and 2 were examined but marked no documents on her behalf.

9. Upon hearing argument of both the counsel, considering oral and documentary evidence, the trial Court dismissed the Petition, declining to grant decree for restitution of conjugal rights, assigning its own reasons.

10. Aggrieved by the dismissal order, the unsuccessful petitioner therein preferred this appeal on various grounds. The main contentions raised in the grounds of appeal are:

a) The trial Court did not consider the efforts made by the petitioner to take back the respondent to lead marital life and the conduct of the respondent throughout and committed an error in dismissing the Petition;

b) The trial Court failed to consider the demand for payment of Rs.20,00,000/- by her brother-in-law through one Kumar to send the respondent to the matrimonial house to lead marital life but he could not comply the demand, therefore, it was the cause for her separate stay but the trial Court did not consider the plea in proper perspective;

c) The respondent though made several allegations of harassment, both physical and mental, in U.S.A. and in India, they were not substantiated by any evidence but the trial Court without proper reasoning disbelieved the contentions of the petitioner and declined to grant decree for restitution of conjugal rights and committed an error in dismissing the Petition and prayed to *set-aside* the order under challenge by allowing this appeal and grant decree for restitution of conjugal rights.

11. During course of argument, Sri C. Masthan Naidu, learned counsel for the petitioner-appellant, would contend that when the respondent

herself has withdrawn from the conjugal society, without any reasonable cause, the trial Court ought to have granted a decree for restitution of conjugal rights; that apart, the burden is upon the respondent, who has withdrawn from the conjugal society of the petitioner, to show that there is a justifiable cause for her separate living. In the absence of any proof for her separate living, the trial Court ought not to have dismissed the Petition. In fact, the respondent failed to prove the harassment, physical and mental, meted out by her both in U.S.A. and in India but still the trial Court disbelieving the plea of the petitioner, believed the alleged cruelty and declined to grant decree for restitution of conjugal rights holding that there is justifiable cause for the respondent to live separately which finding is *ex-facie* erroneous and liable to be *set-aside*. Finally, the petitioner requested this Court to allow the Appeal, *setting-aside* the order under challenge and pass a decree for restitution of conjugal rights.

12. *Per contra*, Sri P. Venkata Rao, learned counsel for the respondent-wife, would submit that the specific reason assigned by the respondent for her separate living is substantiated by the evidence on record and as such the trial Court rightly considering the evidence in proper perspective, believing the reason assigned by the respondent for her separate living and thereby proved the justifiable case for her separate living. And that too, when there is no perversity or illegality in the order under challenge, this Court cannot interfere with the finding of the trial Court and prayed to dismiss the Appeal, confirming the decree and decretal order passed by the trial Court.

13. Considering rival contentions, perusing order under challenge including the oral and documentary evidence on record, the sole point that arise for consideration is:

Whether the respondent has withdrawn from the conjugal society of the petitioner without any justifiable cause? If so, is the petitioner entitled to a decree for restitution of conjugal rights, under Section 9 of the Hindu Marriage Act, 1955?

14. **POINT:** The relationship between the petitioner and respondent, their visit to U.S.A. after their marriage are not in dispute. The only dispute is with regard to withdrawal of the respondent from the conjugal society of

the petitioner, without any reasonable cause, and the cause, if any, shown by the respondent is justifiable or not.

15. According to the petitioner, after their return from U.S.A. to see mother of the respondent and her relatives, on account of death of her brother and sister-in-law in the road accident, for some time she did not join the petitioner despite requests made by him personally and through her mother and grand mother, but started living with her mother at Vendodu village. Whereas, the respondent's contention is that there is justifiable cause for her separate living as the petitioner subjected her to cruelty, both physical and mental, demanding additional dowry.

16. According to Section 9 of the Act, When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the District Court, for restitution of conjugal rights and the Court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly. Thus, the requirement to grant a decree for restitution of conjugal rights is that the either spouse has withdrawn the society of the other, without any reasonable excuse, depends upon several factors, which varies from case to case and no straight jacket formula can be laid down since it depends upon the facts of each case. According to explanation to Section 9 of the Act, the burden is upon the person who has withdrawn from the society of the other to prove that there is a reasonable excuse for such withdrawal from the conjugal society. Thus, the initial onus of proof is on the respondent, as she is living separately on the ground of alleged harassment, both physical and mental, meted out in the hands of petitioner, demanding additional dowry of Rs.10,00,000/-. To substantiate her contention, the respondent herself was examined as RW.1 by filing a Petition under Order XVIII Rule 4 of C.P.C. reiterating what she pleaded in the counter filed by her. Even according to the allegations made in the counter, the petitioner and respondent went to U.S.A., after their marriage and returned to India on 30.07.2005; whereas the marriage was performed on 17.02.2005. Thus, they lived together for a period of five months either

in India or in U.S.A. In the 1st Para of her cross-examination, RW.1 asserted that the petitioner harassed her for additional dowry of Rs.10,00,000/- after going to U.S.A. and admitted that she did not give any complaint to Police at U.S.A., as she was not aware of procedure to give complaint to the Police at U.S.A., though she is a post-graduate in Commerce. She further contended that she was not informed about the death of her brother and his wife but came to know about their death, after she returned to India and failure to give information about their death amount to mental cruelty but this contention would not stand to any legal scrutiny as there is no specific pleading in the counter that it is one of the causes for her separate living. However, it is not a justifiable cause for her separate living even if the said fact is true. Strangely, the trial Court put a specific question to the respondent in the cross-examination as to what made her to leave the petitioner, she answered that the petitioner is unfit for conjugal life with her. Immediately a suggestion was put to RW.1 by the learned counsel for the petitioner that the petitioner is fit to lead conjugal life with her and denied by her, but in the last Para of cross-examination, she expressed her disinclination to join the petitioner as she was subjected to cruelty by him during her stay with him for a period of five months and a suggestion put to her that the petitioner never subjected her to cruelty was denied. Thus, it appears that the main reason for her separate living is that her husband, petitioner herein, is unfit for conjugal life but no substantive evidence is brought on record, by the learned counsel for the respondent, to prove incapacity of the petitioner to perform sexual intercourse. However, it was not the ground urged in the counter by the respondent for her separate living as justifiable cause or reasonable excuse. Therefore, this contention would not stand to any legal scrutiny.

17. The main contention of the respondent is that after they arrived at U.S.A. the petitioner started harassing her both physically and mentally demanding additional dowry of Rs.10,00,000/- but she kept quiet without complaining to anybody including the brother of the petitioner, at whose house they stayed for some time in U.S.A. and even after they returned to India, she did not disclose the alleged cruelty to anybody including her

mother. Surprisingly, for the first time, she gave complaint to the Police, on 19.10.2005, alleging that the petitioner subjected her to cruelty demanding additional dowry to carry on business in U.S.A. with a threat to divorce her in the event she did not meet the alleged demand of the petitioner and obtained her signatures on three blank papers subjecting her to physical violence and also threatened not to disclose the same to anybody. She further admitted in the complaint that they returned to India on 30.07.2005; the date of offence mentioned in the F.I.R. is 19.10.2005 and reported the incident on the same day but, by the alleged date of offence the petitioner and respondent were living separately; on the other hand, the contentions of the report disclosed that part of the incident took place in U.S.A. and in India when the mother and grand mother of the petitioner went to the respondent at Vendodu and demanded payment of additional dowry of Rs.10,00,000/- etc., If really, such a serious incident of physical violence against the respondent by the petitioner with a threat to kill her in U.S.A., if she did not meet the illegal demand of the petitioner happened, nothing prevented her to give complaint either to the Police in U.S.A. or to the Police in India, immediately after her return. Even after she returned to India on 30.07.2005, she maintained silence without disclosing the incident to anybody and did not give any report to the Police in India. Maintaining silence for three months approximately creates any amount of suspicion about the alleged incident that took place in U.S.A. Therefore, basing on the allegations made in the complaint in Crime No.96 of 2005 of Gudur Rural P.S., SPSR Nellore District, itself is not sufficient for denial of a decree for restitution of conjugal rights.

18. None of the parties to the Petition brought to our notice about the result of C.C. No.51 of 2006 and, if for any reason, the accused therein, the petitioner herein, had been convicted, then it would have been a ground for the respondent to deny her joining with the petitioner to lead marital life. In the absence of proof of those allegations, a belated complaint to the Police and pendency of C.C. No.51 of 2006 before the Judicial Magistrate of I Class, Gudur, are of no assistance to the respondent to deny decree for restitution of conjugal rights.

19. Besides examining the respondent as RW.1, she also examined RW.2, M. Narayana Reddy, who is her junior paternal uncle. In the examination-in-chief, he testified about performance of marriage, presentation of gold and other articles *etc.*, but in his cross-examination, he disclosed about the information he received from the respondent about the demand made by the petitioner for payment of additional dowry with a threat to divorce and marry again, forcibly obtaining her signatures on blank papers so also threat exerted on her to kill *etc.*, He further testified the subsequent events about convincing the petitioner expressing the inability to meet the illegal demand *etc.*, and did not take back the respondent to marital life. In the cross-examination, while admitting that the respondent never asked him to pay Rs.10,00,000/- but informed that the petitioner was harassing her demanding Rs.10,00,000/- additional dowry and it is followed by a suggestion denying those allegations, however, RW.2 denied the suggestions. In further cross-examination, several suggestions were put to him that the petitioner was ready and willing to take back the respondent to lead marital life but the respondent did not join him was denied by the witness. However, the entire evidence of RW.2 is not direct evidence and it is based on the information he received from RW.1. In fact, according to the case of the respondent, she informed about the incident of demanding for payment of Rs.10,00,000/- by the petitioner, as additional dowry, to her mother at Vendodu village and she expressed her inability. In such a case, the mother of the respondent is the best witness to speak about the alleged illegal demand made by the petitioner or his relatives either at U.S.A. or at Vendodu village of SPSR Nellore District. Obviously for different reasons, the respondent did not chose to examine the competent natural witness to speak about the factum of demand made by the petitioner for payment of additional dowry and expressing her inability to pay the same. Hence, much credence cannot be attached to the evidence of RWs.1 and 2 about the alleged harassment and demand made by the petitioner for payment of additional dowry *etc.*,

20. On a close analysis of the evidence of RWs.1 and 2, the reason for refusal of the respondent to join the petitioner is that the petitioner

demanding Rs.10,00,000/- with a threat to kill her in the event she did not meet the illegal demand allegedly took place in U.S.A. but she kept quiet for many months even after the alleged demand and invented a different theory that the petitioner's mother and grand mother came to Vendodu and demanded for payment of additional dowry of Rs.10,00,000/-, then she lodged a complaint against the petitioner and his mother. It appears that the alleged ground is artificial for her refusal to join the petitioner to lead marital life. Thus, the respondent miserably failed to establish the justifiable cause for her separate living and failed to discharge her initial burden of proof, in view of explanation to Section 9 of the Act.

21. The petitioner, to substantiate his contentions, more particularly, about withdrawal of the respondent from his conjugal society, without any just or reasonable cause, examined himself as PW.1, testified about the performance of marriage and their visit to U.S.A., returning to India and refusal of the respondent to join him, so also demand of Rs.20,00,000/- by Venugopal Reddy through Kumar, a resident of Srikalahasthi village to send the respondent to lead marital life with the petitioner. In the cross-examination, learned counsel for the respondent suggested to him that he subjected the respondent to cruelty, demanding additional dowry of Rs.10,00,000/- from her parents with a threat to divorce her and marry again in the event she did not heed to his demand, got denial of it. In the entire cross-examination, nothing has been elicited in support of the contentions of the respondent about the alleged harassment or cruelty *etc.*, not even a suggestion was put to PW.1 about the readiness and willingness of the respondent to join the petitioner so also harassment of the respondent by the mother of petitioner and demand of Rs.10,00,000/- as additional dowry. However, a suggestion was put to him that he went to Vendodu village and demanded Rs.10,00,000/- to the respondent as additional dowry, was denied.

22. PW.2 is one Reddivari Kasinadha Reddy, who is an elder, testified about the demand made by Venugopal Reddy for payment of Rs.20,00,000/- by the petitioner to him through Kumar and in the cross-examination a suggestion was put to him that Venugopal Reddy did not

demand Rs.20,00,000/- to send the respondent to lead conjugal life with petitioner was denied by him.

23. The evidence of PW.1 at best shows that the respondent did not join him to lead marital life after their return to Vendodu village from U.S.A., without any justifiable cause, as discussed in the earlier paragraphs. The reason assigned by the respondent for her separate living is the alleged harassment by the petitioner, both physically and mentally, demanding Rs.10,00,000/- as additional dowry but the said fact was not substantiated by the respondent, on whom the initial onus of proof lies. Added to that, the testimony of PW.1 is clear that the respondent did not join him and stayed with her mother at Vendodu village, without any justifiable or sufficient cause. It appears from the record that the only reason for her separate living is that the petitioner might be unfit to lead marital life, but the evidence of the petitioner was not specifically explained anywhere. However, it is evident from record that the respondent did not join the petitioner to lead marital life, after she went to Vendodu village and the reason assigned for her separate living is not supported by any reliable evidence, but the trial Court without appreciating the evidence in proper perspective to find out truth in the allegations made by the petitioner and respondent against one another and the burden of proof to establish the justifiable cause for separate living of the respondent was not adverted to as contemplated under explanation to Section 9 of the Act by the trial Court and dismissed the Petition without any legal reasoning. Hence, the finding of the trial Court is liable to be *set-aside*.

24. In view of my foregoing discussion, I hold that the respondent is living separately withdrawing from the conjugal society of the petitioner, without any justifiable or reasonable cause. Therefore, the petitioner is entitled to a decree for restitution of conjugal rights. Accordingly, the point is answered.

In the result, the Civil Miscellaneous Appeal is allowed, *setting-aside* the decree and decretal order dated 14.08.2012, passed in H.M.O.P. No.16 of 2007 by the learned Senior Civil Judge, Gudur, SPSR Nellore District, passing a decree for restitution of conjugal rights, directing the

respondent to join the petitioner to lead marital life, within three (3) months from the date of receipt of a copy of this order.

In consequence, miscellaneous petitions, if any, pending in this appeal, shall stand closed. No order as to costs.

M. SATYANARAYANA MURTHY, J

Date: 12-03-2015.

Dsh

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

C.M.A.NO.1066 OF 2012

AND

C.M.A.No.37 OF 2013

COMMON JUDGMENT:

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Both these CMAs were heard by a Division Bench comprising of Justice Ramesh Ranganathan and Justice M. Satyanarayana Murthy.

H.M.O.P.No.26 of 2010 was instituted by the wife seeking dissolution of the marriage by grant of a decree of divorce. When the said O.P was decreed, the respondent husband therein filed C.M.A.No.1066 of 2012. Justice Ramesh Ranganathan had arrived at a conclusion that the order passed in the said H.M.O.P.No.26 of 2010 dated 14.08.2012 does not call for interference and accordingly, dismissed C.M.A.No.1066 of 2012.

Justice M. Satyanarayana Murthy had arrived at exactly the opposite conclusion and found no ground to sustain the decree passed by the Court in H.M.O.P.No.26 of 2010.

The husband had earlier instituted H.M.O.P.No.16 of 2007 under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights. O.P.No.16 of 2007 was dismissed by judgment dated 14.08.2012. Calling in question the correctness of the same C.M.A.No.37 of 2013 was filed by the husband. While, Justice M. Satyanarayana Murthy had arrived at the conclusion that the respondent wife in the O.P. has withdrawn from the conjugal society of the petitioner husband without any justifiable reason

and hence, the husband petitioner is entitled for a decree for restitution of conjugal rights, Justice Ranganathan preferred to dismiss the C.M.A.No.37 of 2013.

In view of the conflicting opinions expressed by the two learned Judges, constituting the Division Bench, the matter has been placed before me.

If the decree of divorce granted in H.M.O.P.No.26 of 2010 is liable to be upheld, then, the H.M.O.P.No.16 of 2007 is liable to be dismissed, as restitution of conjugal rights cannot be granted after divorce decree is granted. In my opinion, it is imperative to examine and find out as to whether the decree of divorce is liable to be granted as prayed for by the wife in H.M.O.P.No.26 of 2010.

H.M.O.P.No.26 of 2010 has been instituted under Section 13(i)(a) and (i)(b) of the Hindu Marriage Act, 1955, wherein the petitioner wife in that O.P. has alleged cruelty against the respondent husband. The all important question which has to be answered is whether "cruelty" is held established or not.

The expression 'cruelty' has not been attempted to be defined by the Hindu Marriage Act at all and if I may add, advisedly so. It is, therefore, for the Courts to understand, as to in the given facts and circumstances the element of cruelty which deserves grant of a decree of divorce is present or not. There cannot be an exhaustive enumeration of the factors which precisely amount to cruelty while dealing with the conduct of spouses. It is the conduct of the parties which has to be gathered from the circumstances of each case. With the advantage of a calibrated instrument, the elements or factors which constitute cruelty cannot be measured precisely. The antecedent and contextual circumstances have to be gathered, analyzed and tried to be understood in the set of those very circumstances, from the stand point of view of an ordinary or normal human being.

The marriage between the parties took place on 17.02.2005 at Vanaja Krishna Kalyana Mandapam, Gudur, Nellore District, in accordance with Hindu rites and customs. It is the case of the wife that at the time of marriage, an amount of Rs.5,00,000/- in cash and household articles worth Rs.1,00,000/- were given to the respondent wife and 50

sovereigns of gold jewellery was also presented to the respondent husband. The parties have left for U.S.A on 28.05.2005, as the respondent husband in the O.P. is stated to have been employed there. As ill luck would have it, the elder brother of the petitioner wife was involved in a fatal motor vehicle accident, resulting in his death on 31.05.2005 and in a few days time thereafter, the wife of her brother also died. The information relating to this double tragedy has certainly reached the respondent husband promptly. While the wife alleges that she has not been informed of the same, the husband would assert that he did inform. However, the parties have come back to India on 30.07.2005 and after spending a day's time at Sullurpet, both the wife and husband reached the home of the petitioner wife at Vendodu Village. It is thereafter the petitioner wife went on to pursue the legal remedies available to her, including filing a criminal case for an offence under Section 498-A IPC and then filed O.P.No.26 of 2010 for grant of decree of divorce.

Justice M. Satyanarayana Murthy holds that there is no factual foundation behind the allegation of the wife that the information about the death of her brother and sister-in-law has not been passed on to her. I am of the opinion that the view entertained by Justice M. Satyanarayana Murthy does not appear to rest upon a sound basis.

Imagine the parties who have been married only on 17.02.2005 and then leaving this country on 30.05.2005 to live in U.S.A and no sooner they have landed in that country, and even before one could physically settle down, if a news of the magnitude of the death of a brother and his wife (sister-in-law of the wife) were to reach her, no person could have preferred to take it lightly and stay calm and composed. All the more so, if a person is hailing from rural background, the possibilities of existence of strong family bonds cannot be lost sight of. The tragedy of the magnitude of losing a brother and his wife most unexpectedly is not a kind of an incident which would be taken to lightly by many a reasonable person. If the wife has treated it really lightly, as is impliedly suggested by the husband, in the present case, there would not have been an occasion for her to return to India on 30.07.2005 as well, having hardly spent a couple of months with her husband far away from this Country. It is not as though

she is a frequenter between these two countries, unlike her husband. A person who has gone hardly a couple of months back to U.S.A to join her husband, with so many aspirations where it is stated that he is employed, she would not have made a return trip to India so soon, without making an attempt to assimilate the kind of life that one has to lead there by making appropriate adjustments.

In the above background, the assertion of the petitioner wife that the respondent husband is not gainfully employed in U.S.A. at that point of time also gains importance. May be, the husband may have been employed earlier. But, around 30.05.2005 he does not appear to be employed anywhere and that is one precise reason why My learned Brother Justice Ramesh Ranganathan has considered that the respondent husband has withheld the relevant if not a very vital information. The trial Court also found that the respondent husband has not produced any evidence to demonstrate that he is gainfully employed in USA around that time.

The wife has asserted that as soon as they landed in USA, they started living with an elder brother of the husband. That may not appear or sound to be any unusual. But certainly not for weeks together, unless the husband is incidentally employed in the same town or close by thereto. Further, while the brother of the husband has been going to his office day in and day out, with all seriousness which gets attached to such an activity and her husband not doing so but merely pretending, by leaving the home routinely, with a view to spend enough time outside to impress his wife that he is truly employed, the bluff does not stay put for long, however innocent the wife might appear to be. One would easily make out the difference.

In the absence of any credible material evidence being produced by the husband that he was gainfully employed in USA by about 31.05.2005, the inference that he is merely pretending as if he was employed, is liable to be accepted as an appropriate and a reasonable one.

In this backdrop, let us test the veracity of the diametrically opposite versions spoken to by the parties, about the information about the double tragedy that hit the wife back home, reaching her promptly.

The husband, by taking a stand that he has informed his wife about

this news promptly, admits, tacitly, that he is aware of the information. Then, one can understand the wife, hailing from a rustic rural area of this State, not insisting upon getting back to India immediately, if the husband is leaving for office everyday and then letting her know, how difficult it can be to get leave of absence from work place, that too so soon after returning from a break of 2 or 3 months duration obtained for the sake of marriage. But, if the wife realized that the husband is not gainfully employed at all, she would not have kept quiet for weeks on. Hence, it is more probable to believe that the husband may not have promptly informed her of the tragedy that struck their family back home. Further, he might even be apprehensive that if he were to come back to India so soon after 30.05.2005, the suspicion of his wife that he is not gainfully employed in USA might gain credibility, warranting his disclosure truthfully about his employment status in USA, to others including, who may be relatives of his wife.

The conduct of the husband has to be also examined in the backdrop of the fact that the present marriage is a second one. For the present, I would keep aside completely the assertion of the wife that the husband has also not disclosed information about his failed first marriage. The anxiety of the husband to somehow ensure that this marriage also does not fail, on the count of his joblessness, could have possibly prompted him not to disclose correctly the information about his joblessness and about the tragedy that hit the family of the wife. Hence, the assertion of the wife that the information about the tragedy has not percolated to her appears more probable.

Now, the point for consideration also acquired a new dimension when the wife asserted that there was no conjugal life/relationship between the parties. That could be one reason for the wife's demand to return to India in less than 2 months time after leaving this country. Lack of such a relationship also contributes in a substantial measure to the collapse of the ties between the parties. All the 3 aforesaid factors constitute 'mental cruelty' or not has to be answered.

Let me consider the legal principles deduced by the Supreme Court as to what elements could constitute 'cruelty' in the context of Section

13(1)(ia) of the Hindu Marriage Act, 1955.

In **Narayan Ganesh Dastane Vs. Sucheta Narayan Dastane** ^[25],

the Supreme Court has noted:

"The Court has to deal, not with an ideal husband and an ideal wife (assuming any such exist) but with particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court, for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures."

In **Shobha Rani Vs. Madhukar Reddi** ^[26], the Supreme Court has

noted the following:

"[Section 13\(1\)](#)(i-a) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It 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. It is a course of 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 to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the 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.

Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance.

That conduct which is complained of as cruelty by one spouse may not be so for the other spouse. There may be instance of cruelty by the unintentional but inexcusable conduct of any party. The cruel treatment may also result by the cultural conflict of the spouses. In such cases, even if the act of cruelty is established, the intention to commit cannot be established. The aggrieved party may not get relief. We do not think that that was the intention with which the Parliament enacted sec. 13(1)(i-a) of the [Hindu Marriage Act](#). The context and the set up in which the word 'cruelty' has been used in the section, seems to us, that intention is not a necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of

intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment. The same is also the line of reasoning adopted by the House of Lords in *Gollins v. Gollins*, [1963] 2 All E.R. 966 at 976 where Lord Evershed said:

"I am unable to accept the premise that "cruelty" in matrimonial proceedings requires or involves of necessity the element of malignity- though I do not of course doubt that if malignity be in fact established it would be highly relevant to a charge of cruelty. In my opinion, however, the question whether one party to a marriage has been guilty of cruelty to the other or has treated the other with cruelty does not, according to the ordinary sense of the language used by Parliament, involve the presence of malignity (or its equivalent); and if this view be right it follows, as I venture to think, that the presence of intention to injure on the part of the spouse charged or (which is, as I think, the same thing) proof that the conduct of the party charged was "aimed at" the other spouse is not an essential requisite for cruelty. The question in all such cases is, to my mind, whether the acts or conduct of the party charged were "cruel" according to the ordinary sense of that word, rather than whether the party charged was himself or herself a cruel man or woman....."

In **V.Bhagat Vs. Mrs. D.Bhagat**^[27], the Supreme Court has brought out the following:

"13. Cruelty contemplated by the sub-clause is both physical and mental. We are concerned herein with the latter. It is not possible to define 'mental cruelty' exhaustively. As observed by Lord Reif in *Gollins v. Gollins*:

"No one has ever attempted to give a comprehensive definition of cruelty and I do not intend to try to do so. Much must depend on the knowledge and intention of the respondent, on the nature of his (or her) conduct, and on the character and physical or mental weaknesses of the spouses, and probably no general statement is equally applicable in all cases except the requirement that the party seeking relief must show actual or probable injury to life, limb or health. It is easy to see that the origin of this requirement is the decision in the well-known case of *Russell v. Russell*."

To the same effect are the observations of Lord Pearce (at p. 695; All ER p. 992):

"It is impossible to give a comprehensive definition of cruelty, but when reprehensible conduct or departure from the normal standards of conjugal kindness causes injury to health or an apprehension of it, it is, I think, cruelty if a reasonable person, after taking due account of the temperament and all the other particular circumstances would consider that the conduct complained of is such that this spouse should not be called on to endure it.

I agree with Lord Merriman whose practice in cases of mental cruelty was always to make up his mind first whether there was injury or apprehended injury to health. In the light of that vital fact the court has then to decide whether the sum total of the reprehensible conduct was cruel. That depends on whether the cumulative conduct was sufficiently weighty to say that from a reasonable person's point of view, after a consideration of any excuse which this respondent might have in the circumstances, the conduct is such that this petitioner ought not to be called on to endure it.

The particular circumstances of the home, the temperaments and

emotions of both the parties and their status and their way of life, their past relationship and almost every circumstance that attends the act or conduct complained of may all be relevant."

The reference to "Injury to life, limb or health" in the above passages must be understood in the context of the requirements of the divorce law then obtaining in the United Kingdom."

15. If so, the question arises what kind of cruel treatment does clause (i-a) contemplate? In particular, what is the kind of mental cruelty that is required to be established? While answering these questions, it must be kept in mind that the cruelty mentioned in clause (i-a) is a ground now for divorce as well as for judicial separation under Section 10. Another circumstance to be kept in mind is that even where the marriage has irretrievably broken down, the Act, even after the 1976 [\(Amendment\) Act](#), does not permit dissolution of marriage on that ground. This circumstance may have to be kept in mind while ascertaining the type of cruelty contemplated by [Section 13\(1\)\(i-a\)](#).

16. 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. 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. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."

In **Savitri Pandey Vs. Prem Chandra Pandey**^[28], the Supreme Court has noted the following:

"Treating the petitioner with cruelty is a ground for divorce under [Section 13\(1\)\(i-a\)](#) of the Act. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a

reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other.”

In **G.V.N. Kameswara Rao Vs. G. Jabilli**^[29], the Supreme Court has noted the following:

“Under [Section 13\(1\)](#) (ia) of the [Hindu Marriage Act](#), on a petition presented either by the husband or wife, the marriage could be dissolved by a decree of divorce on the ground that the other party has, after the solemnization of the marriage, treated the petitioner with cruelty. 'Cruelty' is not defined in the Act. Some of the provisions of the [Hindu Marriage Act](#) were amended by [Hindu Marriage Laws \(Amendment\) Act](#), 1976. Prior to the amendment, 'cruelty' was one of the grounds for judicial separation under [Section 10](#) of the Act. Under that Section, "cruelty" was given an extended meaning by using an adjectival phrase, viz. "as to cause reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party". [By the Amendment Act](#) of 1976, "cruelty" was made one of the grounds for divorce under [Section 13](#) and relevant provision reads as follows:-

"Divorce (1) Any marriage solemnized, whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party

(i) .

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty, or

(ib) ..

(ii)-(ix) "

The omission of the words, which described 'cruelty' in the unamended [Section 10](#) of the Hindu Marriage Act, has some significance in the sense that it is not necessary to prove that the nature of the cruelty is such as to cause reasonable apprehension in the mind of the petitioner that it would be harmful for the petitioner to live with the other party. English Courts in some of the earlier decisions had attempted to define "cruelty" as an act which involves conduct of such a nature as to have caused damage to life, limb or health or to give rise to reasonable apprehension of such danger. But we do not think that such a degree of cruelty is required to be proved by the petitioner for obtaining a decree for divorce. Cruelty can be said to be an act committed with the intention to cause sufferings to the opposite party. Austerity of temper, rudeness of language, occasional outburst of anger, may not amount to cruelty, though it may amount to misconduct.”

The aforesaid legal principles bind us. When they are applied to the fact situation prevailing in the case, not promptly informing the wife

about the factum of unexpected death of her brother and sister-in-law had a near shattering effect on the wife cannot be discounted. Such a factor certainly constitutes an element of cruelty, as the wife may be justified in apprehending dangers in the relationship with the husband. The added factor of not taking into confidence the wife and not disclosing to her about his not being employed and that moment of life, irrespective of the potentiality of landing in a wonderful job later on, also constitutes cruelty, as the aspirations of a newly married wife would be soaring high and her beautiful dreams and aspirations cannot receive a rude jolt/treatment by the real fact dawning on her. Joblessness, perhaps, in the initial phases of life of newly married, may in certain circumstances help greatly in bonding the new partners in the marriage, but, that would happen, when the fact is openly known to other. But when suppression amounting to misrepresentation is resorted to, it can easily lead to loss of trust and confidence. In my opinion, these 2 factors are good enough, to amount to 'mental cruelty' on the part of the husband. Not that the 3rd factor of lack of conjugal relationship between the parties is any less insignificant. It in fact knocks down the very substratum upon which the edifice of the institution of a marriage rests.

For all these reasons, I consider that the view expressed by Justice Ramesh Ranganathan in dismissing the C.M.A.No.1066 of 2012 is correct. Accordingly, I agree with the conclusion of Justice Ramesh Ranganathan that C.M.A.No.1066 of 2012 should be dismissed and the decree of divorce granted in H.M.O.P.No.26 of 2010 dated 14.08.2012 is liable to be upheld.

As a consequence, the H.M.O.P.No.16 of 2007 instituted by the husband for restitution of conjugal rights has to necessarily fail.

In that view of the matter, C.M.A.No.37 of 2013 preferred by the husband shall also stand dismissed.

The reference is ordered accordingly.

JUSTICE NOOTY RAMAMOHANA RAO

Date:13.04.2016

sp

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

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C.M.A.Nos.1066 of 2012 and 37 of 2013

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COMMON JUDGMENT: (Per Hon'ble Sri Justice Ramesh Ranganathan)

CMA.Nos.1066 of 2012 & 37 of 2013 were heard by us, and as both of us expressed different opinions, the matter was referred by the then Hon'ble the Chief Justice to a third Judge (NRR,J) who agreed with the opinion expressed by one of us (RR,J) and dismissed CMA.No.1066 of 2012 and upheld the decree of divorce granted in HMOP.No.26 of 2010 dated 14.08.2012. He also dismissed CMA.No.37 of 2013 preferred against HMOP.No.16 of 2007 instituted by the appellant for restitution of conjugal rights.

In view of the opinion expressed by NRR,J, concurring with the earlier opinion of RR,J, both CMA.No.1066 of 2012 and CMA.No.37 of 2013 are dismissed; the decree of divorce granted in HMOP.No.26 of 2010 dated 14.08.2012 is confirmed and the order of the Court below, dismissing HMOP.No.16 of 2007 dated 14.08.2012, is also confirmed.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

Date: 29.04.2016

v v

[\[1\]](#) (2006) 3 SCC 778

[\[2\]](#) (2014) 7 SCC 640

[\[3\]](#) (2007) 4 SCC 511

[\[4\]](#) (1966) 2 All ER 257

[\[5\]](#) AIR 1975 SC 1575 = (1975) 2 SCC 326

[\[6\]](#) AIR 1988 SC 121

- [\[7\]](#)^[7] (2013) 5 SCC 226
- [\[8\]](#)^[8] (2006) 4 SCC 558
- [\[9\]](#)^[9] (2014) 8 SCJ 497
- [\[10\]](#)^[10] [1963] 2 All E.R. 966 at 976
- [\[11\]](#)^[11] (1994) 1 SCC 337
- [\[12\]](#)^[12] (2005) 2 SCC 22
- [\[13\]](#)^[13] (2002) 5 SCC 706
- [\[14\]](#)^[14] 2014 (6) ALT 594 (DB)
- [\[15\]](#)^[15] 1998 (5) ALT 234 (DB)
- [\[16\]](#)^[16] 2000(6) ALT 79 (D.B)
- [\[17\]](#)^[17] (2005) 7 SCC 353
- [\[18\]](#)^[18] AIR 2006 SC 1675
- [\[19\]](#)^[19] (2007) 4 SCC 511
- [\[20\]](#)^[20] (2013) 5 SCC 226
- [\[21\]](#)^[21] AIR 2002 SC 591
- [\[22\]](#)^[22] AIR 2002 SC 88
- [\[23\]](#)^[23] AIR 1957 SC 176
- [\[24\]](#)^[24] AIR 1964 SC 40
- [\[25\]](#)^[25] AIR 1975 SC 1534 at P.1541
- [\[26\]](#)^[26] 1988 (1) SCC 105
- [\[27\]](#)^[27] 1994 (1) SCC 337
- [\[28\]](#)^[28] 2002 (2) SCC 73
- [\[29\]](#)^[29] 2002 (2) SCC 296