

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 138 of 2012

Vijay Kumar Gupta S/o Ramlal Gupta Aged About 46 Years R/o Satti Bazar, Raipur,
P.S. City Kotwali C.G., Chhattisgarh

---- Appellant

Versus

Smt. Kiran Bala W/o Vijay Kumar Gupta Aged About 41 Years R/o Isha Complex,
Chudi Line, Golbazar, Raipur C.G., P.S. Golbazar Raipur, Chhattisgarh

---- Respondent

FA No. 116 of 2003

Vijay Kumar Gupta S/o Shri Ramlal Gupta, aged 42 years, R/o Azad Chowk, Raipur,
Chhattisgarh

---- Appellant

Versus

Smt. Kiran Bala W/o Shri Vijay Kumar Gupta, aged 33 years, R/o Baloda Bazar,
District-Raipur, Chhattisgarh

---- Respondent

For Appellant- husband	:	Shri Manay Nath Thakur, Advocate on behalf of Shri B.P. Sharma, Advocate
For Respondent-wife	:	Shri Rahul Mishra, Advocate on behalf of Shri Y.C. Sharma, Advocate

**D.B. :Hon'ble Mr. Justice Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Vimla Singh Kapoor**

CAV JUDGMENT

29/11/2019

1. The aforesaid two appeals are being disposed off by this common order. FAM No.138 of 2012 has been preferred by the appellant -husband against respondent-wife, aggrieved by judgment and decree dated 17.9.2012 by which appellant's application for grant of decree of divorce under Section 13 (1) of the Hindu Marriage Act, 1955, on the ground of cruelty and desertion, has

been dismissed.

2. First Appeal No.116 of 2003 is preferred by the appellant -husband against the respondent- wife aggrieved by judgment and decree dated 6.5.2003 by which the learned Court below has allowed wife's application for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955.
3. Appellant-husband moved an application for grant of decree of divorce against respondent-wife on the pleadings that their marriage was solemnized on 21.2.1985 and a daughter Roshni was born out of their wedlock in the month of August 1986. The appellant pleaded in his application that the respondent-wife insisted the appellant to take her along with him to Bombay where the appellant was engaged in a job, despite being informed that at Bombay, the husband was not having any independent house and sharing with others as paying guest. The respondent-wife adopted a very stubborn approach and declared that she would not reside at Raipur and started quarreling, which led to disturbance of peace in the family. Due to insistence of wife, finally, the appellant had to take his wife to Bombay in November 1985 by taking on rent, a flat. Respondent-wife is not at all compromising and she was never willing to reside with family members of the appellant. It was further pleaded that at Bombay also, respondent-wife used to lock the house and go out frequently without informing the appellant and the appellant had to face serious inconvenience when upon return to his home, he would find house locked by the wife. Respondent-wife was not living peacefully. She was habitual of moving around here and there like a vagabond, she had no affinity, she was quarrelsome and used to make the atmosphere in the house tense. Even when the appellant remained posted at Hyderabad and Pune, respondent-wife behaved unusually. Upon return, she used to straightway proceed to her parental house rather than staying in the matrimonial house. Respondent-wife used to quarrel on appellant extending financial help to his family members and also used to threaten to commit suicide. At the time of marriage of wife's sister also, there was a lot of quarrel raised by the wife. In February 1989, respondent-wife after having entered into quarrel, picked up some of her belongings and left the house of the appellant and later on, father-in-law informed that respondent-wife would not return to matrimonial house as they have broken all relations. He also asked the appellant to send all the articles,

belonging to respondent, failing which, appropriate legal proceedings would be drawn. Respondent-wife used to tell the appellant that she was married against her wishes, she wants to remain active in politics and live life, free from any obligation. She used to mostly remain busy in political activities at the cost of matrimonial obligations, used to threaten to commit suicide by consuming sleeping pills. Therefore, the appellant may be granted decree of divorce both on the ground of cruelty and desertion as the parties have been living separately for 16 years. It was also pleaded that during the pendency of the case also, the appellant-husband was subjected to cruelty inasmuch as during the pendency of appeal against decree of restitution of conjugal rights, respondent-wife forcibly entered the house of the appellant where the appellant's brother was running his utensil shop and proceedings of attachment were initiated. He was apprehended by the police. Criminal proceedings were initiated so much so that he had to remain in jail. Thus, lot of cruelty was committed on the appellant.

4. Per contra, respondent-wife denied all the allegations stating that it is the appellant and his family members who have subjected her to cruelty. He was not willing to take the wife along with him at the place of his job at Bombay and was neglecting to maintain his wife. Mother and brother of the husband subjected her to cruelty and her legitimate demand that she ought to be allowed to reside with her husband was not acceptable to family members and she was being harassed by saying that she did not bring proper gifts at the time of marriage. On many occasions, she was unceremoniously shunted out of the matrimonial house. During his posting at Puna and Hyderabad also, husband- appellant was not serious in discharge of his obligations towards wife and the infant child and she was subjected to beating and scolded on many occasion. For feeding of child, she had to remain on the mercy of neighbours and others. When she advised for purchase of a bed after an incident of biting of infant child by poisonous insect, the appellant-husband misbehaved. She was not being provided sufficient money for meeting day to day expenses. She never held out any threat of suicide nor she ever lodged any report of any cruel act in any forum. At the time of marriage of her sister, appellant misbehaved and refused to send respondent-wife to attend marriage and after lot of persuasion, he agreed but he himself did not go to attend marriage. When her husband, despite repeated requests, did not take her back

to the matrimonial house, she had to finally move an application for restitution of conjugal rights and despite there being a decree passed in her favour, appellant was avoiding to execute decree. Her act of seeking a place of residence in the matrimonial house cannot be said to be an act of cruelty because she not only had a decree of restitution of conjugal rights in her favour, under the provisions of Protection of Women against Domestic Violence Act, 2005, she is also entitled to rights of residence as provided under Section 17 thereof.

5. On the aforesaid pleadings of the parties, learned Family Court framed issue as to whether the appellant-respondent is entitled to decree of divorce on the ground of cruelty and on the ground of desertion. After allowing the parties to lead oral and documentary evidence, by impugned judgment and decree, learned Family Court came to the conclusion that the appellant-husband failed to prove allegation of cruelty and desertion both and dismissed the suit.
6. Respondent- wife moved an application for grant of decree of restitution of conjugal rights on the pleadings, inter alia, that after marriage in the year 1985 and birth of the daughter in 1986, wife was residing with her husband at different places of his posting at Puna and Hyderabad. But later on, when her husband was posted at Bombay and she was left behind with the mother and the brother, she was subjected to scolding and harassment. After she and her husband came back from Bombay in December 1985 to Raipur and started living with mother-in-law and brother-in-law, they started provoking the husband to harass on the allegation that proper items were not gifted at the time of marriage and husband used to ignore her and she was subjected to mental cruelty by the husband, mother-in-law and brother-in-law. When she was carrying pregnancy, she was beaten up and shunted out of matrimonial house despite her willingness to continue in the matrimonial house. All attempts were made to discourage and harass so that she may not reside in the matrimonial house. After marriage of sister in the year 1989 at Balodabazar, the husband did not come to take his wife back. In March 1992, though upon mediation, husband agreed to take the wife back, eight days thereafter, she was sent back against her wishes to parental house and since then she is residing at Baloda-Bazar along with daughter Roshni. Despite several attempts made by the wife and her relatives, husband did not take any

steps to bring the wife and child back to matrimonial house which led to filing of an application for restitution of conjugal rights.

7. Denying the allegations, the husband stated that it is the wife who is guilty and responsible for strained relations between the parties. The allegation of harassment on the ground that proper dowry was not brought were denied. The allegation of cruelty which were made by the husband seeking decree of divorce were made a basis to resist the claim of wife for restitution of conjugal rights on the pleading that respondent-wife was unnecessarily insisting that she would be living with her husband at Bombay despite all difficulties and when she was asked to stay back in the matrimonial house at Raipur, she started quarreling and created tense atmosphere. Wife was always acting with cruelty, she was quarrelsome. During her stay with husband at different places where he was posted and working, wife acted with cruelty by entering into quarrel on every trivial matter. She used to put lock in the house and go out and not returning early. In March 1992, wife went to her parental house of her own and it is not that husband shunted her out. Wife is not discharging her marital obligations, behaving with cruelty, engaged in political activities and, therefore, her application for restitution of conjugal rights is not at all bonafide.
8. Learned Court below, after allowing the parties to lead oral and documentary evidence, recorded a finding that wife was being subjected to cruelty in connection with allegation of bringing less dowry at the time of marriage, she was subjected to derogatory remarks and was also subjected to cruelty and beating.
9. Learned counsel for the husband, assailing judgment and decree passed in FAM No.138 of 2012 argued that the appellant-husband had not only specifically pleaded number of instances of cruelty committed on him by the wife from time to time over long period of matrimonial life but also led specific evidence to prove many instances of cruelty committed by the wife on the husband in making unnecessary demand to reside at Bombay with him though, there was no proper facility for residence, living a careless life, having no concern and care for husband, keeping the house locked without notice to the appellant, quarreling with the appellant, his mother and brother, threatening to commit suicide, dereliction in performance of matrimonial

obligation, acting with cruelty while insisting on place of residence on the basis of decree of restitution of conjugal rights, making false allegation against husband leading to initiation of proceedings, not maintaining peace and husband sent to jail. He would further argue that the respondent- wife acted with malafide in bringing down the esteem of the appellant in the eye of public by spreading derogatory news assassinating his character, in the print as well as electronic media. However, learned trial Court giving undue weightage to trivial contradiction in the evidence, refused to grant decree of divorce. Learned counsel for the appellant-husband further argued that learned lower appellate Court, while rejecting the application for grant of divorce, ignored to take into consideration that the parties were living separately since 1992 and that in the background of dispute between them, over these long years, marriage was irretrievably broken and none of the parties were interested in coming together. Therefore, on the face of these overwhelming proved circumstances of parties living separately since 1992, decree of divorce ought to be granted. In support of his submissions, learned counsel for the appellant placed reliance upon the decisions in the cases of **Naveen Kohli Vs. Neelu Kohli**, (2006) 4 SCC 558, **Samar Ghosh Vs. Jaya Ghosh** (2007) 4 SCC 511, **Vishwanath Agrawal S/o Sitaram Agrawal Vs. Sarla Vishwanath Agrawal** (2012) 7 SCC 288 and **K. Srinivas Rao Vs. D.A. Deepa** (2013) 5 SCC 226.

10. Per contra, learned counsel for the respondent-wife would argue that the learned Family Court, after meticulous examination and scrutiny of the evidence has found that the appellant's case is not made out. It is argued that the main allegation that the wife was insisting to reside with her husband, wherever he was posted in connection with job, cannot be said to an act of cruelty because wife is quite legitimate in raising such a demand. Next submission is that the allegation that in the matrimonial house, the wife indulged in quarrel with mother-in-law and brother-in-law is a concocted story as there are serious contradictions in the evidence regarding alleged cruelty as stated by appellant, his wife and the brother. These material contradiction with regard to the alleged cruelty were taken note of and properly appreciated by learned Family Court to arrive at conclusion that allegation of cruelty is not made out. It is also argued that allegation against the wife that she insisted to enter into the matrimonial house on the strength of decree of restitution of conjugal rights cannot, by any stretch of imagination, be said to be an act of

cruelty because at the first place, wife only sought to get a place of residence as there was a decree of restitution of conjugal rights subsisting in her favour. Otherwise also, under Section 17 of the Protection of Women from Domestic Violence Act, 2005, wife is always entitled to residence in the matrimonial house. Wife neither made any complaint in the police station against the husband nor filed any other criminal case. The proceedings were drawn by the police as there was disturbance of peace and order and proceedings for maintaining peace were drawn by the Magistrate against her husband. Respondent-wife never lodged any criminal case against the husband and except filing application for restitution of conjugal rights, she never lodged any complaint against her husband in any fora as she was always willing to save her matrimonial life and future of her minor daughter.

11. Against decree of restitution of conjugal rights, case of the appellant- husband is that restitution has been granted in a mechanical manner. He would submit that serious allegation are leveled in the divorce petition giving details of the manner in which respondent-wife was subjecting the appellant and his family members to harassment and cruelty by indulging in frequent quarrel and making unnecessary demand, have not been properly appreciated by learned trial Court. He would further submit that the evidence on record clearly shows that respondent-wife, of her own volition, had left the matrimonial house in the month of March 1992 and, thereafter, she never returned to matrimonial house and long 16 years thereafter, she filed application for restitution of conjugal rights.

12. Per contra, learned counsel for respondent-wife would argue that learned trial Court after examining the evidence on record, particularly the allegation of cruelty, has recorded clear finding that wife was subjected to cruelty and it is not that she subjected the husband to cruelty. Learned trial Court also recorded a finding that it is not the wife who had left the matrimonial house but she was subjected to cruelty and forcibly and against her wishes, sent back to parental house and since then, despite repeated efforts made by the wife, her family members and other mediators, the appellant without any basis and reasonable excuse, was avoiding to provide place of residence to the wife and minor child, therefore, grant of decree of conjugal rights does not suffer from any illegality.

13. We have considered rival submissions made by learned counsel for the parties, perused the judgments of the Courts below in both the cases, one relating to petition seeking decree of divorce filed by the husband and other relating to application for restitution of conjugal rights filed by the wife, out of which the aforesaid two appeals have arisen.
14. The appellant- husband Vijay Kumar Gupta sought decree of divorce on twin grounds of cruelty and desertion. Learned Family Court found none of the ground proved and dismissed the application. We shall first take up as to whether any ground is made out to interfere with the finding of learned Family Court that the appellant-husband failed to prove desertion by respondent-wife. Assessment of oral and documentary evidence on the aspect of desertion has been dealt with elaborately by learned Family Court in paras- 43 to 47 of its judgment. The evidence of Vijay, the husband, that in February 1989, respondent -wife had gone to Baloda Bazar to attend the marriage of her sister and at that time, her father along with other relatives had come to take her along with them and at that time, they entered into quarrel and asked the wife to keep his entire belongings by saying that she would not return again and thus respondent- wife left the matrimonial house and deserted the appellant and never returned, has been disbelieved in view of the evidence of respondent-wife Kiranbala that when her father had come to invite the husband and family members to attend marriage, the husband, mother-in-law, brother-in-law misbehaved and hurled abuses and also assaulted. Learned Court below had taken into consideration the evidence of respondent-wife that she, in order to resume marital relations, came back to matrimonial house in 1992 and stayed there but she was again insulted and unceremoniously shunted out. Her evidence that in order to seek restitution of conjugal rights, she approached the Court and against decree of restitution of conjugal rights, despite there being no stay, husband is avoiding to take her back to matrimonial house and then filed suit for divorce, has also been taken into consideration. Learned Court below has considered that throughout, respondent-wife has expressed her willingness to resume marital relation and she had no intention of giving divorce. Learned Court below has also taken into consideration that despite all proceedings of conciliation and re-union though respondent-wife is willing to reside along with the appellant, the appellant has

refused to re-unite. The plaintiff evidence of wife leaving matrimonial house in February 1989 to attend marriage of her sister and requiring entire belongings to be sent has not been accepted for want of reliable evidence. Further more, learned Court below has also taken into consideration contradictory evidence of appellant's mother Smt. Savitri Gupta (AW4) that in 1989, Kiranbala (respondent-wife) never came to the house and, therefore, she had not taken her belongings and mark-sheets and thus, not supporting the evidence of appellant-husband, has also been taken into consideration.

15. In the plaint, averment of desertion has been made in paragraphs 9, 10, 12 and 19 thereof. According to plaint allegation, respondent-wife left matrimonial house and went to Baloda-Bazar to attend marriage of her sister. At that time, father had come, entered into quarrel and asked respondent-wife to collect her belongings and not to return in future. Father of the respondent-wife used to come to Raipur and inform the appellant-husband that his daughter will not return and whatever belongings of his daughter are lying in the matrimonial house, may be sent back. Thus, according to appellant-husband, respondent-wife left him in the year 1989 and did not come back. However, respondent-wife has deposed in her evidence that husband never came to take her back, therefore, she had gone to reside in the matrimonial house in March 1992 but after some time, she was insulted and again unceremoniously shunted out of the matrimonial house. This specific evidence led by defendant has not been controverted. Appellant -Vijay, in his evidence, admits that he had objected to his wife going to parental house to attend marriage of her sister but he could not explain as to why he objected to his wife attending marriage of her own sister. Further, he admits that he himself did not go to attend marriage. There is clear admission made by him in cross-examination that he made no attempt to bring his wife and daughter back to matrimonial house. The occasion for the wife to go to parental house in the month February 1989 was not without any reason but on the occasion of marriage of her own sister and it is quite natural that a sister would always like to attend marriage of her sister. Therefore, departure of respondent-wife from matrimonial house in February 1989 was only for attending marriage of her sister.

16. The evidence led by the appellant -husband that father of the respondent- wife

and other relatives who had come to take her for attending marriage, entered into quarrel, abused and asked respondent- wife to collect her belongings and not to come back is not supported from the evidence of other witnesses. Appellant's mother Savitri Gupta (AW4) herself states that respondent- wife had not come to the house in February 1989 and, therefore, there was no occasion for her to collect her belongings and mark-sheets. From the evidence of appellant and respondent one thing is clear that when respondent-wife wanted to go to her parental house to attend marriage of her sister, appellant-husband had objected, therefore, respondent's father and other relatives had come to take her to parental house and in that episode, quarrel also took place. The appellant did not go to attend the marriage. All that only leads to an inference that there was dispute on respondent-wife attending marriage of her sister, despite husband objection, she went to her parental house. But that by itself, would not lead to inference that she went to parental house with intention of deserting her husband and all matrimonial obligations. In the matter of desertion, what is important is the intention of the parties. Merely because wife had gone to her parental house in the background of some quarrel with the husband, that by itself, without anything more, does not prove any intention on the part of wife to desert her husband.

17. In this case, what is important to note is that the respondent-wife had led specific evidence that when her husband did not go to take her and child back to matrimonial house, finally, she went to her matrimonial house in March 1992. This specific evidence of wife has been relied upon by learned trial Court as it has remained un-controverted. The appellant on the other hand, has admitted that he never made any attempt to take his wife back nor has gone to house of the wife. Thus, as against total absence of evidence on the part of appellant to take steps towards resumption of marital obligation, respondent-wife has led specific evidence of she having made effort to come back to the matrimonial house and has deposed that she was again insulted and thrown out.

18. The evidence of the wife, as compared to that of the husband, weights higher on the scale of probabilities because the respondent- wife moved the Court for restitution of conjugal rights by filing an application under Section 9 of the Hindu Marriage Act. Even in those proceedings, the husband did not express

willingness to take his wife back. Respondent-wife continuously and persistently kept on expressing her willingness to go back to matrimonial house and ultimately decree was also passed in her favour.

19. In the present case, evidence has been led by the appellant-husband that after the decree of restitution of conjugal rights was passed, respondent-wife attempted to thrust herself into the matrimonial house. In fact, this incident and conduct of the wife has been led in the evidence by the appellant to prove allegation of cruelty. But then, as far as aspect of desertion is concerned, this evidence led by the husband-appellant himself, demolishes appellant's case of desertion by respondent-wife. If at all respondent-wife had an intention of deserting her husband, there was no reason for her to move an application for restitution of conjugal rights, contest the matter, get a decree and then attempt to get entry into the matrimonial house on the basis of decree of restitution of conjugal rights. This particular proved conduct of the wife along with evidence which has been discussed above, rules out any intention on the part of respondent-wife to desert the appellant. On the contrary, the evidence is more suggestive of the appellant having deserted his wife ever since she went to attend marriage of her sister in February 1989 which was not acceptable to the appellant and due to which, some dispute had also taken place.

20. In view of above consideration, this Court finds no good ground to interfere with the finding recording by learned Family Court that the appellant has failed to prove that respondent-wife deserted him, so as to constitute a ground for grant of decree of divorce.

21. We shall now examine the finding of learned trial Court in the light of pleadings and evidence on record to find out whether the Court below has committed illegality in holding that appellant-husband failed to prove cruelty. We have noted herein-above, number of small incidents have been pleaded by appellant-husband in the plaint which included respondent's insistence to reside with the husband at Bombay, her reluctance to reside with mother-in-law and brother-in-law, quarrelsome behaviour and tendency to frequently go to parental house and at times going to parental house after returning from place of posting of the husband, without attending mother-in-law and brother-in-law in the matrimonial house. In addition to the above, the appellant has

strenuously put forth evidence that during the pendency of appeal against decree of restitution of conjugal rights, respondent- wife attempted to forcibly enter into the matrimonial house which led to disturbance of peace and the police arrived and then an unpleasant situation was created when husband was taken to police station, proceedings under Sections 107, 110 Cr.P.C. were drawn so much so that he had to remain in jail also. This particular incident and the conduct of the wife has been made the main basis by appellant-husband to make out a case of cruelty by submitting that by this conduct, respondent- wife harassed the appellant and all members of family, and thus committed cruelty.

However, before adverting to the pleadings and evidence on record on the aspect of cruelty, we consider it apposite to refer to one of the celebrated decisions of the Supreme Court on what constitutes cruelty, in the case of **Naveen Kohli** (supra), wherein, a three-Judge Bench of the Supreme Court examined the concept of cruelty both in English and Indian law, in order to evaluate whether in the case in hand, a case of cruelty is made out or not. Cruelty as understood in the text and judicial pronouncement can be summarized as below :

¹"38...."Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such a character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger."

²39.... "Very slight fresh evidence is needed to show a resumption of the cruelty, for cruelty of character is bound to show itself in conduct and behaviour. Day in and day out, night in and night out."

³40.... "It is true that the more serious the original offence, the less grave need be the subsequent acts to constitute a revival."

1. D. Tolstoy in his celebrated book "The Law and Practice of Divorce and Matrimonial Causes" (Sixth Edition, p. 61)

2. Bertram v. Bertram [(1944) P 59] per Scott, L.J. observed:

3. Cooper vs. Cooper [(1950) WN 200 (HL)]

⁴41.... "If the door of cruelty were opened too wide, we should soon find ourselves granting divorce for incompatibility of temperament. This is an easy path to tread, especially in undefended cases. The temptation must be resisted lest we slip into a state of affairs where the institution of marriage itself is imperiled."

x x x x
x x x x

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

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

22.The Supreme Court also considered the principles of law crystallized by series of judgments of the Supreme Court rendered since 1964 onwards in para-46 to 65 (*Naveen Kohli's* case) upon survey of large number of decisions. The

4. Lord Denning, L.J. in *Kaslefsky v. Kaslefsky* [(1950) 2 All ER 398, 403]:

5. Lord Pearce observed:

6. Lord Reid in *Gollins v. Gollins* [1964 AC 644 : (1963) 2 All ER 966]:

observations made in various judgments, referred to in the aforesaid decision may be summarized as below:-

“A. The concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition. To establish legal cruelty, it is not necessary that physical violence should be used.

B. The word “cruelty” has not been defined in the Hindu Marriage Act. It has been used in Section 13 (1) (i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the others. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be inquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or willful ill-treatment.

C. Cruelty alleged may largely depend upon the type of life

the parties are accustomed to or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.

D. They are of varying degrees from house to house or person to person. When a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatized as cruelty in one case may not be so in another case. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners and less depend upon precedents as they have to deal with conduct of human beings who are not generally similar. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of.

E. Mental cruelty in Section 13 (1) (i-a) of the Hindu Marriage Act can be broadly defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party and it is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in

each case having regard to the fact and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

F. The word “cruelty” has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case. There may be instances of cruelty by unintentional but inexcusable conduct of any party. The cruel treatment may also result from the cultural conflict between the parties. Mental cruelty can be caused by a party when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations, and to crown it all, to allege that he and all the members of his family are a bunch of lunatics. The allegations that members of the petitioner's family are lunatics and that a streak of insanity runs through his entire family is also an act of mental cruelty.

G. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. “Cruelty” therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in the mind of other spouse that it would be harmful or injurious for him or her to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the aggrieved spouse and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other.

H. The concept of cruelty and its effect varies from individual

to individual, also depending upon the social and economic status to which such person belongs. 'Cruelty' for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case.

I. Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case.

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

not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty.

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

J. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties,

their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

K. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

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

23. In a subsequent authoritative pronouncement of the law with regard to cruelty in the case of **Samar Ghosh** (supra) in concluding para-101, reiterating that no uniform standard can ever be laid down for guidance, yet the Supreme Court thought it proper to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". Those instances, not meant to be exhaustive but only illustrative, as observed in the aforesaid decision, are as below:

"101. x x x x x

- (i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.
- (ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live

with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which

happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary,

it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty. “

24. In another subsequent decision in the case of **Vishwanath Agrawal** (supra), Their Lordships in the Supreme Court dealt with the case where decree of divorce was sought on the ground of cruelty. While relying upon earlier decision including the decision in the case of *Samar Ghosh* (supra), it was observed thus:

“22. The expression “cruelty” has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.

x x x
x x x

27.To put it differently, the mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It was further observed, while arriving at such conclusion, that regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances. What is cruelty in one case may not amount to cruelty in another case and it has to be determined in each case keeping in view the facts and circumstances of

that case. That apart, the accusations and allegations have to be scrutinized in the context in which they are made. Be it noted, in the said case, this Court quoted extensively from the allegations made in the written statement and the evidence brought on record and came to hold that the said allegations and counter allegations were not in the realm of ordinary plea of defence and did amount to mental cruelty.”

25. In yet another decision in the case of **K. Srinivas Rao** (supra), the Supreme Court relying upon earlier decision rendered in the case of *Naveen Kohli* (supra) as also *Samar Ghosh* (supra), added some more illustrative instances to what was observed in the case of *Samar Ghosh* (supra) as below:-

“16. Thus, to the instances illustrative of mental cruelty noted in *Samar Ghosh*, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.”

26. The aforesaid well settled principles with regard to concept of cruelty, both physical and mental, have held the field till date and provide sufficient guidelines to deal with individual cases on its own facts and circumstances. Keeping in forefront the aforesaid decision and the law laid down, reiterated and settled in catena of decision referred to above, we shall deal with the case in hand to find out as to whether the appellant-husband has succeeded in proving the cruelty so as to entitle him a decree of divorce.

27. Referring to the averments made in the plaint, in third paragraph of this order, we have elaborately dealt with as to what are the instances pleaded by the husband which according to him constitute cruelty. At this juncture, it would be relevant to mention that the allegation of cruelty are in two parts. The first one is what was originally pleaded in the plaint. The second part is post restitution of conjugal rights decree passed in favour of respondent- wife vide judgment and decree dated 6.5.2003. Through intervention of higher Courts, the appellant was permitted to amend pleadings and lead additional evidence to plead and prove additional ground of cruelty. This constitutes post restitution of conjugal rights decree.

28. The first allegation in the plaint is with regard to abnormal behavior of the wife in insisting that she would reside along with her husband. In the pleading as well as in the evidence of the plaintiff-appellant, it has been stated that when the plaintiff got a job at Bombay and proceeded for Bombay, respondent-wife insisted that she would like to go along with her husband and reside with him which led to certain amount of dispute and quarrel in the family. The evidence which has been led by the husband and his witnesses is that though, it was expressed that it would be difficult for her husband to manage residence for both of them, the respondent-wife became adamant and said that she would not be living in the matrimonial house at Raipur but would be residing only with her husband at Bombay. As the pleading and evidence goes to show, this was the first occasion of dispute between the parties. However, even if it is accepted that respondent-wife was adamant that she would be residing with her husband at Bombay, we find it difficult to hold this as an instance of cruelty by the wife or his other family members. There is no specific pleading nor any evidence to show that taking further this dispute, the respondent-wife conducted in a manner or indulged in a conduct of such a nature which constituted cruelty. Vague words like “ झगड़े पर उतारू हो गईं” have been stated in the evidence without giving any specific details. Therefore, such a conduct of the wife cannot, by any stretch of imagination, without anything more, constitute cruelty by the standards as set in catena of decisions which have been referred to herein-above.

29. The next allegation to establish a case of cruelty is that at Bombay, the respondent-wife had created embarrassment on certain occasion when the

appellant after coming back from his office found the house locked and when wife had gone elsewhere without informing. Firstly, the appellant neither in his pleading nor his evidence has stated as to the frequency of such incident. Evidence led by the husband and its witnesses show that husband resided with his wife at Bombay for a very short period of few months only. On how many occasions this incident of house having been found locked, happened, has not been clearly stated. Even if it were to be accepted, on certain occasion, when appellant came back from his office, house was found locked, it would not amount to cruelty as understood under the law. If such were taken to be a case of cruelty, perhaps in every case, a ground for decree of divorce on the ground of cruelty would arise.

30. It has also been pleaded and evidence has been led that when the appellant was posted at Hyderabad and Pune, respondent-wife used to quarrel. In para-3 of the plaint, it has been pleaded that while the appellant was posted at Hyderabad and Pune, wife's relatives used to come and provoke her by alleging that there is not even a bed in her house and due to which respondent used to enter into quarrel. On this aspect, respondent-wife in her pleading has stated in para-5 of his written statement that most of the time the appellant remained on tour and the wife had to manage for daily needs, details of which have been given by her in her evidence also. Respondent-wife had to take care of an infant child also and for that, as pleaded and deposed in evidence, she had to take help of the neighbours also. She has specifically pleaded and deposed that while her child was sleeping on the floor, a poisonous insect had bitten the child and thereafter, when respondent-wife demanded for purchasing a bed, the appellant misbehaved and also assaulted. This cruel treatment was informed by wife to her relations who came there and husband was advised to behave properly. Evidence to this effect has been led not only by wife but her witnesses also. The evidence of the wife in this regard that there was no bed in the house and the infant child was bitten by a poisonous insect has not been denied by the appellant-husband. Thus, in this background, the appellant's allegation that he was harassed by respondent-wife as there was no bed in house, to our mind, would not constitute a case of cruelty.

31. It has also been alleged by the appellant-husband in his pleading that respondent -wife used to quarrel with the appellant on appellant extending

financial help to his family members and that she also used to threaten to commit suicide. This allegation, though made in the plaint, is blissfully vague. What was the total earning of the appellant and what part of his income he used to send to his mother or his brother has nowhere been stated either in the plaint or in the evidence. What was the period during which he extended financial help to his mother and brother has also not been stated in his evidence. No specific instance of quarrel on this ground has been stated. It has been vaguely stated that wife used to threaten to commit suicide. Averments to this effect has been made in para -7 of the plaint which have been specifically denied by respondent-wife in her written statement. In addition, it has been pleaded in para-5 of the written statement that the appellant was not providing sufficient fund to his wife for maintaining household affairs, care of infant child and he mostly remained out of station.

32. The evidence on affidavit under Order 18 Rule 4 CPC as contained in para-2 , is merely verbatim reproduction of plaint allegation and no specific incident has been reported.

His brother Sanjay (AW2) has not given clear evidence in this regard. He has made a general statement that respondent was not preparing food and on every issue she used to disturb peace of the family and extend threat to commit suicide. Thus, on this aspect the evidence of the appellant (AW1) is not supported from the evidence of his brother Sanjay (AW2) as both of them have stated differently regarding the occasion for giving threat to commit suicide.

33. Appellant's mother Smt. Savitri Gupta (AW4) has not stated anything regarding any such conduct of the respondent that she used to hold out threat to commit suicide. It is also relevant to notice that the allegation of the appellant being that respondent-wife was not fully cooperating in household affairs while residing with his mother and brother, entering into frequent quarrels, disturbing peace in family, insisting that she would reside with the appellant wherever he is posted and not at Raipur with mother-in-law and brother-in-law have not been stated by appellant's mother Smt. Savitri (AW4) who was one of the most important witness to support such allegation of the appellant-husband. Even Sulekha Gupta (AW5), wife of Sanjay, has not given any specific evidence regarding internal family dispute, frequent quarrels, misbehaviour as alleged by the appellant in his pleadings and evidence.

34. In order to support the allegation that respondent-wife was not prepared to reside in the house at Raipur along with mother and brother and that she was quarrelsome, appellant has also examined maid servant Uttara as AW5. According to her evidence, there used to be quarrel between the respondent and her husband and in-laws but mother-in-law and sister-in-law did not support this statement. According to this witness, respondent frequently used to state that she would go to her parental house and this used to be the cause of quarrel. According to her, she was not interested in cooking and used to quarrel with the mother-in-law. However, this evidence is not supported from the evidence of mother-in-law and sister-in-law. Moreover, according to this witness, when the appellant had gone out of station in connection with his job, respondent after having quarrel had left for her parental house, but according to evidence of appellant himself, respondent wife had come along with him at Bombay, Puna and Hyderabad. This maid servant in her cross-examination, however, states that she does not know whether the appellant has come back or still working in the same job. That means that this lady is a concocted witness as she does not even know the current affairs in the family. She has also deposed that she does not know what was the cause of quarrel. Again in her cross-examination, she says that when her husband had gone in connection with his job, respondent had also accompanied him. Thus, her entire evidence that during the period appellant remained out of station in connection with job, respondent- wife, residing in her matrimonial house, used to quarrel stands falsified.

35. This pleading and evidence with regard to respondent-wife entering into frequent quarrel or not taking interest in household affairs or misbehaviour with other members of the family is not proved from any reliable evidence. The evidence of the appellant's witnesses including that of the appellant are contradictory in this regard.

36. The appellant, in order to claim a decree of divorce, has heavily relied upon on an incident which happened when respondent-wife made an attempt to enter the matrimonial house on the strength of a decree of restitution of conjugal rights. This ground has been raised by way of additional pleading and leading additional evidence. In the plaint, it has been alleged that a decree of restitution of conjugal rights was passed in favour of respondent wife on

6.5.2003 against which appeal was preferred in the High Court. It was also pleaded that an application for grant of maintenance under Section 125 Cr.P.C. was also filed by respondent seeking maintenance for herself and her daughter, in which proceedings, an order was passed on 13.6.2005 by which, maintenance of Rs.2,000/- per month was awarded in favour of daughter, though, it was held that respondent- wife was able to maintain and against that order, a revision was also preferred before the higher Court. It has been further pleaded that during the pendency of the appeal, respondent-wife got a false criminal case registered against husband in police station Aazad Chowk, Raipur, due to which he had remained in jail on 23-24 October 2010. In his evidence he has deposed that on 22.10.2010, respondent-wife forcibly entered the matrimonial house in that part where his brother was running a utensil shop. It is alleged that those who accompanied the respondent caught hold of the appellant in a violent manner, hurled abuses, threatened that if they did not allot respondent a place of residence in the matrimonial house, he would be kidnapped. He further deposed that, though, report was made in the police station, police did not register any criminal case, therefore, the appellant filed a complaint before the Magistrate which is still pending. On this aspect, when he has been cross-examined he admits that there was no stay granted by the High Court. He further admitted that the police had come to the shop to take action against him under Section 151 Cr.P.C. This admission shows that proceedings under Section 151 Cr.P.C. were drawn against him for taking security for keeping peace. He further admits that in proceedings under Section 151 Cr.P.C. respondent- wife neither appeared nor raised any objection to grant of bail and later, on furnishing security offered by his mother, he was released. He also admits that he did not challenge the legality and validity of orders and proceedings under Section 151 Cr.P.C.

37. The other witness of the appellant namely Sanjay Gupta (AW2) has stated that on the strength of decree of restitution of conjugal rights, respondent forcibly entered the matrimonial house and as soon as she reached, started hurling abuses. According to appellant, as well as this witness, respondent had come along with Process Server of the Court. Though they requested the SHO to register criminal case but no case was registered therefore a criminal complaint was filed before the Magistrate. This witness admits in his cross-examination that the shop where utensils are kept is a place of residence also

and there is no partition amongst the brothers. He further admits in his cross-examination that his brother i.e. appellant was arrested by the police on the allegation of committing breach of peace. Though he alleges that all this was done at the instance of respondent, no document has been placed before the Court that any written complaint was made by respondent either before the Court or before the police making any allegation against her husband, the appellant. Sanjay (AW2) also admits that respondent never appeared before the SDM to oppose bail.

38. The mother-in-law Smt. Savitri Gupta (AW4) has also stated that respondent-wife arrived in the shop along with the Court Process Server and those who had accompanied her hurled abuses and also assaulted.

39. No independent witness has supported the case of the appellant and his witnesses. There is no evidence of appellant or any of his family members having received injury. Though, appellant and his other witnesses deposed in the evidence that the photographs were taken and incident was also video-graphed, no such specific evidence has been led. The allegation of some other person accompanying the respondent-wife and threatening appellant and his family members to allot a place of residence in the matrimonial house have not been found proved in any criminal proceeding. The evidence of appellant shows that police did not register any FIR on any such allegation rather it is the appellant against whom proceedings were drawn under Section 151 Cr.P.C. by SDM as he was found committing breach of peace and, later on, he was released on furnishing bond and security. The evidence also shows that respondent-wife had come to matrimonial house seeking a place of residence, along with the Court Process Server. There is no allegation that respondent-wife assaulted anybody or committed any violent act. It would thus appear that all that can be held proved is that respondent-wife came to matrimonial house claiming that she is entitled to live in the matrimonial house on the basis of decree of restitution of conjugal rights. This appears to be more in exercise of her rights to residence in the matrimonial house rather than any intentional act of harassing the husband or any of his family member. Lots of allegations have been made that the appellant and his family members were abused and manhandled by those who accompanied respondent, matter was reported to media, no clinching evidence in this regard has been made before

the Court to support such allegation which appeared to be more of exaggeration.

40. Learned counsel for the appellant referred to various order sheets of this Court in appellate proceedings against judgment and decree of restitution of conjugal rights by submitting that though case was pending, adjournment were sought and during this period an attempt was made by respondent-wife to enter the matrimonial house. He would further submit that this Court made certain adverse observation also against respondent expressing displeasure by observing that as the appeal was pending and parties were called to appear in person, it was not proper on the part of respondent-wife to enter the house of the appellant forcibly. On the basis of the observation made in the other appeal, it has been strenuously argued that the act of cruelty on the part of respondent-wife is proved.

After giving our anxious consideration, we are unable to accept the argument. May be that when the proceedings were pending before this Court, respondent ought not to have insisted to enter the matrimonial house, but that by itself, in the absence of any proof of any cruelty, would not be made a basis to grant a decree of divorce on the ground of cruelty. The act of respondent-wife in seeking shelter in the matrimonial house was on the strength of decree of restitution of conjugal rights. Even if such hurried and haste act on the part of respondent-wife is condemnable, to say that this by itself would constitute cruelty cannot be accepted.

41. On studiously and thoroughly examining the evidence of alleged cruelty as led by appellant and applying the standards of severity of conduct which would entitle a party to get a decree of divorce on the ground of cruelty, we are unable to hold that the conduct of respondent was such that it constituted cruelty so as to entitle the appellant to grant of decree of divorce. In the decisions which have been referred to herein-above, it has been held that cruelty has to be distinguished from the ordinary wear and tear of the family life. It cannot be decided on the basis of the sensitivity of the aggrieved spouse and has to be adjudged on the basis of course of conduct which would, in general, be dangerous for spouse to live with the other. Further more, to constitute cruelty, the conduct complained of should be grave and weighty so as to come to the conclusion that the petitioner spouse cannot be reasonably

expected to live with the other spouse. It must be something more serious than ordinary wear and tear of marital life. Before the conduct can be called cruelty, it must touch a certain pitch of severity. Mere trivial irritations, quarrels between the parties may not amount to cruelty.

42. In the present case, none of the instances of cruelty have been found to be proved. The incident of respondent-wife entering the matrimonial house along with Process Server of the Court, on the strength of decree of restitution of conjugal rights, by itself, would not constitute cruelty. Moreover, we find that in the present case, respondent-wife has not taken any other proceedings or made any complaint against the husband or his family members in any Court or forum except filing an application before the Court for restitution of conjugal rights. She has neither made any complaint in the police station alleging any cruelty on her by the husband or his family members nor has she leveled any scandalous allegation against husband. The pleadings in her written statement and her evidence are all to the effect that despite all differences, cruelty committed on her which have been found to be proved in the other proceeding, she was willing to come back to matrimonial house, obviously because she had a daughter and she made all effort to go back to matrimonial house and protect future of her daughter. She did have occasions to make complaint against her husband more than once but she never reported the matter in any forum either against appellant or the family members. We have already considered the aspect of desertion and came to the conclusion that it is not the respondent-wife but the appellant who has deserted his wife. Therefore, we do not find any ground to interfere with the finding of learned Court below that the appellant failed to prove cruelty committed on the appellant by the respondent-wife by her conduct, acts, omissions.

43. Learned counsel for the appellant lastly sought to persuade this Court that as in any case, the marriage has been irretrievably broken down, even if ground of cruelty and desertion are, strictly speaking, not made out, a decree of divorce may be granted. Referring to the decisions which have been cited by him, which we have also referred to herein above, he argued that present is a case where appellant-husband and respondent-wife have not been living together since last 30 years according to the appellant at least 27 years even if

respondent's evidence is accepted. He would further submit that during this period, the parties were subjected to several rounds of conciliation proceedings but all failed. The daughter has also grown up and is residing with mother throughout. There is nothing left in the marriage between the parties and there is no possibility of any re-union after more than two and half decade, therefore, only on this ground a decree may be granted. Though all the decisions which have been cited by learned counsel for the appellant, definitely show that the Supreme Court found that as the parties were not living together and engaged in litigation for a very long period coupled with other peculiar circumstances of those cases, marriage was found to be irretrievably broken leading to grant of decree of divorce, however, it has also been observed that such ground of divorce is not statutorily prescribed in Section 13 of the Hindu Marriage Act. Even observation has been made by Their Lordships in the Supreme Court that in the light of recommendation of Law Commission, appropriate legislative amendment be carried out to include this also as one of the ground for divorce but, till date, no amendment has been made in Hindu Marriage Act in that regard. Even though in this case, we find that marriage between the parties have irretrievably broken and there is no hope or possibility of re-union, at this stage, even while deciding FAM No. 138 of 2012, we find ourself unable to grant a decree of divorce on that ground in exercise of our appellate jurisdiction, particularly when, in none of the decisions of the Supreme Court, cited before us, it has been judicially evolved that in exercise of appellate jurisdiction, decree of divorce can be granted by the High Court on the ground that marriage has irretrievably broken.

44. As far as challenge to judgment and decree dated 6.5.2003 passed in Civil Suit No.5-A of 1998 is concerned, by which the learned trial Court has allowed wife's application for restitution of conjugal rights, specific pleadings has been made in the application by respondent -wife that in para-5 of the plaint that in the year 1989, respondent-wife had gone to Baloda-Bazar to attend marriage of her sister. It has been pleaded that despite invitation, appellant- husband did not attend marriage nor made any attempt to bring back his wife. It has also been pleaded that father of respondent- wife and other relatives contacted appellant on many occasions requesting him to take his wife and child back to matrimonial house and finally as a result of mediation made, her husband agreed to resume marital relationship but only after 8 days, she was

sent back to parental house in March 1992 and since then respondent wife is residing at Baloda-Bazar with her minor daughter Roshni, in her parental house. Further pleadings are that despite repeated efforts made, the appellant-husband did not make any attempt to take care of his wife and daughter nor made any arrangement for their maintenance and thus dereliction to perform marital obligation. In para-6 of the plaint, it has also been pleaded that on 8.4.1997, again request was extended for resumption of marital relation but despite notice given through Lawyer, the appellant did not make any effort towards restitution of conjugal rights. Rebuttal pleadings as made in the written statement of the appellant-husband are that the father of the wife had come to take respondent to attend marriage of his another daughter and a quarrel had taken place when he stated respondent-wife to collect all her belongings and not to come back again and in this manner, respondent- wife left the matrimonial house of her own. The pleadings made by the wife in her application for restitution for conjugal rights is that in March 1992, she had come to matrimonial house but again, unceremoniously she was shunted out, which has been denied that any resumption of conjugal rights had taken place. It has been pleaded that application for restitution of conjugal rights long after respondent has left matrimonial house is more of attempt to falsely implicate the husband.

45. In the pleadings, both the parties have pleaded the background of earlier dispute and strained relation between the parties prior to respondent-wife leaving for parental house to attend marriage of her sister. Both the parties have made allegations and counter allegations of committing cruelty upon each other.

46. While in the pleadings made by respondent-wife in her application for restitution of conjugal rights, specific pleadings have been made that the appellant-husband neither attended marriage of her sister in the year 1989 nor made effort to take his wife and daughter back to matrimonial house and further that even though, wife had come to matrimonial house in March 1992, she was again thrown out, except denial of such pleadings, there is no specific pleading made by the husband in his written statement that he was willing to keep the wife and daughter along with him or that he had made any effort to bring them back or even made any oral request to wife to come back to

matrimonial house. There are no specific pleading that any attempt was made on his part to bring about amicable settlement of dispute between husband and wife. Thus, while the wife has specifically pleaded regarding efforts made towards resumption of marital life, there are no pleadings made by the husband that he made any attempt towards resumption of marital life with respondent wife.

47. Respondent- wife, who has examined herself as AW1, in the proceedings of restitution of conjugal rights, has categorically deposed in para-23 that after invitation, she had to come to attend marriage of her sister in the year 1989, her father and other relatives came to take her to parental house and she was brought to Baloda-Bazar but the husband did not come to attend marriage despite repeated requests and she continued to reside at Baloda-Bazar. Further, in para-24, she has also deposed that though, her father on several occasions, requested the husband to take his wife back but the appellant husband did not take any steps and finally she along with her uncle Vijay, went to the house of the appellant and stayed there for 8-10 days but finally, she was sent back against her wishes to her parental house in the year 1992, along with her daughter. Thereafter, it has been deposed, her husband never came to take her back nor made any arrangement for her maintenance. She has also stated that even after March 1992, her daughter and other relatives made several attempts but the appellant never accepted and finally on 8.4.1997, a legal notice was given to husband to take back wife and daughter. She has been subjected to detailed cross-examination. Suggestion given to her in the cross-examination that after she came to her parental house in the year 1989 she never went back, has been denied. She has stated that her husband had left her at Baloda-Bazar and several attempts were made to bring about settlement through her father and many others. She has specifically deposed the efforts made for settlement of dispute by Ravi Soni and Girish who are relatives.

48. The aforesaid evidence led by the respondent-wife is supported from the evidence of Ravi (AW2), Girish (AW3) and her father Bhagwat Saraf (AW4). Each of them have deposed that after Kiran Bala had come to attend marriage in 1989, her husband did not come to attend marriage nor took back his wife and daughter though several attempts were made.

On the other hand, appellant examined himself as NAW-1, his mother Savitri Gupta as NAW2. Appellant in his evidence has deposed that his wife, after having gone to Baloda- Bazar in February 1989, did not come back. He has deposed that at the time of leaving matrimonial house, she said that she would not come back again. However, in his evidence, he has not stated anywhere whether he had made any attempt to bring his wife and child back to the matrimonial house. He only made allegation that he was subjected to cruelty by his wife and has also deposed that there used to quarrel between his mother and brother with the respondent-wife. It is also admitted that in February 1989, her father and other relative had come to take her but thereafter, he did not make any attempt to bring his wife back to matrimonial house. He has also admitted that on 8.7.1992, father of wife had given him a notice to take his wife back to matrimonial house, but he did not respond to said notice. He also admitted that belongings of the wife which were sent by him were not being accepted by her father Baghwat Prasad. At the last, he has clearly deposed that he has serious objection to restitution of conjugal rights.

Smt. Savitri Gupta (NAW2), mother of appellant-husband has stated that his daughter-in-law is residing at Baloda-Bazar since 1988 and she has declared that she is not willing to reside in the matrimonial house. The evidence of this witness is contradictory to what has been stated by Vijay (NAW1) that wife left the matrimonial house in February 1989. In para-3, she has admitted that no attempts were made to bring her daughter-in-law/respondent-wife back to matrimonial house.

49. Learned trial Court after scrutiny of evidence on record, as considered above, has recorded a finding that the evidence of respondent- wife that she was deserted by her husband and no attempt was made by husband, though, she kept on making all efforts to resume normal marital life, has been proved. Upon consideration of evidence, we are also of the opinion that the respondent-wife has not only specifically pleaded but led specific evidence that after she went to parental house to attend marriage of her sister in February 1989, there was background of quarrel in the matrimonial house and appellant-husband did not come to attend marriage and thereafter, he never came to Baloda-Bazar to take his wife and daughter back to the matrimonial house. Not only this, specific evidence led by the wife that several attempts

were made to bring about re-union through mediation in various proceedings, the appellant husband did not make any effort to restitution of conjugal rights. In fact, in his evidence, appellant has clearly stated that he is not willing to resume marital relation.

50. In the connected appeal (FAM 138 of 2012) filed by the appellant-husband seeking decree of divorce on the ground of cruelty and desertion, upon appreciation of material evidence on record, we have also recorded a clear finding that the appellant-husband has failed to prove allegation of cruelty and that it is not the wife but the appellant-husband who deserted his wife.

51. In view of the above, we do not find any good ground to interfere with the impugned judgment and decree of restitution of conjugal rights granted in favour of respondent-wife and against the appellant-husband.

52. Both the appeals filed by the appellant-husband are dismissed. Let separate appellate decree be drawn accordingly. Costs made easy.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge