

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

% *Judgment Reserved On : November 08, 2016*
Judgment Delivered On : November 10, 2016

+ **MAT.APP.(F.C.) 94/2014**

ANURAG SHARMA

.....Appellant

Represented by: Mr.A.S.Chandhiok, Sr.Advocate and
Ms.Geeta Luthra, Sr.Advocate
instructed by Ms.Arveena Sharma,
Mr.Prateek Yadav, Ms.Naina Dubey,
Ms.Shweta Kakkar, Ms.Shreya
Singh and Ms.Shivani Lohiya,
Advocates with Appellant in person

versus

MANUSHI SHARMA

.....Respondent

Represented by: Mr.Amit Khemka, Advocate with
Mr.Rishi Sehgal and Ms.Varchana
Taneja, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. It all began when Anil Sharma PW-2, a friend of the family of Anurag and a junior colleague in the office of the father of Manushi introduced the two families and Manushi's mother sent an e-mail to Anurag's mother attaching therewith Manushi's bio-data Ex.PW-3/1. It was made known that after graduating in Honours in Commerce, Manushi had obtained a Masters Degree in Business Administration and was currently

employed with a bank in Mumbai earning ₹7.5 lacs per annum. The response by Anurag's mother was by e-mail Ex.PW-3/1 (three e-mails have been exhibited as Ex.PW-3/1) enclosing therewith Anurag's bio-data Ex.PW-1/D1; seeking birth details of Manushi, informing in the e-mail that the boy's family was highly religious and believed in horoscope matching. The bio-data informed that Anurag had a Bachelors Degree in Commerce and a Masters Degree in Business Administration and was employed with ITC Ltd. at Kolkata. In response, Manushi's father gave particulars of Manushi's birth to Anurag's mother vide e-mail Ex.PW-3/1.

2. It is apparent that the horoscopes matched and the proof thereof is the admitted case of the parties that along with their families, Manushi and Anurag met at Hotel Centaur in Delhi on April 19, 2008, followed by another meeting at Hotel Taj in Delhi on April 20, 2008, when the extended family of Manushi and Anurag; being a few cousins, uncles, aunts and grand-mother apart from their parents were present. Horoscope having matched, the elders of the family having interacted, the couple agreeing for a matrimonial union, the Roka ceremony was performed. Formal engagement took place on May 12, 2008 at Hotel Radisson, Noida.

3. It is apparent that the astrologer who matched Manushi's and Anurag's horoscope was a novice. The marriage between the two, which was solemnized on December 06, 2008, was turbulent and as we would be reverting back to the events post May, 2008 till the two got married, we note that the two separated on May 26, 2009. The marriage lasted for five months and twenty one days. Petition seeking annulment of the marriage by granting a decree for divorce was filed by Anurag on July 02, 2010 invoking Section 13(1)(ia) of the Hindu Marriage Act, 1955. We find that

in the caption of the petition annulment was prayed under Section 12(1)(c) of the Hindu Marriage Act, 1955, but in the prayer reference is only to Section 13(1)(ia). Learned counsel for the parties were in agreement that annulment of the marriage was sought for on the ground of mental cruelty and was defended on said understanding of the petition.

4. After the engagement on May 12, 2008, Anurag went to Mumbai on May 18, 2008. The couple admittedly went to see a movie in Inorbit Mall, and suffice it to note that the first serious discord between the couple occurred on May 18, 2008.

5. Before noting the rival versions as to what transpired between the couple on May 18, 2008 it would be profitable to note that as per Anurag, on being informed that Manushi was employed with Yes Bank and since his job with ITC was transferrable and he was of the opinion that a successful career lady may not be able to have a happy consortium with him, he was hesitant to agree to the proposed marriage and disclosed to his prospective in-laws that he did not want a career oriented wife and was assured by them that Manushi was working only for passing time and was occupied till she got married. A fact obviously denied by Manushi and for which she places reliance upon her bio-data forwarded to Anurag's mother in which it was clearly informed that she was a qualified professional working with a bank and earning a decent salary.

6. The event which took place on May 18, 2008 has two rival versions. Being in unison with the fact that the two went to Inorbit Mall to see a movie.

The two rival versions as to what happened at Inorbit Mall

7. As per Anurag, Manushi suddenly started shaking uncontrollably and behaved abnormally when the management asked the audience to evacuate the hall since a bomb threat had been received. This sets the backdrop of Anurag's case, and it is apparent that the backdrop hue Anurag paints is with the innuendo that Manushi had some psychological problem; evidenced by her reaction when there was a bomb scare. Manushi's response is that Anurag left the hall during the screening of the movie and when he did not return she tried to contact him over the mobile phone. She sent a message over the phone that she would be leaving for home and received the reply that she should wait for him and he was at Rubby Tuesday. She proceeded to Rubby Tuesday and was shocked to see Anurag drinking alcohol at 11.00 A.M., unmindful of the fact that he had to take the flight back the same evening. In rejoinder Anurag admits that he went to Rubby Tuesday but denies drinking alcohol at 11:00 AM. As per him since he had not taken breakfast therefore during the movie he went to eat a chicken sandwich and fish fries.

Rival version of the second incident before marriage on June 01, 2008

8. The couple agree that on June 01, 2008, Ankit Prakash a friend of Anurag invited the couple for lunch at San Marigano. 4-5 other friends of Anurag and Ankit were also present. As per Anurag, during the three hours spent at the lunch, Manushi remained indifferent. She refused to eat or drink and was busy watching television; a behaviour which was odd, rude and anti-social. Obviously, the insinuation is that this behaviour caused mental trauma to Anurag in front of his friends. Manushi gives the version that being recently engaged and even otherwise not being a very talkative

person she was hardly given any time to open up with Anurang's friends who, were more interested in drinking and evinced hardly any interest to engage in a social interaction. She claims that because she does not consumed alcohol she could not join the company of Anurag and his friends in the binge and was satisfied to order and eat a vegetarian pizza.

9. These are the two pre-marriage incidents relied upon by Anurag in his petition, forming the backdrop of his further pleadings of the events post marriage to sustain the prayer seeking annulment of the marriage.

10. In the petition filed by him he makes no mention of a visit made by him to Mumbai to celebrate his birthday with Manushi and having spent 9th and 10th June, 2008 in Mumbai. But he admits visiting Mumbai on said two dates in response to the written statement filed by Manushi. With a little fuzziness, the pleadings of the parties, which are fairly prolix, bring out that the couple met probably on four occasions in Mumbai and two-three times in Delhi after the engagement.

The rival versions of the parties as to what was the interaction between the two when they met before marriage at Mumbai and Delhi

11. As per Anurag, Manushi was found by him to be anti-social and unfriendly and he expressed this to her father, who responded that since she was interacting with a male who was her prospective husband she was naturally quiet and shy and that he would counsel his daughter. Anurag pleads that he decided to call off the marriage and when this was communicated to Manushi's parents they beseeched him and used the good offices of Anil Sharma not to break-off the marriage. He was assured by Manushi's parents that they would work upon Manushi's shyness.

Manushi claims all this to be a hog-wash. She links the setting of her grievance to the engagement ceremony, pleading that twice Anurag returned the engagement ring to her, telling her that she should inform her father to give him a diamond studded ring. As per her, whenever they met before marriage, Anurag would try to get physical with her and when she resisted he used to get angry and frustrated. She claims to have overlooked this behaviour of Anurag, taking it to be the natural reaction of a man. She claims that whenever she offered a gift to Anurag he would refuse saying that he uses only imported and branded goods. She makes a grievance that Anurag used to address her parents as uncle and aunty rather than mummy and papa – which was expected from a son-in-law. She pleads that one fine morning (date not given) she received an e-mail from Anurag's e-mail ID *anuragbplyahoo.com* containing statements of his flings with large number of girls and when she inquired over the telephone, Anurag told her to ignore it; with the justification that his e-mail had been hacked and some girl inimical to him had played a prank. Needless to state, Anurag denies these allegations and qua the most insinuating one i.e. concerning the e-mail claimed to have been received by Manushi, he pleads the story to be a hog-wash and sans any particulars of the alleged e-mail and without proof thereof. Anurag pleads that the falsity of the allegation made by Manushi against him could be inferred by testing the behaviour, on receipt of such offending e-mail, by a normal person; he claims that any normal and sensible girl even with ordinary intelligence would have called-off the marriage.

12. The marriage between the two was solemnized on December 06, 2008 at the Constitution Club in Delhi. Manushi makes a grievance in her

pleadings as to how she was treated on the day of the marriage and the next few days. She claims that in the morning of the marriage a cousin of hers, to pull Anurag's leg rang him up and asked him to recognize her. Anurag responded that he had so many girl friends therefore it was impossible for him to recognize her. It was a moment of extreme embarrassment for her but she let it pass. She pleads that after the marriage was solemnized, rather than take her to Gurgaon where Anurag's parents resided, she was taken to Hotel Taj Man Singh on Man Singh Road. Her trousseau was not taken to the house of her in-laws in Gurgaon. She claims that the day next after the marriage, Anurag told her that his sister Aditi had liked an Armani designer leather watch set gifted to her i.e. Manushi by a friend of his, at which she offered to give the same to Aditi who, rather than gracefully accept the same (Quote) : *'Quickly snatched the watch from respondent's hand'*. Needless to state Anurag denies it all.

Rival versions of the events at the honeymoon

13. Agreeing to the fact that the two went to Lankavi followed by a Star Cruz for honeymoon from December 09, 2008 till December 18, 2008, case pleaded by Anurag is that on two or three occasions during the honeymoon he found Manushi sitting on the bed crying uncontrollably at late night and when he asked her what was wrong she told him that she was feeling unwell in a new place and could not sleep. In spite of he cajoling her and comforting her she cried uncontrollably; much to his trauma. Manushi denies such behaviour and pleads that she was very excited to go for a honeymoon, a spirit which was dampened when at the immigration she found Anurag limping. She understood that he was experiencing pain. She questioned him what was wrong. He replied that he had pulled a muscle.

On the flight he took alcohol. Later on, she learnt that Anurag suffered from an incurable genetic disease called ankylosing spondilitis. As per her, even Anurag's mother suffered from the disease which was genetic. She makes a grievance of being cheated. She pleads that on returning from the honeymoon she was bluntly told by Anurag that as regards him the marriage was over. He told her that if she had allowed him to get physical during the engagement period she would have saved herself from the stigma of being a divorcee and her stigma would have been limited to a girl with a broken engagement. She pleads that Anurag told her that no girl had refused to go to bed with him. He told her that since he was suffering from an incurable disease and knew that he would soon become handicapped he wanted to enjoy life sleeping with as many girls he liked and because of this he used to drink and smoke heavily. As per Manushi this was the reason Anurag even took drugs and she later on learnt that he used to daily take one cigarette called '*Godan Garam*'; an Indonesian brand containing marijuana. Admitting that he suffered from ankylosing spondilitis and so does his mother, pleading that the disease is curable, Anurag denied the rest.

Rival version of the incident on the intervening night of 21st and 22nd December, 2008

14. It is the case of Anurag that accompanied by Manushi he went to Bhopal on December 20, 2008 to pay obeisance to their family deity at Chhind. He pleads that his friend Saurabh Sharma PW-4, his wife and a cousin joined for dinner at Hotel Noor-Us-Sabha. He pleads that during dinner Manushi behaved abnormally; sitting away on the table and suddenly started speaking to herself loudly and offensively. She remained

unsocial and rude. They went back to the Hotel Jahanuma Palace where they were staying. At 3.00 in the middle of the night, Manushi started poking him unnecessary. She rang up her father and said that she would not sleep with him. Her father in turn contacted his father who, had to arrange a separate room for Manushi where she slept in the night. Next day morning his parents came to Bhopal. Manushi's version is that on the flight from Delhi to Bhopal, Anurag told her that she was looking rustic with her bangles worn and a bindi on her forehead. He directed her to remove the bangles. Being a newly wedded bride she desired to be dressed like one and feel like one. At the Airport they met an old school friend of Anurag who was with his wife. She interacted with the wife of Anurag's friend while Anurag interacted with his friend. Taking excuse from the wife of Anurag's friend she went to the wash room and when she returned Anurag scolded her for going to the wash room with his friend's wife left behind; a statement which she pleads to be most illogical and therefore she claims that she chose to remain quiet. She admits that the two had dinner with Saurabh Sharma, his wife and a few friends. She claims that Anurag and his friends took alcohol. She pleads that Saurabh Sharma and his wife had dropped them to their hotel. She pleads that before reaching the hotel Saurabh Sharma took them for a drive in the city and showed various places where, as bachelors they hung about, smoke, drank and latched at girls. She pleads that nothing happened that night as claimed by Anurag. But she pleads that in the night Anurag went to the drawing room attached to the bed room to take a smoke and she slept. She pleads that the next day she urged Anurag to take her to his grand-father's house, with a request that she would like to stay with him. Anurag refused. She insisted to at least

meet his grand-parents. He insisted that she should first meet his mother's best friend. They went to a Hanuman Temple outside the city of Bhopal. He then took her to the house of his mother's best friend and then to the house of his mother's sister and finally to his grand-father's house. He then took her to Saurabh Sharma's house. The two came back to the hotel. As per plan, they joined Saurabh's friends at a dinner. Whilst Saurabh and his friends took alcohol and so did her husband, she sat next to one Richa Sharma and a cousin sister of Saurabh. She claims that she had polite conversation with the two. As per her, Anurag consumed excessive alcohol and on returning to the room smoked cigarette after cigarette and did not permit her to open the window of the room, which was stuffed with smoke. When it became unbearable, she requested for the window to be opened, at which Anurag shouted at her and told her to get out. Sent out of the room, she cried for an hour and with a heavy heart rang up her parents who in turn informed Anurag's father who, arranged for a room in the hotel for her to sleep and he along with her mother-in-law came the next day to Bhopal. She pleads that her mother-in-law started grilling her.

15. That an incident took place in the middle of the night, with two rival versions, is not in dispute. Whereas according to Anurag the unfortunate incident took place on the intervening night of 20th and 21st December, 2008, as per Manushi the incident took place on the intervening night of 21st and 22nd December, 2008. But the date is irrelevant.

Incidents between December 26, 2008 to January 04, 2009 at Kolkata.

16. Both parties admit to the fact that from the night of December 26, 2008 till January 04, 2009 the couple were at Kolkata. Anurag pleads that

Manushi was quiet and unsocial at Kolkata. As per Anurag, despite claiming before marriage that his non-vegetarianism was not an issue for her, while in Kolkata Manushi refused to eat at the same table with him when he consumed non-vegetarian food and even threatened that she would neither eat nor live with him if he consumed non-vegetarian food. On January 01, 2009, his senior Vikram Khosla, invited the couple to dinner where about ten people were present. At the house of his senior, Manushi only took soup and refused to eat, thereby causing embarrassment and humiliation to him. Taking two sips of soup, Manushi proclaimed loudly that '*it is horrible*'. She did not talk to anyone. His friend, Nishant Sardana PW-5, tried his best to strike a social conversation with Manushi to make her feel comfortable, but she turned a deaf ear. The next day, on January 02, 2009, Manushi disappeared for about eight hours and he went mad with worry to locate her. She did not respond to his calls nor replied to the SMSs which he sent to her. She returned by a taxi late night. Manushi denies it all. Her version is that she did not behave unsocial at the dinner thrown by Vikram Khosla. As per her the males grouped in a corner and were busy drinking, discussing business. There were only three females; the wife of the host, a wife of a friend and herself. She had hardly anything to talk. She denied any soup being served. As per her, after drinks all went to Tollygung Club for dinner, where as per her the males consumed more liquor. The wife of Vikram Khosla did not accompany them to dinner. The lone other female and she were the only two females. The club had a restricted vegetarian menu and thus she ordered soup. One male person in the group was dead drunk and was eating rice using his hands in a most disgusting manner and this made her lose her appetite. She

denied that Nishant Sardana tried to strike a polite conversation with her. Her version of what happened on January 02, 2009 is that after Anurag left for his office she started listening to music on Anurag's computer and suddenly discovered photographs and videos of her husband having sex with a girl named Elizabeth Gangadharan; and she was taken aback. Feeling low, she claims that she went to the Kali Temple nearby to pray and regain her composure and had put the mobile phone on silent mode and this was the reason why she could not respond to the calls and the SMSs sent by Anurag. The moment she saw the missed calls and SMS alerts after performing puja, she spoke to Anurag and returned home to find him drinking. She confronted Anurag with the photographs and videos. He, in a sly manner quizzed '*Did you not find us looking good together*'. She was shell shocked. She felt cheated. She told her parents about this. Her mother-in-law said it was quite natural for her son to have pre-marital sex and there was nothing wrong. She told her that her son-in-law had extra marital sexual relations with other women but neither she nor her daughter objected to the same.

17. As per Anurag, from January 05, 2009 onwards till end of the month Manushi stopped any communication with him and when her parents went to the house of his parents they introduced a story of his past relationship, notwithstanding that his mother had been just discharged from Apollo Hospital as she had suffered an acute attack of ankylosing spondylitis. He claims that contrary to the assurance given before marriage that Manushi would shift to Kolkata she never took any steps to shift to Kolkata. Manushi's version is that it was quite natural for her parents to confront Anurag's parent with he, not only having pre-marital sex but even

preserving the memories thereof in the form of videos and photographs in the computer. As per her, having failed to win the love of her husband she naturally felt insecure. As per her the drinking and spending habits of her husband was reason enough for her not to abandon her career. She denied that when her parents made a social visit to the house of her in-laws after her mother-in-law returned from the hospital, they spoke about the matrimonial issues confronting the couple. As per her these issues were discussed earlier.

18. The couple admit that on the belief that divine intervention could help them they went to Garh Mukteshwar on February 21, 2009, but with a twist. As per Anurag he did not believe in superstition but went along at the asking of his father-in-law, as per Manushi, it was a joint decision of the family elders.

19. Anurag then makes a grievance of Manushi's unsocial behaviour on the eve of Holi at Kolkata. Manushi denied the same. As per her the effort she took to visit Kolkata, was to try and forge a new relationship forgetting the past, but Anurag was rude and did not behave like a husband.

20. Both agree that the two could not sort out their pending issues, and in their pleadings as noted hereinabove, each painted self as the victim and the other as the tormentor. Each pleads as if he/she is a saint and the other a sinner. Both agree that at the asking of Anurag's parents it was agreed that the couple, along with Anurag's parents, would proceed to the United States of America for a holiday in May, 2009.

Rival versions of Anurag and Manushi regarding what transpired in the United State of America when they were there from 16th May, 2009 till 26th May, 2009

21. As per Anurag, Manushi remained unsocial and refused to mix with his sister and brother-in-law when the two along with his parents went to the United States of America on May 16, 2009 and took the return flight from Dallas to New York on May 26, 2009 and further connecting flight to New Delhi where they reached on May 28, 2009. As per him the two went to Las Vegas on the fourth day of the trip and all throughout Manushi remained rude. Returning to Dallas on May 23, 2009, he claims that Manushi locked herself in a room feigning illness and when he went to attend to her, she shouted using four letter offensive words. As per him, with great persuasion his family members persuaded Manushi to accompany them for lunch. Manushi agreed, but on reaching the market refused to get out of the car and created a scene. She walked out and sat on a bench. With great persuasion she agreed to walk to a restaurant nearby where, she threw cutlery and crockery around, much to the embarrassment and humiliation of his family members and himself. She said that the food was horrible and that it *sucks*. She refused to interact with his family members and as a result the holiday was cut short and everybody returned; and that was the end. The couple never met thereafter. As per Manushi everything pleaded by Anurag was a hog-wash. She claims that the trip was a façade to create evidence that Anurag and his family members loved and cared for her. As per her it was the marriage anniversary of Anurag's parents which had to be celebrated there. Anurag had not wanted her to be there with his family and therefore had ignored her. The trip was cut short because she fell sick. She claimed that she became unwell when she reached the United States of America, and makes a grievance of not being properly looked after.

22. We have endeavoured to crystallize the rival versions, after distilling the prolix pleadings in the divorce petition which spans 28 pages, a written statement which spans 45 pages and a replication which spans 57 pages.

23. In support of his case Anurag examined himself as PW-1, his father Anil Sharma as PW-3, the common friend of the parties who shares same name i.e. Anil Sharma as PW-2, his friend Sourabh as PW-4 and Nishant Sardana as PW-5; the latter two to support his case pertaining to what happened in Bhopal and at the new year's party at Kolkata respectively. Manushi examined herself as DW-1, her senior at the Royal Bank of Scotland, Sh.Akhilesh Jha as DW-2, one Prashant Leela Ramdass DW-3, a colleague of her father and Anil Sharma PW-2, and her father Shialesh Sharma as DW-4. The depositions of the witnesses and their cross-examination covers 606 pages and it would be futile on our part, for the reason it would serve no purpose, to pen profile the testimony of the witnesses, including their cross-examination for the obvious reason each supports the version of the party who cited him as a witness, except to note at the appropriate stage their testimony while discussing the two rival versions. But a word about the testimony of DW-2. Working as the senior of Manushi he deposed that his interactions with Manushi revealed that she was a social person and suffered from no mental disorder. She was an excellent professional. Was excellent at her work and had the skills to interact with customers. The testimony of DW-3 brings out that Anil Sharma PW-2 was a junior colleague of Manushi's father.

24. Anurag and his father deposed that Manushi and her parents had assured that after marriage Manushi would leave her job. Anurag's father admitted that in the intervening night of 20th and 21st December, 2008, at

around 3:00 AM he received a call from Manushi's mother requesting him to rush to Bhopal and therefore he reached Bhopal by the 6:00 AM flight along with his wife and claims that Manushi apologized for her bad behaviour. He deposed that when his wife was admitted at Apollo Hospital in January, 2009 Manushi's parents visited them at the hospital but Manushi did not bother to meet his wife. He supported his son as regards his son's version of what happened in the United States of America.

25. Vide impugned decision dated July 19, 2014 the petition filed by Anurag has been dismissed by the learned Principal Judge, Family Court. With reference to the testimony and picking on statements from the deposition of Anurag and his father, the learned Judge has opined that Anurag's version that Manushi and her parents had promised before marriage that Manushi would abandon her job has not been proved. Believing Manushi that she saw an objectionable video clip of Anurag with a girl named Elizabeth and that Anurag had a lavish lifestyle, the learned Judge has held that under the circumstances Manushi would have an additional reason not to lose her financial independence. Regarding the pre-marriage incidents which took place on May 18, 2008 and on June 01, 2008 the learned Judge has held that assuming Manushi shook uncontrollably at the Inorbit Mall when the management announced a bomb threat the behaviour would not be cruel. On the reasoning that Anurag did not examine his friend Ankit Prakash who had invited the couple for lunch on June 01, 2008 at San Marignano the learned Judge has disbelieved Anurag on the charge that Manushi inflicted cruelty upon him by being unsocial with his friends.

26. The four events post marriage concerning what happened during the honeymoon; at Bhopal on the intervening night of 21st and 22nd December, 2008 (the incident concededly took place on said intervening night and not on the preceding intervening night as claimed by Anurag and concededly an error which is trivial because it relates to a date); at Kolkata when Vikram Khosla threw the new year's party on January 01, 2009; and Manushi leaving the house where she was staying at Kolkata with Anurag the next day and at the trip to the United States of America, the learned Judge has held that assuming Manushi cried on 2-3 occasions at night during their honeymoon it cannot be labeled as a cruel behaviour because as a newly wedded bride it was understandable. Disbelieving Anurag that Manushi's constant poking at him at the night triggered a spat between the two, on the reasoning that Anurag has not stated as to in what manner Manushi poked him, the learned Judge has believed Manushi's version. Regarding Manushi's unsocial behaviour pleaded by Anurag at the dinner thrown by Vikram Khosla, the learned Judge has somewhat confused herself because we find that this incident is discussed in paragraphs 76 to 82 of the impugned judgment and the learned Judge has intermixed the testimony of Sourabh Sharma who was a witness to the incident at Bhopal. The learned Judge has referred to the photographs Ex.PW-1/10 to Ex.PW-1/13, which as per Anurag were taken at the dinner and the same show Manushi happy and interacting with those around her. The photographs have been taken as proof to belie Anurag's version that at the dinner Manushi remained reticent, bordering on anti-social behaviour. Pertaining to Anurag's charge that the next day i.e. on January 02, 2009 Manushi left his house and he was traumatized trying to find her out, the learned Judge

has referred to the fact that there was contemporaneous evidence of Manushi having made a complaint to her parents and confronting her in-laws with the fact Anurag had not only indulged in premarital sex but had even kept a video clip thereof and for which the learned Judge has highlighted para 25 of the petition filed by Anurag in which he pleaded that notwithstanding his mother not being well and hospitalized in January, 2009, on January 25, 2009 Manushi and her parents created a scene alleging that Anurag had indulged in premarital sex and had retained a video clip thereof. The learned Judge has referred to an unexhibited letter dated January 13, 2009, which during arguments in appeal was admitted by learned senior counsel for Anurag as having been written by Anurag's father to Manushi's parent acknowledging their support and help when Manushi's mother was unwell. The learned Judge has also relied upon Manushi's phone bill Ex.RW-1/2 for the period January 07, 2009 to February 06, 2009 which shows Manushi in constant touch with not only Anurag but even her in-laws. Disbelieving Anurag regarding Manushi's conduct in the United States of America the learned Judge has held that had Manushi thrown crockery in the restaurant on May 23, 2009 there would have been a bill raised for destruction and since none was produced it would be proof that no such thing happened. The learned Judge has held that from the evidence it emerge that Anurag had a genetic disease ankylosing spondilitis, and so did his mother.

27. The learned Judge has then proceeded to consider whether allegations by Manushi which even she could not substantiate regarding Anurag being a womanizer, an alcoholic and a drug addict, taken by her in a written statement constituting cruelty. Highlighting that in the replication

Anurag never pleaded that these allegations have caused mental trauma and cruelty, the learned Judge has terminated the decision holding that Anurag has failed to prove cruelty.

28. As noted by us in paragraph 23 above, the deposition of the witnesses which includes the cross-examination, runs into 606 pages and obviously there would be enough grounds to pick on statements in examination-in-chief and point out omissions in the cross-examination i.e. not challenge said statements and thus argue that the rival view point was made good. This in our opinion would be a mechanist exercise and keeping in view the voluminous oral testimony in the instant case would not be an advisable way of solving the problem. We therefore simply note that there are numerous statements in examination-in-chief made by Saurabh PW-4 and Nishant PW-5 which have not been confronted with, but as the adage goes : men may lie but circumstances don't; similarly would be the statement : men may lie but photographs don't. Anurag himself has filed photographs Ex.PW-1/2 to Ex.PW-1/5 and Ex.PW-1/10 to Ex.PW-1/35 and these photographs tell their own story.

29. Surprisingly, Manushi denied these photographs and during arguments in the appeal, when we asked Sh.Amit Khemka, learned counsel for Manushi whether Manushi claims the photographs to be morphed, learned counsel fairly conceded that the photographs are genuine and reason why Manushi denied them all is because with reference to the photographs Ex.PW-1/10 to Ex.PW-1/28, Anurag wanted to prove that Manushi used to drink alcohol, to disprove Manushi's statements that she could not engage in a social interaction with his friends on June 01, 2008 and at the new year party on January 01, 2009 because she did not take

alcoholic drinks, but his friends did; and since his friends were busy drinking she was left in solitude.

30. The photograph Ex.PW-1/5 pertains to the couple dinning during honeymoon and one can see Manushi having either a cocktail or a mock tail. Her facial expressions show that she was happy and content, enjoying the honeymoon. The photographs Ex.PW-1/10 to PW-1/16 are taken during a trip made by Manushi to Kolkata from May 07, 2009 to May 14, 2009 and in respect of which trip there are no pleadings of the parties. The photographs clearly evince Manushi happily sitting with Anurag, Nishant Sardana and other colleagues of Anurag. The photographs show, and we referred to the facial expressions and in particular the photographs Ex.PW-1/14 and Ex.PW-1/15, that Manushi had more than a peg or two of alcohol. In Ex.PW-1/14 and Ex.PW-1/15 she is seen happily dancing. These photographs completely belie Anurag's version, falsely supported by Nishant Sardana that at the party Manushi was reticent, uncommunicative and inflicted mental cruelty by proclaiming to the host that the soup was horrible. Further, the photographs Ex.PW-1/17 to Ex.PW-1/28, taken when Anurag and Manushi were at Raichuk on May 09, 2009. As told during hearing of the appeal Raichuk is the name of the ITC Guest House in Kolkata and these photographs show Manushi having once again consumed more than a peg or two of an alcoholic drink. Her spirits are very high. Her facial expressions and the poses in which she has got herself photographed show the joyous mood in which she was.

31. We take the story told by these photographs a little further, before discussing the rival versions of the parties. The photographs Ex.PW-1/30 to Ex.PW-1/31 pertain to the trip at the United States of America and show

Manushi happy and content. And so does the photograph Ex.PW-1/35 taken on the flight to the United States of America on a first class ticket.

32. If Anurag has a problem from the story told by the photographs, so does Manushi. And here lies the nub of the matter.

33. Let us get over first, the two rival versions concerning the incident on May 18, 2008 and on June 01, 2008, which admittedly are before the marriage. We would be justified in overlooking these incidents for the reason these do not relate to post-marriage events and in law cruelty has to be when the matrimonial bond was forged and alive. Concerning what happened at Rubby Tuesday, we find an inherent contradiction in the version of Anurag as pleaded by him and as stated by him in his replication. He pleads that when the two were watching a movie at Inorbit Mall the management asked the audience to evacuate because there was a bomb threat and at that Manushi started shaking uncontrollably; evincing that she had some psychological problem. But when Manushi, after denying said behaviour pleaded in her written statement that during the movie Anurag left the hall and since he did not return she contacted him over the telephone, she learnt from him that he was at Rubby Tuesday and therefore she proceeded to said cafeteria and found him drinking alcohol at 11:00 A.M. In his replication Anurag admitted being at Rubby Tuesday, but claimed that because he had not taken breakfast he went there to eat a sandwich and fish. Now, if the replication is correct, then obviously Manushi came out of the hall alone searching for him and where was the occasion for the two to leave the hall at the asking of the management upon receipt of a bomb threat. Anurag's conduct, which he admits of leaving the hall to eat a sandwich and fish, not only belies his version and

establishes that of Manushi, but would be relevant to bring home the point that this would be evidence of Anurag being prone to magnify events which are trivial and probably create versions out of non-existing events. We simply highlight this to caution ourselves to be equally careful with Anurag's versions because with reference to the photographs we have already brought out a need for caution while weighing Manushi's version.

34. Though there are no photographs when the couple had lunch on June 01, 2008 at San Marignano on being invited by Ankit Prakash with 4-5 other friends of Anurag and Ankit also present. But Anurag's version that Manushi remained indifferent and refuse to eat and drink are falsified by the photographs above because from the interaction between the couple and Anurag's friends and his parents on other dates, they belie Anurag's version that even during those incidents Manushi remained cold and indifferent; refused to eat food and did not share the social company of his friends and parents. Similarly these photographs belie Manushi's version that since she did not consume alcohol and being not a talkative person she sat quiet because Anurag's friends were more interested in drinking rather than socializing, she had no option but to sit quietly.

35. Anurag's version of being cheated with respect to the pre-marriage promise that Manushi and her parents promised that Manushi would quit her job is again an exaggerated version by Anurag and we disbelieve the same for the reason when Manushi's mother forwarded to Anurag's mother Manushi's bio-data it was made known that Manushi had graduated in Honours in Commerce and had a Masters Degree in Business Administration and was employed with a bank. Manushi's professional outlook was made clear. That apart, from the fact that in April 2009 when

Manushi shifted to a new flat in Mumbai, concededly Anurag went to Mumbai to settle her, is also proof of the fact that Anurag never insisted that Manushi should quit her job immediately after the marriage. It is obviously a case where the couple had agreed that both would work and simultaneously try that one out of the two obtains a job in the city of the other.

36. The couple admit that after marriage, from December 09, 2008 till December 18, 2008 they went firstly to Lankavi and then on a Star Cruz for honeymoon. Anurag's version that the honeymoon was an utter failure because Manushi used to cry uncontrollably in the night is belied by the photograph Ex.PW-1/5, which is the only photograph filed by Anurag taken at the honeymoon. But we find traces of something seriously brewing between the couple during this period. It seeps out from the pleadings and the testimony of Manushi. She pleads that at the immigration she found Anurag limping and understood that he was experiencing pain and therefore asked him what was wrong. He replied that he had pulled a muscle. But she learnt that he had an incurable genetic disease called ankylosing spondilitis. That something went terribly wrong during the honeymoon finds its proof on what happened after the couple returned to India and were in Bhopal on the intervening night of 21st and 22nd December, 2008.

37. Pertaining to the honeymoon, we simply have the rival versions of the two and it is a case of a word of mouth versus a word of mouth. The independent evidence is the solitary photographs Ex.PW-1/5. But the fact that the couple returned from the honeymoon on December 18, 2008 and proceeded to Bhopal the day after i.e. on December 20, 2008 and the next night the two had a terrible spat would be the evidence of the honeymoon

being far from happy. Perhaps the honeymoon was, if not cold, surely not a warm one. But the rival versions concerning the honeymoon would be evidence of both stating exaggerated versions putting the blame on each other.

38. That on the intervening night of 21st and 22nd December 2008 the couple had a terrible spat is not disputed by the two and is corroborated by not only their testimony but even the testimony of their fathers.

39. Anurag's version, which he seeks to corroborate through the testimony of his friend Saurabh Sharma PW-4 that Manushi was offensive, loud and rude during the dinner hosted by Saurabh Sharma is in the same line of what he claims was Manushi's behaviour during the honeymoon; when his senior Vikram Khosla threw a dinner on January 01, 2009, and which version he seeks to support through the testimony of Nishant Sardana PW-5 and when the couple went to the United States of America in May, qua which behaviour and incidents the photographs Ex.PW-1/10 to Ex.PW-1/31 tell a completely different story regarding Manushi's behaviour. Therefore, Anurag's version has to be taken, not with a pinch of salt but with two teaspoons of salt. We have no reason to disbelieve Manushi that at the dinner she had a polite conversation with the female cousin of Saurabh Sharma and one Richi Sharma.

40. But something triggered a spat at a little before dawn at 3:00 A.M. It was an ugly spat. Admittedly, Manushi had to contact her father who, in turn had to contact Anurag's father who, in turn had to get in touch with the hotel at Bhopal and ensure that Manushi is given a room in the hotel. Obviously, either Manushi walked out of the hotel room where she was spending the night with Anurag or was compelled to walk out. 3:00 A.M.

before dawn and that too in winters is a most unearthly hour for a couple to be having a casual chat which turned explosive. It is obvious that after the couple went to their room after having a dinner with Anurag's friends they never slept. Something troubled the two. It was an ugly situation. The verbal dialogue crossed limits of remonstrance and Manushi was compelled to part company with Anurag and call up her father. That the incident took place a day after the couple returned from the honeymoon, as highlighted by us above, is an indication of the relations turning sour during the honeymoon and in all probability it was Manushi feeling cheated on not being informed that Anurag was suffering from a genetical disease : ankylosing spondylitis. Unknown to her and unfelt by her something was seeping into her and this obviously was having an adverse impact upon Anurag. Perhaps Anurag's parents are to be blamed for hiding this and even he. Manushi's behaviour as a result of a feeling of being cheated would be the natural behaviour, but proved to be disastrous.

41. Anurag's version regarding Manushi's unsocial behaviour at the dinner hosted on January 01, 2009 by his senior Vikram Khosla is belied from the photographs which he himself filed. Manushi's response is equally belied from the photographs. Though there is no photograph taken of the party which was held on January 01, 2009, but the photographs i.e. Ex.PW-1/10 to Ex.PW-1/28, when the couple were together and in the company of Anurag's friends who were the same at the dinner on January 01, 2009, show that Manushi was very happy in the company of Anurag's friends and once again, with an apology to the reader for sounding like a gramophone record needle whereof is stuck, we repeat : the photographs show Manushi having consumed more than a peg or two of alcohol and in a

very boisterous mood. His version that Manushi remained indifferent and only took soup and refused to eat causing embarrassment and humiliation to him is false. Manushi's response that there were only three females and the males were interested in drinking and because at the club there was a restricted vegetarian menu she ordered soup is also false. But the pleadings and the testimony of the two once again brings out not only Anurag's propensity to blow incidents out of proportions and perhaps tell complete and blatant lies, but even Manushi sailing in the same boat albeit with a lesser speed.

42. As to what happened on January 02, 2009, the couple are not at variance that Manushi had left the flat where Anurag was staying and she could not be contacted over her mobile phone by Anurag. Whereas Anurag pleads this to be a deliberate act intended to torture him mentally, as per Manushi after Anurag left for his office and she was listen to music on his computer she accessed photographs and videos of her husband having sex with a girl named Elizabeth Gangadharan and she was taken aback. Feeling low, she went to the nearby Kali Temple to pray and put the mobile phone on silent mode and therefore did not receive the beeps or the signals when Anurag sent SMSs to her or tried to reach out to her. The fact that she made a complaint to said effect to not only to her parents but even Anurag's parents, and is not her version which emerged for the first time in the written statement filed by her, lends assurance to the truthfulness thereof. Any girl, may overlook a premarital sex by her husband, would certainly feel humiliated, offended and annoyed at the husband retaining past memories in the form of video-clippings. Anurag's version is yet

another illustration of he trying to twist incidents with version thereof favourable to him.

43. Regarding Manushi's conduct at the United States of America, it has to be kept in mind that even as per Anurag and his father the couple went to the United States of America amidst tension between the two and in all probability Anurag's parents took the couple with them to ensure that cocooned within the family members the couple could be insulated and yet bonded with each other. The photographs Ex.PW-1/30 to Ex.PW-1/35 taken during the trip in the United States of America belie Anurag's version of Manushi's offensive conduct and equally belie her version that because she was sick and unwell she could not interact with Anurag and his family members as she ought to have.

44. The cornucopia of the evidence brings out that from the inception of the marriage, Anurag's and Manushi's paths had irreversibly diverged. Except for bickering, the two did nothing. The relationship between the two was sufficiently spoiled. It is clear that the two were fighting each other from the very beginning of their marital life and perhaps even before after they were engaged on May 12, 2008, till they were married on December 06, 2008. After marriage they never set-up a consortium as husband and wife. Manushi continued with her job in Mumbai and Anurag in Kolkata. After marriage, the couple spent time together honeymooning till December 18, 2008. Proceeding to Bhopal the day next on December 20, 2008, the couple had a terrible spat on the intervening night of 21st and 22nd December, 2008. They separated, in that, one went to Mumbai and other to Kolkata. The two were then together from December 26, 2008 till January 04, 2009 at Kolkata. They met each other briefly when on

February 21, 2009 they went to Garh Mukteshwar and in all probability to seek divine intervention. From February 22, 2009 to February 24, 2009 Manushi was in Kolkata and thereafter from March 06 to March 12, 2009. For a day in the month of April, 2009 Anurag stayed with Manushi at Mumbai. From May 07, 2009 to May 14, 2009 the couple were together once again in Kolkata. The couple then were in the United States of America from May 16, 2009 till May 26, 2009 and thereafter the two never stayed together. The two hardly lived as husband and wife and notwithstanding Anurag and his parents being more blameworthy inasmuch as they hid Anurag's medical disability, we find that Anurag and Manushi have been picking up quarrels imputing allegations against each other creating problems in their marital life, unmindful of the mental injury caused to each other. Tolerance, adjustment and respect to each other seem to be totally absent. Senseless mental torture continued all throughout when the parties cohabited.

45. Anurag and Manushi are well qualified. Both have a Masters Degree in Business Administration. They are intelligent. They have a well paid job. But perhaps there is no appreciation for intelligence in the market of matrimony where spouses sum up each other according to their own standards in which no marks are awarded for intellect. To keep a marriage afloat requires no great ability. Little usefulness is enough. A spouse who can perform an errand neatly, without attempting to use his/her own judgment, over it is enough. Unfortunately, Anurag and Manushi overlooked this simple mantra of matrimony and probably nobody told them so. The behaviour of the two is the manifestation of the stress related disorder resulting in mood disorder which one sees regretfully these days.

Fast paced lifestyle, complexities of living, a breakdown of support systems and the challenges of economic instability have obviously taken a toll on the two.

46. Our discussion with reference to the evidence above brings out greater exaggerated versions in magnitude and in number by Anurag which he has failed to substantiate fully against Manushi but qua Manushi these could be sufficient acts of causing mental cruelty to her. We have also brought out, though in a lesser degree of magnitude and even in number the justifications by Manushi to be not truthful. But her assertions : (i) That Anurag tried to get physical with her a number of times before marriage; (ii) on returning from honeymoon Anurag told her that the marriage was over; (iii) Anurag told her that suffering from an incurable disease he wanted to enjoy life sleeping with as many girls as he could; (iv) he took drugs and smoked marijuana in the branded cigarette ‘Godan Garam’; (v) Anurag’s mother justified Anurag’s pre-marital sex with the justification that even her son-in-law maintained extra-marital relationships to which Anurag’s sister never objected; and (vi) Anurag was more interested in alcohol, drugs and women, being not substantiated by her would be acts causing mental cruelty to Anurag.

47. In a recent judgment authored by us on October 21, 2016 MAT.APP.(F.C.) 36/2014 Sandhya Kumari vs. Manish Kumar we had noted that though irretrievable breakdown of marriage is not a ground for divorce, but in the judgments reported as 2006 (2) Mh.L.J.307 Madhvi Ramesh Dudani vs. Ramesh K.Dudani, 2007 (4) KHC 807 Shrikumar vs. Unnithan vs. Manju K.Nair, (1994) 1 SCC 337 V.Bhagat vs. D.Bhagat and (2006) 4 SCC 558 Navin Kohli vs. Neelu Kohli the concept of cruelty has

been blended by the Courts with irretrievable breakdown of marriage. The ratio of law which emerges from said decisions is that where there is evidence that the husband and wife indulge in mutual bickering, leading to remonstrations and therefrom to the stage where they target each other mentally, insistence by one to retain the matrimonial bond would be a relevant factor to decide on the issue of cruelty, for the reason the obvious intention of said spouse would be to continue with the marriage not to enjoy the bliss thereof but to torment and traumatize the other.

48. The marriage solemnized on December 06, 2008 resulted in the couple separating on May 26, 2009. It lasted only for five months and twenty one days, with the two sharing each other's company for approximately sixty days. Even these days were spent in turbulence. We only wish that the astrologer who matched the horoscope was not a novice.

49. Accordingly we allow the appeal dissolving the marriage between Anurag and Manushi solemnized on December 06, 2008 by passing a decree of divorce.

50. Parties shall bear their own cost all throughout.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

NOVEMBER 10, 2016
skb/mamta