

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.M-305 of 2012

Date of decision: 17th February, 2016

Brij Bala

...Appellant

Versus

Maneesh Mittal

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE REKHA MITTAL**

**Present: Mr. S.S.Bains, Advocate,
for the appellant.**

**Mr. Avnish Mittal, Advocate,
for the respondent.**

RAJIVE BHALLA, J.

The appellant-wife, challenges judgment and decree dated 30.10.2012, passed by the Additional District Judge, Chandigarh, dissolving the marriage and decreeing the petition for grant of a decree of divorce.

Counsel for the appellant submits that facts pleaded by the respondent even if proved, at best, reveal a normal wear and tear of matrimonial life, i.e. petty quarrels, recriminations that were resolved and nothing more. The cause of trouble between the parties, was the father of the respondent, who had been beating the appellant as is proved by the evidence adduced by the appellant. The finding that the husband has been able to prove the allegation of cruelty are

based upon a misreading of the evidence. An examination of the judgment reveals that onus to “disprove” the allegations levelled by the respondent has been placed upon the appellant. The finding recorded by the trial court that the appellant branded the respondent as greedy as he belongs to the “Baniya” community, has been recorded by disregarding that no such pleading is available in the petition. This apart, a perusal of the deposition, in the affirmative by PW3, the respondent, reveals that he has not uttered a single word that referring to the appellant as greedy or that he belongs to the “Baniya” community is in any manner cruel. The allegations regarding branding the community of the husband as greedy or that birth of a female child was considered a curse in a “Baniya” family are general statements that have been misused by the trial court to infer cruelty against the appellant.

Counsel for the appellant further submits that the court below has ignored the fact that the husband has claimed nullity of marriage on the ground that the appellant concealed her first marriage and divorce with Narinder Sikka and that he only came to know this fact in November, 2007 when the appellant was being taken for brain surgery. The respondent, however, has not explained why he did not file a petition under Section 12(1)(c) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'). The court below has ignored the fact that before their marriage, the appellant and the respondent had been seeing each other for four years. The respondent was all along aware of the earlier marriage and before the marriage, the decree was shown to the respondent and his

signatures were obtained on a certified copy of the decree, Ex.R-1 and Ex.R-2. The document Ex.R-2 is signed by the respondent. The alleged concealment of the first marriage and the divorce are, therefore, false, particularly when the parties fell in love and their courtship lasted for four years. The plea of fraud is even otherwise not available to the respondent, as parties resided together upto 2009, though the marriage had taken place on 17.01.2000. A marriage that cannot be annulled under Section 12 of the Act, cannot be dissolved under Section 13 of the Act by holding that a fraud has been perpetrated by the offending spouse. Counsel for the appellant further submits that if there was any concealment, the husband only convened a panchayat on 10.06.2009 and the very fact that husband himself stated that he paid Rs.71 lacs for resumption of co-habitation proves that the husband had condoned the alleged concealment of her first marriage. The respondent has not challenged his signatures on decree, Ex.R-2 at any stage much less in these proceedings. The trial court has failed to record any specific finding on the signatures appearing on the decree, Ex.R-2, but has discarded it by assigning reasons that are baseless. The finding based upon the report, Ex.R-13 and the deposition by RW2, an expert, has been wrongly discarded as has been the statement by RW6-Pishora Singh.

Another incident relied by the trial court is the alleged adoption of Aarshiya, daughter of the parties and an incident, dated 28.09.2009. The respondent has failed to prove that the appellant wanted to give the child in adoption to her sister Rajni Gujral. The appellant having refuted this allegation, onus lay upon the

respondent to adduce clear and cogent evidence but in the absence of any such evidence, the court below has wrongly held that the appellant wanted to give the child in adoption to her sister. The trial court lost sight of the fact that a child cannot be adopted without the consent of both parents, there is no adoption deed registered and the story regarding adoption is an after thought coined by respondent, so as to present the court with a ground for divorce. A complaint made by the husband to the police in fact establishes that the story regarding adoption is false. The incident, dated 28.09.2009, which was preceded by the alleged attempt on the part of the appellant to offer the child for adoption led to both parties filing complaints and then withdrawing their respective complaints. A perusal of complaints reveals that there is no reference to any adoption, thereby falsifying the allegations levelled by the respondent.

Counsel for the appellant further submits that the allegations that the appellant demanded Rs.71 lacs as permanent alimony, as a settlement, which was reduced into writing but was never acted upon, has been wrongly construed by the trial court as a factor against the appellant. The respondent has not produced any written agreement and if this amount was paid as permanent alimony, the respondent was required to prove why he resumed co-habitation. The amount, so paid, was given by the appellant's family members for investments to the respondent, as is proved by the fact that the respondent made investments, on behalf of the appellant in two shops in Shalimar Mall, Panchkula. The trial court has misconstrued

these facts as proving cruelty. The incident on 12.11.2008, which has found a significant part in the findings recorded against the appellant, namely, false FIR lodged by the appellant against her father-in-law, at Police Station Noida, is perverse and arbitrary. Shri S.P.Mittal, the appellant's father-in-law, quarreled with the appellant on the way back from the school at Noida, struck the appellant, bit her thumb, and pushed her out of the car, for which she lodged an FIR, Ex.R6. An MLR, Ex.R-17 was prepared but after intervention of relatives, the appellant withdrew her complaint. The trial court instead of holding the father-in-law responsible for biting the thumb of the appellant has inferred cruelty by and at the behest of the appellant on the ground that the matter was compromised, a conclusion that is not only perverse but also arbitrary. The trial court also ignored the fact that the dispute was between the wife and her father-in-law and not between the wife and the husband. The appellant was sent back to her parental home by the respondent on account of this quarrel and, therefore, got the children admitted at Chandigarh.

Counsel for the appellant also submits that as the respondent has not proved the ingredients of cruelty whether physical or mental and has failed to prove that he was not aware that the appellant was a divorcee, there is no evidence that the appellant had agreed to give their daughter in adoption, the FIR lodged by the appellant was against the father-in-law and not against the respondent, and as the incidents narrated by the respondent, are normal wear and tear of marriage, the impugned judgment and

decree may be set aside and the appeal may be allowed.

Counsel for the respondent, on the other hand, submits that the trial court has after considering the pleadings and evidence on record, accepted the pleas that the appellant concealed her earlier marriage and subsequent divorce to Rajan Sikka, that the appellant had agreed to give Aarshiya Mittal, in adoption to her sister Rajni Bala, that the appellant demanded Rs.71 lacs as a pre requisite to resumption of matrimony, which was acceded to by the respondent on 30.07.2009, that the appellant left the matrimonial home on her own, with jewellery and belongings, moved to Chandigarh and transferred the children to a school in Chandigarh, without the knowledge and consent of the respondent-husband, that the appellant levelled false allegations of beating the daughter against the respondent and even got the child medically examined but the medical examination did not reveal any injury, that the appellant and her father levelled false allegations against the husband and his family criticising them as greedy as they belong to the "Baniya" community, that the appellant's behaviour became aggressive after brain surgery, that the appellant forced the respondent to live separately from his parents and a criminal complaint filed against the respondent and his family, was subsequently withdrawn. The findings so recorded are legal and valid and do not call for interference.

We have heard counsel for the parties, at length, appraised their written synopsis/arguments, perused the pleadings and the voluminous evidence on record.

Two mature individuals, fall in love, get married, have two

children and then fall apart with both levelling allegations and counter allegations of greed, misbehaviour, physical intimidation and assault, and an allegation that the husband belongs to a community that is by its very nature greedy and views the birth of a daughter as a sin, allegations against each others parents, allegations of harassment, physical abuse by the father-in-law and by the respondent, concealment of first marriage and a divorce, an attempt by the wife to give their child in adoption to the wife's sister, allegations against the respondent and his father that the respondent beat their daughter, getting her medico legally examined, a demand of Rs.71 lacs as a pre-condition to the resumption of matrimony and various other matters, that we shall deal with after we narrate the facts and evidence.

Before we proceed any further, it would be necessary to point out that both the appellant and the respondent are bankers, working on senior positions and as admitted met while they were on training with Deutsche Bank. The courtship lasted for four years and eventually, parties got married on 17.01.2000, at Chandigarh, according to Hindu rites and ceremonies, with the consent of their parents. The parties were blessed with two children, a son on 02.05.2003 and a daughter on 26.08.2005. The parties appear to have led a normal life but in November, 2007, when the appellant began complaining of severe headache. After treatment at various hospitals, she was detected with "Brain Aneurysm" for which she was required to undergo brain surgery at Paras Hospital, Gurgaon, on 29.12.2007. The appellant was discharged on 20.01.2008. The

respondent-husband has pleaded that before the appellant went for the operation, she became depressed as she thought that she may not survive, made an admission to the respondent that she had not told him about her earlier marriage and divorce and apologized for this concealment. The respondent ignored this startling revelation though, he was distressed at this breach of faith. The appellant was thereafter taken to hospital, 46 different times. The respondent cared for her and the children as a loving husband and parent. The respondent also alleges that during this period, the appellant asked the respondent that if she does not survive, he should give their daughter in adoption to her sister Rajni Bala, who, though, married for the last more than 15 years has not conceived. The respondent, however, did not react to this proposal in view of the precarious condition of the appellant but later came to know that the appellant had already made such a commitment to her sister. The respondent, as a dutiful, loving husband took care of the appellant in every possible manner, spent a large sum of money on her surgery and recovery. The appellant's behaviour with the respondent and his family members and the children, however, began to change. She was unable to look after the children, began to beat them and started insisting that they should give their daughter in adoption to Rajni Bala. The behaviour of the appellant towards the respondent and his family members became rude, indifferent and abusive. On 12.11.2008, the respondent's father and the appellant went to the school to bring Aarsheya home. On the way back, Aarsheya asked for a chocolate but the appellant slapped her, on which the

respondent's father intervened and asked her to treat the child with affection. The appellant flew into a fit of rage, asked the respondent's father not to interfere, stormed out of the car and made a false complaint with the police alleging that she has been beaten by her father-in-law but then withdrew her complaint on the next day. The appellant did not return to the matrimonial home and from 12.11.2008, started residing in separate accommodation at Gurgaon where she invited her sister Monika Gujral to live with her. The appellant resided separately for 3½ months. The respondent bore the entire expenses of the appellant's stay at Gurgaon. Both children, were with the respondent. After great persuasion, the appellant returned to the matrimonial home in March, 2009. The respondent, in order to please the appellant and their children took them to various countries like Singapore, Malaysia, Honk Kong and various places within India, but the appellant's behaviour did not change. She began feeling guilty as she could not fulfill her promise to her sister, Rajni Bala regarding the adoption. The appellant left the matrimonial home four times in a span of one year. The appellant along with their children left the matrimonial home on 10.06.2009 and took away all her jewellery, clothes etc., with an intention to sever matrimony. The respondent tried his best to persuade the appellant, but to no avail. The appellant was adamant that she wants a divorce and nothing less. The appellant insisted that the respondent should pay her maintenance and permanent alimony, take the children with him and then put a condition that she could give matrimony another chance, provided the respondent gave

her his life savings as a pre-condition to joining the matrimonial home and in case she is not able to adjust, she will agree to a mutual divorce. The appellant demanded an amount of Rs.25 lacs for each child, in a fixed deposit. An agreement was prepared and as per the demand raised by the appellant, the respondent transferred his entire savings of Rs.71 lacs to the account of the respondent, on 30.07.2009 and 31.07.2009. The respondent also took a house on rent in Delhi, where the appellant joined the respondent, on 04.08.2009. At the instance of the appellant, the respondent's parents shifted to a rented house, at Panchkula. However, in the first week of September, 2009, Rajni Bala, the appellant's sister, came to stay with them. On 28.09.2009, one Kundan, an acquaintance of Rajni Bala came to the house of the respondent. The respondent came to know that they had come to become familiar and friendly with Aarsheya as the appellant intended to give custody to Rajni Bala. The respondent told the appellant, that she should give up the idea as he does not want to give his daughter in adoption to Rajni Bala, whereafter the respondent was physically assaulted by the appellant and her sister and told in no uncertain terms that the respondent cannot stop them from taking custody of Aarsheya. Apprehending that they may not take the daughter forcibly, the respondent left the house, took his daughter with him and reported the matter to the police. The matter was, however, sorted out in the police station, but the appellant shifted the minor son of the parties to her parent's house at Chandigarh without the consent of the respondent. The appellant and her sister broke the crockery items

and the respondent's laptop before leaving the matrimonial home on 28.09.2009. The appellant, thereafter, filed a false complaint to the police, alleging that the respondent had beaten her minor daughter. The medico legal examination from General Hospital, Panchkula, led to MLR, dated 02.10.2009, wherein the doctor opined that there was no injury or pain on any part of the body of their minor daughter. The respondent, thereafter, levelled various other allegations regarding the appellant's father, her sister, her sister's divorce etc. The appellant also filed a false petition under the Protection of Women from Domestic Violence Act, a false Habeas Corpus petition, which was dismissed on 20.11.2009.

The appellant, on the other hand, apart from various preliminary objections regarding maintainability, concealment of material facts and false averments etc., admitted that marriage between the parties was a love marriage, pleaded that dowry/gift items were given at the time of marriage to the respondent, his father, brother-in-law, sister etc. The allegation that the appellant had suppressed her marriage and divorce was empathetically denied by averring that a certified copy of the divorce decree was shown to the respondent and his family members and was duly signed by the respondent. It was also pleaded that the parties were working in Deutsche Bank, Sector-9, Chandigarh and everybody in a bank knew that the appellant was a divorcee. The allegation against the appellant's family members were empathetically denied. It was admitted that she underwent brain surgery in November, 2007, but alleged that this problem occurred because of physical and mental

torture suffered by her at the hands of the respondent, his parents and relatives. The allegation that the respondent consumed liquor is false as she belongs to the Radha Swami Sect. Beas, Amritsar. The other incident, namely, an incident at Agra, where she lost her mental balance or that she is attracted towards monied men were categorically denied. The appellant pleaded that she was drawing more salary than the respondent and went on to make averments that her family owned a house carrying more value than the respondent's house. The appellant, thereafter, averred that she was looking after the respondent as well as the children and prepared meals for them as and when domestic help was not available. The complaint made by the appellant before CAW Cell was true and not made so as to harass the respondent or his relatives. The appellant has always made an attempt to ensure that the marriage works but the respondent, his parents and her sister have always been torturing and harassing the appellant that she is a divorcee and the marriage is not acceptable to them. The appellant bore all the maltreatment as she did not want to break another marriage and under these circumstances had resigned her job for the welfare of the children. The parties resided at House NO.594, Sector 16, Panchkula but as the respondent's sister resided nearby, there was interference, taunts etc. regarding the fact that the appellant was a divorcee and had given birth to a female child. The respondent was, ultimately transferred to Delhi and they began residing at Noida. The behaviour of the respondent and his parents, however, did not change. The respondent's father suffered a heart-attack in August,

2007 and it was the appellant who removed her father-in-law immediately to hospital. Despite the fact that the appellant underwent a major brain surgery, the behaviour of the respondent and his family members did not change. The father-in-law of the appellant used to hit and abuse the appellant even in the presence of servants and other family members including the respondent. On 12.11.2008, the respondent's father attacked the appellant, which led to multiple injuries on her person. The appellant lodged a complaint with the police station, Sector 24, Noida. The appellant was medico legally examined and FIR No.113 of 2008 was registered, under Section 323 IPC, Police Station Sector 24, Noida, which was ultimately compromised and withdrawn on 13.11.2008, in the interest of matrimony. The father-in-law had bitten her right thumb on 12.11.2008 as is proved from the MLR. Despite various assurances, she was beaten daily on one pretext or the other and eventually the appellant was left with no option but to leave her matrimonial house for her parental house at Chandigarh after informing the Noida Police, on 10.06.2009. The children were admitted to a School at Chandigarh but on the intervention of friends and relatives, the appellant returned Delhi. On 27.09.2009, when the appellant's sister was present at Noida, the respondent beat the appellant but at the intervention of the sister, the matter was compromised. On 28.09.2009, the respondent picked up a quarrel with the appellant and beat the appellant's sister, then their daughter and bolted himself and their daughter in the bathroom. The appellant in order to save

their child, called the landlord and telephoned the police control room. The respondent fled, with their daughter in a car. The respondent was ultimately called to the police station, New Friends Colony, Delhi. In the police station, the respondent whispered in the ear of the appellant that she may leave for her parental house and the respondent would bring their daughter within two days, provided the appellant wants to see her daughter. A joint application for the compromise was submitted to the police in this regard. The appellant has been residing at her parent's house ever since with their minor son, whereas the minor daughter is residing with the respondent. The respondent admitted that she filed a Habeas Corpus petition for the custody of a daughter but it was dismissed to seek remedy before the Guardian Court. The respondent denied all other allegations including allegations that she demanded Rs.71 lacs as a pre-condition to the resumption of matrimony and in turn pleaded that Rs.71 lacs belong to the appellant and her relatives, who had entrusted it to the respondent for investment in shares and property. The amount of Rs.71 lacs was deposited in 2009, whereas the dispute occurred later and is, therefore, not related to the dispute, as alleged by the respondent. The respondent filed a replication, controverting averments in the written statement and reiterating averments in the petition and pleading certain other facts.

On the basis of the pleadings, the trial court framed the following issues:-

“1. Whether the respondent has treated the

petitioner with cruelty?OPP

2. Relief.”

The trial court, thereafter, called upon the parties to lead evidence.

The petitioner-respondent has examined the following witnesses:-

- “1) PW1 Dr. Purnima, Medical Officer, General Hospital, Sector 6, Panchkula, who medico legally examined Aarsheya Mittal (minor) on 2.10.2009 and proved a copy of the MLR.
- 2) PW2 Shri Atul Mahajan, Senior Teller Associate, HSBC Bank, Sector 9-D, Chandigarh, who brought the record relating to an account in the name of the appellant Brij Bala, showing credit of a sum of Rs.45 lacs in her account, on 30.7.2009 and credit of another sum of Rs.26 lacs on 31.07.2009 through RTGS.
- 3) PW3 is the respondent Maneesh Mittal himself.
- 4) PW4 is Shri Som Parkash Mittal, father of the respondent.
- 5) PW5 is constable Baljit Singh, Police Control Room, Sector 9, Chandigarh, who brought the record relating to log book entry of 8.4.2012 regarding receipt of message from the appellant about a quarrel with her husband.
- 6) PW6 is Shri Arun Thakur, Service Officer, Kotak

Mohindra Bank, Sector 9, Chandigarh, who brought the account statement of the respondent Maneesh Mittal, for the period from 3.11.2008 to 27.8.2009.

- 7) PW7 is Shri Kapil Chaudhary, Junior Executive, Paras Hospital, Gurgaon, who brought the record pertaining to treatment of Brij Bala in said hospital.
- 8) PW8 is Shri Puneet Gupta, brother-in-law (sister's husband) of the respondent.
- 9) PW9 Head Constable Baljinder Singh, Police Station, Sector 39, Chandigarh, who brought the DDR register containing DDR entries No.21 and 31 dated 15.1.2012.
- 10) PW9/A Constable Lachhman Singh, office of SSP, Chandigarh, who brought the record pertaining to complaint filed by the appellant before the SSP, Chandigarh.”

The respondent was, however, allowed to lead additional evidence in the shape of deposition by Shri S.C.Bakshi son of Bhola Nath, landlord of the house at Gurgaon, as PW10, where the appellant is stated to have stayed with her sister as a tenant.

The evidence adduced by the appellant, is as under:-

- “1. She appeared as her own witness, as RW1.
2. Sumit Kumar Arora, handwriting expert, who had compared the signatures of the respondent on copy of the decree sheet, as RW2.

3. Dr. Amit Srivastava, Consultant, Neuro Surgery, Paras Hospital, Gurgaon, who brought the admission and treatment record of the appellant , as RW3.
4. Dr. Dinesh Mohan Saxena, Medical Officer, District Hospital Noida, who had medico legally examined the appellant, on 12.11.2008, as RW4.
5. Mrs. Rajni Bala, sister of the appellant, as RW5.
6. Pishora Singh, a neighbour of father of the appellant, as RW6.
7. Romesh Chander Gujral, father of the appellant, as RW7.”

The learned trial court after considering the pleadings, evidence and arguments addressed, held that the appellant has proved the plea of cruelty and, therefore, passed a decree of divorce, dissolving the marriage between the parties.

A perusal of the impugned judgment and decree reveal that the trial court, has after examining the depositions by the respondent, his witnesses, the document and the evidence, held that the appellant has proved a degree of cruelty, sufficient to dissolve the marriage. The trial court has by specific reference to the depositions by the appellant and her father alleging that the respondent belongs to “Baniya Community”, which is greedy and regards the birth of a girl child as a curse held that in the absence of any evidence that the respondent ever demanded any dowry or money from the appellant or her father or maltreated her by raising any such demand and her

admission that there was no demand of dowry, does not even remotely suggest that the respondent or his relatives were greedy, so as to term them in particular and the baniya community in general as greedy. The trial court also relied upon the fact that the serious allegation that respondent beat his daughter, was found to be false as no injury was found on her person and, though, considering the respondent's admission that he had locked himself and their daughter in a bathroom and then ran away with their daughter, as he apprehended that the appellant would give their daughter in adoption to her sister, held that there is some truth in the allegation that the respondent-appellant wanted to give their minor daughter to her sister Rajni Bala, thereby triggering this incident. The trial court also noticed that the allegation regarding adoption has gone un-rebutted in cross-examination. The trial court also held that it is probable that the appellant in view of her illness and brain surgery may have asked the respondent to give their daughter in adoption to her sister, as the appellant feared that she may not survive. The trial court also noticed that the minor daughter is living with the respondent after the appellant left the matrimonial house on 28.09.2009 and the medical examination of the minor, as proved from the deposition by PW1 Dr. Purnima, who medico legally examined Aarhseya Mittal, at General Hospital, Panchkula, reveals that there was no injury mark on her body or any complaint of pain and in response to a question put by the appellant, stated that there was no sign of the child being mentally traumatized or tortured. The trial court also took note of another incident, dated 10.06.2009, when the appellant left the

matrimonial home along with their two children and got them admitted in a school at Chandigarh, after she was beaten by the respondent's father. The appellant's statement that on 10.06.2009, there was no dispute or quarrel with the respondent but she left as she was told to go to her parental house as her father-in-law had beaten her and her minor child, the fact that she admitted that there were no injury to her person or the person of children, nor did she get herself or the children medically examined but left by merely giving a letter to the police at Noida that she was leaving with the children without any articles, were also considered. The appellant was confronted with Exh.R/12, a letter addressed to the police that did not record any beatings etc., but made reference to a domestic dispute/quarrel. The trial court thus, negated the appellant's assertion that she was beaten by her father-in-law, who has retired as Principal Scientist, Joint Secretary of Government of India, had undergone a bye pass surgery and is a chronic patient of asthma. After holding as above, the trial court referred to the deposit of Rs.71 lacs in the saving account of the appellant and concluded that as deposit of Rs.71 lacs is admitted, the onus lay upon the appellant to prove, as alleged, that the amount belonged to her or she had given the amount for investment for her and on behalf of her relatives, but after examining the affidavits, the trial court concluded that in the absence of any such evidence and as Rajni Bala has admitted that she gave a sum of Rs.2 lacs and the appellant was not in a possession of any document, it can be safely concluded that Rs.71 lacs were paid to the respondent as a pre-condition to resume matrimony. The

incident, dated 12.11.2008, which led to registration of FIR no.113/2008, under Section 323 of the Indian Penal Code at Noida, was also dealt with by the trial court, by holding that though that some did incident take place in 2008, in which the appellant received a minor injury, there is no evidence that the injury on the right thumb was a result of a bite by the appellant's father-in-law, as alleged.

A perusal of the facts reveal that the parties met while undergoing training with the Deutsche Bank and after a courtship that lasted for four years, got married at Chandigarh on 17.01.2000, according to Hindu rites and ceremonies but with the tacit consent and blessings of their families. The parties were blessed with two children, Archit Mittal on 02.05.2003(residing with the appellant) and Aarsheya Mittal on 26.08.2005 (residing with the respondent). Their life continued normally except for minor disagreements, upto November, 2007, narrated by the respondent more is his attempt to buttresses his allegation of cruelty than in conviction. The relationship received its first jolt after the appellant began complaining of severe headache and was diagnosed with brain "Aneurysm". The parties agreed that the appellant would undergo surgery and were advised by surgeons that the operation may prove fatal. The appellant has pleaded as his first ground of cruelty that before the appellant was operated, she was depressed as she thought that she may not survive and informed the respondent, before the operation, that she did not want to leave the world without telling the truth regarding her past and informed him of a prior marriage which had ended in divorce and apologised for concealing

these facts. The respondent states that he did not rake up this issue as the appellant's life was in danger and as he considered it his duty to take care of the respondent, leaving the aforesaid revelation for a later dated. The operation was successful. The appellant visited hospital 46 time, in the next two years. The appellant, on the other hand, alleges that the respondent was aware of her previous marriage and divorce and in fact signed a certified copy of the divorce decree and at the instance of her father. The respondent also alleges that parties were working in Deutsche Bank, Sector 9, Chandigarh, where everybody, including the respondent were aware of the appellant's divorce. The appellant's personal particulars submitted to the bank at the time of joining service records her status as a divorce. The appellant also alleges that when fact of the previous marriage were disclosed to the respondent, at the time of settlement of the marriage, certain neighbours were also present. The respondent, in order to, prove the aforesaid fact, relies upon his own deposition and the deposition by his father, which in the circumstances, may be motivated. The appellant, however, relies upon decree, Ex.R-2, allegedly signed by the respondent to prove that he has awared of the prior marriage and divorce. The appellant has examined RW6 Pishora Singh, who has deposed that he was present when a copy of the judgment was read over to and signed by the respondent. Pishora Singh has, however, admitted that he did not attend the marriage of the parties. The other witness, who has deposed about the signing of the decree by the respondent prior to the marriage, is RW5-Rajni Bala, a sister of the appellant.

At this stage, it would be appropriate to point out that the respondent was confronted with the decree and his signatures but denied his signatures. The appellant examined Sumit Kumar Arora, RW2, a handwriting expert, who submitted a report Ex.R2, confirming that the signatures tally with the admitted signatures of the respondent. The report has been rejected by the trial court by holding that though RW2 has admitted that there is a difference of about 14 years between the disputed signature and the standard signatures, he did not try to procure the standard signatures close to the date of signing of the decree.

A perusal of the pleadings and the evidence on record, reveal that the respondent and the appellant are undoubtedly highly educated, professional bankers and to accept that the respondent was unaware of the prior marriage and divorce, particularly during an alleged courtship period of four years, may be rather too much for us to accept but a significant contradiction in the deposition of the appellant herself who has on the one hand deposed that respondent was all along aware of the previous marriage and divorce and then surprisingly deposed that the fact of prior marriage and divorce was disclosed at the time of settlement of marriage in the presence of certain neighbours. If the respondent was aware of the prior marriage, there was no reason for the appellant to disclose her prior marriage and divorce at the time of settlement of marriage much less reason enough for the appellant's father to ask the respondent to sign the decree of divorce, Ex.R/2. The appellant is unable to explain this contradiction in her stand, thereby in our considered opinion,

lending credence to the respondent's version that he was not aware of the prior marriage and divorce, but whether it was only disclosed to him before the appellant was operated for brain "Aneurysm" as she feared that she may not survive after the operation, may not be entirely correct. Another fact that the respondent did not raise any dispute in relation to the prior marriage and divorce, upto the filing of the divorce petition, may be a factor that may go against the respondent but we cannot disregard the inherent contradiction in the evidence adduced by the appellant and, therefore, do not place much emphasis on this facts as there is sufficient evidence on record to hold that the marriage exists in name alone.

As already recorded, apart from minor differences of opinion, that are a part of any relationship whether matrimonial or otherwise, there is nothing much of significance alleged by the appellant or by the respondent prior to her undergoing the operation for brain "Aneurysm" but thereafter things seems to have taken a turn for the worse as both parties allege misbehaviour, harassment, torture, physical abuse, that appear to have torn this picture perfect marriage asunder but what actually happened is known to the parties. Before us are facts so stark as to suggest a complete breakdown in the relationship. The respondent alleges a drastic change in behaviour and attitude, indifference to the children, the family, the beating of the children, insistence on entrusting the girl child to her sister in adoption and various episodes of the appellant leaving the house, with the children, and a final episode whereafter the parties began residing separately with the girl child residing with

the respondent and the male child with the appellant.

The learned trial court has apart from another significant factor, which we shall deal with later, narrated these facts and dealt with these facts separately, which we shall now proceed to narrate.

The appellant in her pleadings and deposition does not allege any physical abuse, harassment, demand of dowry against the respondent, or any such factor as is normally associated with divorce petitions. The marriage between the parties was a love marriage and though a marriage function was held, there is no evidence of any demand or payment or of dowry or any disappointment at the quantum and quality of gifts given at the time of marriage

The first incident appears to have taken place on 12.11.2008, between the appellant and her father-in-law. The appellant and her father-in-law were driving the parties daughter back from school. According to the appellant, her father-in-law attacked and beat her, leading to multiple injuries on her person for which she filed a complaint with the police and got herself medico legally examined at General Hospital, Noida. An FIR No.113 of 008 was registered under Section 323 of the Indian Penal Code, at Noida, but was ultimately compromised on 13.11.2008 as she withdrew her complaint. The respondent and his father have stepped into the witness box and denied the correctness of the aforesaid complaint and incident. In fact PW4, the appellant's father-in-law has deposed that the parties' daughter asked for a chocolate but the appellant began slapping her on which he intervened and requested

the appellant not to beat the child. The appellant got angry and stating that she does not need his advice, stormed out of the car and filed a complaint with the police alleging that she has been beaten by her father-in-law, who bit her right thumb. The stand of the appellant is sought to be proved by the FIR, Ex.R6 a medico legal report, Ex.R17. A perusal of the MLR reveals that there was a reddish contusion 3.00 cm x 1.5cm on the right wrist extending to the base of right thumb and the appellant complained of pain on the left side of her abdomen and a headache. RW4 Dr. Mohan Saxena was produced by the appellant to prove the MLR but admitted that he could not say whether injuries were self suffered or inflicted by a friendly hand and also admitted that the history of injuries are not recorded in the report. The doctor also admitted that the appellant was not accompanied by a police official nor did he receive any request from the police for conducting a medico legal examination. A perusal of the MLR and the complaint made by the appellant does not reveal any bite mark on the right thumb and the injury described in the MLR does not answer to the description of a bite, much less, on the thumb. It appears that the appellant may have taken offence at her father-in-law objecting to something regarding the child and some sort of altercation may have taken place in the car, but in the absence of any allegation in the complaint, or in the MLR to prove that she was beaten by her father-in-law. It appears that the lodging of the FIR and the allegations, may have been the first trigger for the subsequent breakdown of the relationship.

There is another incident, which requires a pointed

reference and which may be the final cause for breakdown in the relationship. The appellant admittedly left the matrimonial house on 10.06.009 and reached Chandigarh with the two children, who were got admitted in a school at Chandigarh. Before leaving Noida, she informed the Noida police and the SSP, Noida that she was leaving her matrimonial house. The appellant has admitted this fact but has stated that she was sent to Chandigarh by the respondent as her father-in-law, had hit her. The appellant alleges that she was turned out of the matrimonial home and came to Chandigarh but admitted that there was no physical injury on her person or the child and she did not go for a medical examination or lodge a complaint with the police regarding the beatings. The appellant admitted that on the date of the incident, the respondent was not at home and mainly alleges beatings and harassment by her father-in-law. The appellant, however, has not been able to adduce any evidence of any beating or harassment by the father-in-law who is a chronic asthma patient and has undergone bypass surgery. This apart, a perusal of the complaint, Ex.R-12, filed before police reveals that it does not record any beating by her father-in-law or that she was leaving the matrimonial home on the advice of the respondent. The appellant has not been able to proffer an explanation for this impetuous act of leaving the matrimonial home and leaving for her parental house at Chandigarh. The appellant, it appears, is trying to create evidence against the respondent's parents for use in case the matrimonial dispute develops into a legal battle.

The dispute was eventually resolved but only after the

appellant was paid Rs.71 lacs by the respondent for resumption of matrimony, which was admittedly deposited in her account. The respondent has pleaded that the respondent paid this amount so as to satisfy a condition placed by the appellant, that she will resume matrimony, if he deposits his savings as maintenance and permanent alimony. The respondent, admittedly, deposited this amount. The appellant states that this amount was money invested by the appellant and her family members as the respondent was an expert in investment of funds. The appellant has not been able to prove that this amount of Rs.71 lacs was entrusted to the respondent by her or her family members. The appellant examined RW5 Rajni Bala, a sister and RW7-Romesh Chander Gujral, father, to prove that they had given a sum of Rs.2 lacs each to the appellant for investment but could not link it to the Rs.71 lacs. The appellant faced with this difficulty, stated that Rs.6 lacs was returned to her relatives, who had paid money to the respondent but a perusal of the evidence reveals that none of these relatives have been produced and in fact no particulars are forthcoming of the names of the relatives, the money entrusted, except for deposits by her sister Nitu Gujral, Rajni Gujral and another sister, who are alleged to have given Rs.2 lacs each. The witnesses have also stated that they gave these amounts in sums of Rs.20,000/- in cash but could not produce any document or record to prove payment of this amount or receipt of any return on this investment as deposed in their statements. In fact a perusal of the statement made by RW5 Rajni Bala reveals that she was oblivious of any such amount having been received by her. RW7

Romesh Chander Gujral, the father of the appellant merely stated that he had received Rs.2 lacs in October and November, 2009, from the respondent. The appellant having failed to prove that the amount of Rs.71 lacs was returned to her due to investment made by her and her relatives tends to fortify the appellant's assertion that this amount was received by her as a pre-condition to resumption of matrimony as maintenance and permanent alimony in case the parties were unable to continue with the matrimonial relationship.

The matter, however, does not end here. The final incident that eventually led to the filing of a petition for grant of a decree of divorce and is one of the pillars of the plea of cruelty raised by the respondent starts from the time of her operation, as the appellant fearing that she may not survive, asked the respondent to give their minor daughter in adoption to her sister Rajni Bala, who did not have a child despite 16 years of marriage. The respondent alleges that, at that stage, he ignored the request but after the operation, the appellant began to insist that their minor daughter be given in adoption to her sister as she had already made a commitment in that regard. The respondent alleges in his pleadings as well as in his deposition that in September, 2009, Rajni Bala, the appellant's sister, came to stay with them in their house at Delhi, where they had shifted in the meanwhile. On 28.09.2009, Kundan, an acquaintance of Rajni Bala came to the house of the respondent. The respondent apprehending that this was an attempt to develop a relationship with their minor daughter with the object of finally handing over custody of the child to Rajni Bala, impressed upon the appellant that she should

give up the idea of giving the child in adoption, leading to an altercation. The respondent was assaulted by the appellant's sister. The appellant began collecting her and their daughter belongings. The respondent apprehending that they would snatch his daughter, left the house with the daughter and reported the matter to the police. Before leaving, Rajni Bala and the appellant broke crockery items, the respondent's laptop and left for Chandigarh with the children. The appellant lodged a complaint with the police, alleging that the respondent had beaten the respondent and got an MLR prepared with respect to the child but the MLR does not reveal any injury on the body of the minor or even pain. The appellant has denied these facts and deposed that Rajni Bala and Kundan had merely come to stay with them for two to three days. The appellant alleges that the respondent became irrational and locked himself in the washroom, where he began beating the daughter and then ran away with the minor. The explanation proffered by the appellant is falsified by the MLR, recorded at Panchkula, which does not reveal any injury on the person of the minor much less any pain to any part of the body. PW1 Dr. Prunima, who examined the minor on 02.10.2009, at General Hospital, Panchkula, stated that the patient (the minor daughter) was conscious, oriented to time, place and person and no injury mark was detected on her body nor was there any complaint of pain.

The aforesaid facts taken collectively with the facts referred to in the preceding paragraphs, in our considered opinion, have been rightly considered by the trial court as sufficient to infer cruelty, particularly when the appellant does not allege any misbehaviour,

torture, beating, by or at the behest of the respondent. The conduct of the appellant in leaving the matrimonial home on two occasions and on another occasion when she began to reside in Gurgaon, the latter having been proved by the deposition of the landlord, in our considered opinion is sufficient to prove the allegations of cruelty, which have been rightly accepted by the trial court.

An aspect of this case, which has been referred to in detail by the trial court, which may or may not be sufficient to infer cruelty, but indicates the extent to which the relationship between the parties has deteriorated and in our considered opinion is beyond repair, requires mention. The parties are educated, both are bankers but the appellant made a distasteful allegation in her deposition, which reveals the level to which their relationship has deteriorated. An extract from her affidavit RW1/A, reads as follows:-

“ After the birth of the female child, the cruelty of the petitioner and his family members towards the deponent increased manifold because neither the petitioner nor his family members were interested in the female child because they are from baniya community, where girl child is curse and not welcomed.”

“After the birth of female child, Aarsheya Mittal, the behaviour of the petitioner and his family members changed a lot because female child is in the family of the petitioner is considered as a curse as they are baniya”

The matter does not rest here. The appellant's father repeated these allegations, though, conscious of the fact that they

have not levelled allegations of demand of dowry, harassment on the quantum or quality of dowry, or that the respondent was a greedy person, who demanded money or gifts in the shape of dowry etc. The respondent in fact paid Rs.71 lacs, to save his marriage but it appears that these allegations which seek to indict the respondent as he belongs to a particular community, without any evidence whatsoever, to substantiate the allegations of greed, curse to a girl child are the final nail in the coffin of this deed marriage, prove that the relationship between the parties is an empty shell, devoid of any substance and, therefore, has been rightly ordered to be dissolved by the court below. Thus, an appraisal of the pleadings, the evidence and due consideration of the arguments, including documents led in additional evidence, lead to a singular conclusion that marriage between the parties is a mere word, devoid of substance, therefore, not inclined to accept the arguments raised by counsel for the appellant that the respondent has not been able to prove his plea of cruelty.

For reasons referred to above, the impugned judgment and decree are affirmed and the appeal is dismissed.

(RAJIVE BHALLA)
JUDGE

17th February, 2016
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(REKHA MITTAL)
JUDGE