

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2018

DELIVERED ON : 11.02.2019

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.M.S.A. No.22 of 2016

C.M.Suresh .. Appellant/ Appellant / Petitioner

vs

Hemamalini .. Respondent/ Respondent/ Respondent

Appeal filed under Section 13(1)(a) of the Hindu Marriage Act read with Section 100 of C.P.C. against the judgment dated 15.02.2016 in H.M.C.M.A.No.6 of 2013 on the file of the Principal District Judge, Vellore confirming the order dated 11.3.2013 passed in H.M.O.P.No.102 of 2010 on the file of the Sub-Court, Vellore.

For Appellant : Ms.L.Srileka
For Respondent Mrs.R.T.Sundari
: for M/s.R.Doraisamy

JUDGMENT

This Civil Miscellaneous Second Appeal has been filed by the appellant against the judgment dated 15.2.2016 passed in H.M.C.M.A.No.6 of 2013 on the file of the learned Principal District Judge, Vellore, confirming the order dated 11.3.2013 passed in H.M.O.P.No.102 of 2010 on the file of the learned Sub-Court, Vellore.

2. The appellant is the husband and he had filed H.M.O.P.No.102 of 2010 under Section 13(1)(ia) of the Hindu Marriage Act, 1955 against the respondent wife for divorce.

3. It is an admitted fact that the marriage between the appellant and the respondent was solemnized on 24.01.1999 at Sri Ragavendra Kalyana Mandapam, Thennamara Street, Vellore according to the Hindu religious rites and caste customs. The marriage was not consummated.

4. The case of the appellant is that after the marriage, the appellant and the respondent lived only for two days and the appellant came to know that the respondent is not interested in living with him and she is having affair with her aunt's son. According to the appellant, the respondent refused to do any house hold work and failed to attend the needs of the appellant and she used to pick up quarrels with the appellant. She has not taken care of parents of the appellant and due to non-cooperation of the respondent, the appellant put great mental cruelty.

5. Further case of the appellant is that on 07.2.1999, the respondent abandoned the appellant and deserted from the matrimonial home. The respondent had also lodged a false police complaint against the appellant and due to the criminal case, the appellant was suspended from service and finally, the criminal case against the appellant ended in acquittal.

6. According to the appellant, earlier, he had filed H.M.O.P.No.80 of 2002 for divorce, which came to be dismissed for default on 10.4.2006 due to non-payment of maintenance arrears. The respondent also filed E.P.No.7 of 2007 for realisation of the maintenance amount. Pending Execution Petition, the appellant had filed another divorce petition being H.M.O.P.No.127 of 2009 and the same was later on not pressed by him on 30.11.2009. Since the appellant had paid the entire maintenance arrears, the Execution Petition was dismissed on 30.11.2009.

7. According to the appellant, the respondent filed M.C.No.4 of 2008 on the file of the learned Chief Judicial Magistrate Court, Vellore and the same was dismissed on the ground that she was not entitled for maintenance. After full payment and after not pressing the earlier petition, the appellant had taken sincere efforts for rejoining with the respondent, but the respondent refused. Hence, the appellant had filed the present petition seeking for divorce.

8. Resisting the petition, the respondent filed counter stating that due to non-payment of arrears of maintenance, HMOP No.82 of 2002 was struck off on 21.3.2006 and the subsequent petition being HMOP No.127 of 2009 filed by the appellant has been withdrawn by him. It is stated that the respondent was always humble, obedient and religious caring for the needs of the family and her behaviour was always uniform. The respondent denied that she was leading adulterous life with her aunt's son.

According to the respondent, the appellant, his mother, brother and brother's wife were treating the respondent with physical and mental cruelty. The parents of the respondent provided a lot of financial assistance to the appellant. However, the appellant and his mother causing cruelty to her by demanding dowry. Hence, the respondent prayed for dismissal of the petition.

9. Before the trial Court, the appellant examined himself as P.W.1 and Exs.P1 and P2 were marked. On the side of the respondent, the respondent and one Arokiadoss were examined as R.W.1 and R.W.2 and Exs.R1 to R3 were marked.

10. Upon consideration of the oral and documentary evidence, the trial Court dismissed H.M.O.P.No.102 of 2010 filed by the appellant. Challenging the same, the appellant had preferred appeal being H.M.C.M.A.No.6 of 2013 and the same was dismissed by the first appellate Court by the judgment dated 15.02.2016. Aggrieved by the concurrent findings of the Courts below, the appellant has filed the present appeal raising the following questions of law:

- (1) When the criminal complaint of the respondent for the offences of Section 498(A) IPC was found to be false and acquitted by the Judicial Magistrate No.IV, Vellore in C.C.No.38 of 2000 the same would amount to cruelty?
- (2) When admitted by the appellant and the respondent are residing away of each other since 1999 and the marriage had irretrievably broken down the long separation would amount to cruelty as per the judgment reported in (2006) 4 SCC 558, 2008 (7) MLJ 1238 and the findings of the courts below overlooking the settled position and the material evidence and perverse, unsustainable and the same is liable to be set aside by this Hon'ble Court.

11. I heard Ms.L.Srileka, learned counsel for the appellant and Mrs.R.T.Sundari for M/s.R.Doraisamy, learned counsel for the respondent.

12. Assailing the findings of the Courts below, the learned counsel for the appellant submitted that the Courts below erred in not considering the fact of the case that the respondent lived only for a period of 17 days and that

the Courts below have not considered the facts that the respondent led adultery life with her aunt's son and denying in sex with the appellant made him to suffer from mental cruelty and mental depression. She would submit that the Courts below failed to note that the conduct and behaviour of the respondent in ill-treating and disobeying the appellant and also non-performing duties as a wife would amount to cruelty.

13. The learned counsel further submitted that long separation would amount to cruelty and the Courts below failed to look into the said aspect. Contending that for the past 20 years, the respondent was away from the appellant, the learned counsel for the appellant prayed for setting aside the concurrent findings of the Courts below.

14. Per contra, reiterating the findings of the Courts below, the learned counsel for the respondent submitted that earlier the appellant had filed two similar petitions for divorce and one was dismissed and the other was not pressed. Once a petition was dismissed, again for the same Section, the appellant was not entitled to file another petition, the learned counsel submitted that the trial Court was right in dismissing H.M.O.P.No.102 of 2010, which was confirmed by the first appellate Court. She would submit that there is no ground to interfere with the findings of the Courts below.

15. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

16. According to the appellant, after the marriage, both the appellant and respondent stayed in respondent's parents house at Kaniyambadi for two days and during those two days, the respondent refused to share the bed with him by stating her love affair with her aunt's son and her parents without consent, arranged the marriage with the appellant. According to the appellant, after two days, he requested the respondent to change her attitude and forget aunt's son and asked the respondent to come and live with him. However, she had refused to come to the matrimonial home and the appellant alone came to his house. On 31.1.1999, the respondent's parents brought her to the matrimonial home and left her. The respondent lived with the appellant only for seven days and thereafter, she picked up quarrel and went away. According to the appellant, in the above said seven days, the respondent refused to talk with him and the marriage was not consummated. The respondent permanently deserted the

appellant on her own accord from 07.2.1999.

17. Though the desertion from 07.2.1999 was denied by the respondent, in her evidence, she had deposed that the separation was during November, 1999 and not in February, 1999. Thus, it is an admitted case of the respondent that she is living away from the matrimonial home from November, 1999 onwards.

18. Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. In this regard, the legal position of the Hon'ble Supreme Court, in the following cases, is as under:

(1) In Naveen Kohli v. Neelu Kohli, reported in 2006(4) SCC 558, it has been held as under:-

"Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

A law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the fault theory, guilt has to be proved; divorce courts are presented with concrete instances of human behaviour as they bring the institution of marriage into disrepute.

We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised 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.

Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist".

(2) In *Sukhendu Das v. Rita Mukherjee*, reported in (2017) 9 SCC 632, it has been held as under:

"This Court, in a series of judgments, has exercised its inherent powers under Article 142 of the Constitution for dissolution of a marriage where the Court finds that the marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted (*Manish Goel v. Rahini Goel*, (2010) 4 SCC 393). Admittedly, the appellant and the respondent have been living separately for more than 17 years and it will not be possible for the parties to live together and there is no purpose in compelling the parties to live together in matrimony (*Rishikesh Sharma v. Saroj Sharma*, (2007) 2 SCC 263). The daughter of the appellant and the respondent is aged about 24 years and her custody is not in issue before us. In the peculiar facts of this case and in order to do complete justice between the parties, we allow the appeal in exercise of our power under Article 142 of the

Constitution.”

(3) In *Rishikesh Sharma v. Saroj Sharma*, reported in (2007) 2 SCC 263, it has been held:

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

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

6. During the last hearing both the husband and wife were present in the Court. The husband was ready and willing to pay a lump sum amount by way of permanent alimony to the wife. The wife was not willing to accept the lump sum amount but however expressed her willingness to live with her husband. We

are of the opinion that he desire to live with her husband at this stage and at this distance of time is not genuine. Therefore, we are not accepting this suggestion made by the wife and reject the same."

19. The learned counsel for the respondent submitted that it is only the Hon'ble Apex Court, which in exercise of its extraordinary powers under Article 142 of the Constitution of India, can pass such orders to do complete justice to the parties.

20. No doubt it is true that it is only the Hon'ble Apex Court, which in exercise of its Extraordinary powers under Article 142 of the Constitution of India, can pass such orders to do complete justice to the parties. The said power is not vested with any other Court in the country.

21. So far as the deserted spouse, viz., the appellant is concerned, one of course cannot say that there was absence of consent on his part for the separation which is one of the conditions to be shown for the deserted spouse, though there is nothing to suggest that there was any conduct on his part giving reasonable cause to the respondent to form the requisite animus deserendi at any time. But simply for that one element, there is no reasonable basis for perpetuating the matrimony which has wholly and hopelessly lost its *raison d'etre*. There has been such inordinate long period of separation, where the initial cause of separation can now be said to be hardly relevant, that the marriage between the parties can be said to be nothing but a fiction. There is practically no hope for any revival or survival. The matrimonial bond exists, if at all, only in form and not one bit in substance. On would do well to recall here the words of the Hon'ble Supreme Court in the case of *Naveen Kohli v. Neelu Kohli*, reported in (2006) 4 SCC 558, extracted *supra*.

22. In the case on hand, admittedly, the appellant and the respondent have crossed 58 and 52 years respectively and are living separately. It is admitted that the marriage has not been consummated. Nearly 20 years have elapsed since their separation during which there was no single attempt to resume cohabitation. Is there any sanctity or, for that matter, even semblance of a purpose left in continuing this legal tie? Is there any stake of either party or, for that matter, of the society in preserving this broken marriage? In my mind the answer

seems to be clear. It would be unjust not to sever the marital tie in the facts of the case. Justice, consistent with good conscience, demands that the marriage be dissolved.

23. 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 an unreported judgment in C.M.A. (MD) Nos.238 and 239 of 2012 (Salome v. Dr.Prince D.Immanuel), this Court held that where the appellant/wife and the respondent/husband were living separately for more than 10 years and the attitude of the respondent even after obtaining a decree of restitution of conjugal rights has not taken steps to enforce the same, but insisting on retaining matrimonial bond that would amount to causing mental cruelty and to torment and traumatized the appellant. In the given facts and circumstances of the case, in Salome v. Dr.Prince D.Immanuel, supra, the learned Single Judge of this Court held as under:

"20. ... The insistence of the respondent to continue the matrimonial tie even though he is fully aware that there is no possibility of re-union and living together as husband and wife, amounts to causing mental cruelty to the appellant."

25. In V.Bhagat v. D.Bhagat, reported in (1994) 1 SCC 337, the Hon'ble Supreme Court examined the concept of "mental cruelty" and observed as under:

"16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving

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

26. In *Parveen Mehta v. Inderjit Mehta*, reported in (2002) 5 SCC 706, the Hon'ble Supreme Court held:

"21. Cruelty for the purpose of Section 13(1) (i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then post the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances of emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other."

27. In *Sandhya Rani v. Kalyanram Narayanan*, reported in 1994 Supp (2) SCC 588, the Hon'ble Supreme Court held:

"since the parties are living separately for the last more than three years, we have no doubt in our minds that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. Therefore, the Court granted the decree of divorce."

28. In the present case, as stated supra, the respondent left the matrimonial home in the year 1999 and she had not returned back to the matrimonial home thereafter. Since there was no possibility of re-union, directing the appellant and the respondent to live together as husband and wife would in fact make the matrimonial life a hell for both parties.

29. In *K.Srinivas Rao v. D.A.Deepa*, reported in 2013 (2) SCALE 735, the Hon'ble Supreme Court held as under:

"We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree."

30. The ratio of law which emerged from catena of decisions of the Hon'ble Supreme Court is that where there is evidence that the husband and wife indulged 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 each other.

31. As stated supra, long separation coupled with the attitude of respondent would amount to mental cruelty caused to the appellant. Mental cruelty is not defined in the Act and it cannot be put on a strait-jacket formula. Facts and circumstances of each case must be considered on merits to decide whether the party alleging mental cruelty has proved the same.

32. In Samar Ghosh v. Jaya Ghosh, reported in (2007) 4 SCC 511, the Hon'ble Supreme Court, enumerated some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". While enumerating instances, the Hon'ble Supreme Court observed that instances are only illustrative and not exhaustive.

33. On a perusal of the typed set of papers, it is seen that the respondent had given a complaint before the All Women Police Station, Vellore alleging that the appellant and the his mother were demanding dowry from her. The All Women Police, Vellore registered a case against the appellant and his mother in Crime No.34 of 1999 under Section 498(A) IPC and Sections 4 and 5 of the Dowry Prohibition Act. The said complaint was taken up by the learned Judicial Magistrate No.IV, Vellore in C.C.No.38 of 2000 and by the judgment dated 29.6.2001, the learned Judicial Magistrate No.IV, Vellore acquitted the appellant and his mother from the charge.

34. By relying upon the acquittal judgment passed by the learned Judicial Magistrate No.IV, Vellore in C.C.No.38 of 2000, the learned counsel for the appellant submitted that lodging of a false complaint against the appellant and his mother amounts to mental cruelty and on this ground the appellant is entitled to get divorce. However, the Courts below erred in considering the said aspect in proper perspective. There is some force in the said submission of the learned counsel for the appellant. In fact, on a perusal of the judgment of the first appellate Court, it is seen that it has not dealt with the said aspect.

35. In K.Srinivas v. K.Sunitha, reported in (2014) 16 SCC 34 : 2014 (8) Supreme 36, the Hon'ble Apex Court observed that either of the spouse filing false criminal case invariably and indubitably would constitute matrimonial cruelty entitling the other spouse to claim a divorce.

36. It is now well settled that making unfounded allegations against the other spouse, lodging false

complaint against the husband and his family members amounts to mental cruelty and can be a basis to seek decree of divorce. Dehors all other allegations made against the husband, the consequence of the wife filing a criminal complaint, which in all probability being false and concocted would definitely drive any normal person to uncompromising situation with his wife. Said act of the wife amounts to mental cruelty; there is no evidence to the effect that, the husband himself is guilty of any matrimonial offence, which necessitated the wife to lodge the complaint and subsequent to such lodging of complaint, there is no material from either side that said act of cruelty is condoned. In the case on hand, the appellant has proved that the respondent has, after the solemnization of the marriage, treated the appellant with cruelty under Section 13(1)(i-a) of the Act and that he is entitled for dissolution of marriage with the wife. Thus, the concurrent findings of the Courts below in rejecting the prayer of the appellant is liable to be set aside.

37. The trial Court held that the appellant had failed to prove by way of evidence to show that the act of the respondent caused cruelty to the appellant mentally and/or physically and therefore, appellant is not entitled for the relief of divorce. The said finding of the trial Court was challenged by the appellant by filing an appeal. As stated supra, on a perusal of the judgment of the first appellate Court, it has not dealt with the said issue in detail. However, it had rendered the judgment on the point that the present divorce proceedings initiated by the appellant was abuse of process of law. Further, the first appellate Court held that earlier the appellant had filed divorce petition in H.M.O.P.No.80 of 2002 and the same was dismissed for non-payment of interim maintenance. The first appellate further observed that once a petition was dismissed, again for the same reason and for the same section, the appellant is not entitled to file the present H.M.O.P.No.102 of 2010 under Section 13(1)(i-a) of the Act.

38. Admittedly, the earlier H.M.O.P.No.80 of 2002 filed by the appellant was dismissed for non-payment interim maintenance and not on contest. Further, the subsequent petition in H.M.O.P.No.127 of 2009 filed by the appellant has been not pressed by the appellant.

39. As stated supra, the earlier petitions filed by the appellant have not been decided on merits. It is settled that the decision not on merits, not attracts the subsequent proceedings. It is also settled that where there is no decision on merits, the contention of the

respondent that the principles of res judicata and/or principles akin to res judicata apply must be rejected. Nothing on record to show that there is a bar in filing the present petition for divorce by the appellant on the same ground.

40. It is pertinent to note that in paragraph-12 of the petition, the appellant has stated the cause of action for filing the petition. Paragraph 12 of the petition reads thus:

"12. The cause of action for this petition arose on 24.1.1999 when the marriage between the petitioner and the respondent was solemnized at Sri Ragavendra Kalyana Mandapam, Thennamara Street, Vellore. Subsequently, both of them lived as husband and wife at Kaniyambadi for two days and when the respondent lived with the petitioner in his house from 31.1.1999 to 7.2.1999 and when the respondent treated the petitioner in cruel manner and on 7.2.1999 when the respondent deserted the petitioner and when the respondent lead adultery life with her aunt's son and when the marriage took place in between the petitioner and the respondent at Vellore when the petitioner filed divorce case in H.M.O.P.No.80/2002 and it was dismissed for default due to the non-payment of maintenance arrears amount and subsequently the respondent had filed E.P. for collection of arrears amount and during the pendency of the E.P. the petitioner filed another divorce case in H.M.O.P.No.127/2009 and it was not pressed on 30.11.2009 and thereafter he had paid the entire arrears of maintenance amount ad E.P. was dismissed and thereafter also the petitioner tried his best to rejoin with the respondent and the respondent refused and filed a maintenance case all are at Vellore within the jurisdiction of this Hon'ble Court."

41. From the above, it is clear that subsequent to the filing of earlier two petitions, fresh cause of action arose, which necessitated the appellant in filing the present petition. Therefore, the present petition filed by the appellant for divorce is not the abuse of process of law. Further, this Court is of the view that the findings of the first appellate Court that the present divorce petition being H.M.O.P.No.102 of 2010 filed by the appellant is void abinitio is unsustainable.

42. At the repetition, it is reiterated that in the present case, there has been effective desertion on the part of the respondent-wife. It is the respondent-wife, who left the matrimonial home and for the past 20 years, there has been no attempt on her part of resuming cohabitation.

43. On a careful reading of the judgment of the trial Court, it is clear that the trial judge has given his own views. The Judges and lawyers, should not import their own notions of life and may not go in parallel with them. When we deal with the conduct of human beings, who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of.

44. Admittedly, both the parties have not pleaded scope for settlement between them. Since there was no possibility of reconciliation, an inference has to be drawn that the marriage between the appellant and the respondent has broken down irretrievably with a view to restore good relationship and to put a quietus to the litigation between the parties and not to leave any room for future litigation so that they may live peacefully thereafter.

45. In view of the above discussion, this Court is of the view that the Courts below erred in dismissing the petition for divorce filed by the appellant since the appellant and the respondent were living separately for long number of years.

46. Before parting with the order, let us consider the permanent alimony to be give by the appellant to the respondent. In Naveen Kohli v. Neelu Kohli, supra, while granting divorce to the appellant therein, the Hon'ble Supreme Court has considered permanent maintenance to be paid to the wife.

47. In the case on hand, admittedly, the appellant was working in Heavy Vehicles Factory, Avadi, Chennai and pay slip for the month of July, 2017 has been produced before this Court, where from it is seen that the gross pay is Rs.59,310/- and the net pay is Rs.49,420/-. Considering the avocation of the appellant, it would be appropriate to direct the appellant to pay the permanent alimony of Rs.5,00,000/- (Rupees Five Lakhs) to the respondent within a period of eight weeks from the date of receipt of a copy

of this order. It is also directed that golden ornaments, silver and other articles, belonging to the respondent, if any, lying with the appellant, the same shall be returned to her.

48.In the result:

(a) this Civil Miscellaneous Second Appeal is allowed by setting aside the Judgment and decree in HMCMA.No.6 of 2013 dated 15.02.2016 on the file of the learned Principal District Judge, Vellore, confirming the judgment and decree in HMOP.No.102 of 2010 dated 11.03.2013 on the file of the learned Sub Judge, Vellore;

(b) the HMOP.No.102 of 2010 filed by the appellant is allowed thereby dissolving the marriage between the appellant and the respondent solemnized on 24.01.1999 by a decree of divorce;

(c) the appellant is directed to pay a sum of Rs.5,00,000/- as permanent alimony to the respondent/wife within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Principal District Judge,
Vellore.

2.The Sub-Judge,
Vellore.

C.M.S.A.No. 22 of 2016

A.SK(01/05/2019)