

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-5254 of 2015
Date of decision:- 20.12.2021

Munish Bajaj

...Appellant

Vs.

Manisha Bhutani

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Jagmohan Singh Ghuman, Advocate
for the appellant-husband.

Mr. Saurabh Arora, Advocate
for the respondent-wife.

Ritu Bahri, J.

The appellant-husband has come up in appeal before this Court, seeking setting aside of judgment dated 04.05.2015 passed by District Judge Family Court, Gurgaon, whereby the petition filed by him under Section 13 (1) (ia) and (ib) of the Hindu Marriage Act, 1955 (for short 'Act 1955'), for dissolution of marriage between the parties by decree of divorce on the grounds of cruelty and desertion, has been dismissed.

Brief facts of the case are that the appellant was married to the respondent according to Hindu rites and ceremonies at Mehak Banquet Hall, New Colony, Gurgaon on 17.2.2001. It was an arranged marriage in which some dowry was given. After the marriage, the parties resided together as husband and wife at Gurgaon. No child was born from this wedlock. On the very first night of the marriage, the respondent told the appellant that she

was not happy with the marriage as it was solemnized by her parents against her wishes, but the appellant advised her to carry on the marriage as it had been solemnized. Since the respondent refused to live with his family at Nangal, the parties shifted to Ram Nagar, Gurgaon, to the house of the appellant's uncle. However, the respondent was impulsive and rude towards them, causing much embarrassment to him. When she conceived in August, 2001, she was unhappy and did not care for herself resulting in a miscarriage. Her parents were called to reason with her, but they started quarreling with the appellant and his family.

At that time, the appellant was working in the marketing department of his company and had to frequently travel throughout India. During this period, the respondent was very rude to him. She was also misbehaved with her school authorities and had even quarreled with her Director as she was then working for Delhi Public School and she had to leave the school. The appellant arranged for a job for her at SDAV Public School, Gurgaon hoping that things would improve. The misbehaviour of the respondent even extended to his friends as she had fought with his friend Dhawal Shukla and his wife Trusha Shukla on the occasion of Karvachauth in October 2001 when they were visiting the family house of appellant at Nangal. The appellant had to ask them to return in order to get the situation under control and this was insulting and embarrassing for him. The respondent would frequently leave the house without the knowledge of any family member and was under the influence of her brother in law Arvind. She conceived again in 2002 but on the intervening night of 17/18.8.2002, she tried to commit suicide by jumping from the second floor of the appellant's house at Ram Nagar where the marriage of a relative was

being celebrated. She was rushed to various hospitals and finally to Holy Family Hospital, as per the wishes of her family. She had to undergo three operations and all the expenses were borne by the appellant. He cared for her and tried to nurse her back to health. On being discharged she refused to live in the house of his uncle and, therefore, he rented a house in Shivpuri. He could not afford a long leave and as the respondent was refusing to be looked after by his mother or any other person, he got his younger brother Vivek to stay with them so that he could care for the respondent in the absence of the appellant. Her own family refused to care for her. She started fighting with Vivek and he had to leave their house whereafter a full time maid was engaged for her. Her family members got the engagement of Vivek broken by levelling false allegations. The appellant used to go to Chandigarh for official work and would visit Gurgaon every weekend. In November 2003, the respondent vacated the premises and took away all the belongings and shifted to another place without his knowledge. He tried to contact her, but she and her family were not ready to speak to him and threatened to falsely implicate him. Since then she has not rejoined his company intentionally and with the objective of breaking all ties with him. All efforts to reason with her had failed. Hence, petition the was filed by him for dissolution of marriage.

The respondent-wife contested the petition admitting the relationship between the parties but specifically denying each and every allegation levelled against her. She claimed that the appellant had levelled absolutely false and frivolous allegations against her as it was he who wanted to get rid of her. She further alleged that it was the appellant who did not want to live with her. All the allegations regarding her alleged

misbehaviour with his uncle's family or that she had quarrelsome nature were false. She had never used abusive language nor had she taunted him or his family. She had never deserted him. She had always been ready and willing to live with the appellant and it was he who was refusing to accept her back. She had never claimed that the marriage was solemnized against her wishes nor had she caused her miscarriages deliberately. She had to leave the D.P. School as she was transferred to Ferozepur Jhirka and she had no mode of conveyance. She never had any altercation with his friend or his wife. She had never been involved in any questionable relationship with her brother in law Arvind. Her parents had never threatened or misbehaved with the appellant or his family. She had never attempted suicide and on 17.8.2002 the appellant had mercilessly beaten her due to which she had become unconscious. She was taken to various hospitals but her family had never refused to look after her. Vivek was kept with her but he was unable to attend to her and, therefore, a maid named Kanta was engaged for her. She and her family were not responsible for the break up of Vivek's engagement. She had to vacate the rented house at Shivpuri because the landlord had asked her to vacate the house which he had subsequently sold. She was shifted to nearby house on the request of landlord as the later required premises for the wedding of his son. Since she was injured, she could not be in possession of any jewellery or valuables. She had endured cruelty, ill-treatment and insults at hands of the appellant and his family. She never deserted him and wanted to live with him. The appellant only wanted to insult her and had filed petition for this purpose only. She and her family had tried to settle the dispute with him but to no avail. She thus sought dismissal of the petition.

From the pleadings of the parties, following issues were framed on 04.09.2014:-

1. Whether petitioner entitled for decree divorce the grounds mentioned the petition?OPP
2. *Relief.*

In order to prove his case, the appellant-husband stepped into witness box as PW1 besides examining P.W.2-M.L. Bajaj and Ramesh Kumar Bajaj as P.W.3.

On the other hand, respondent herself appeared as R.W.1 besides examining Smt. Santosh Sharma as R.W.2, Somnath Arya as R.W.3, Ashok Kumar as R.W.4 and Kanhiya Lal Arya as R.W.5.

The Family Court below has returned a finding against the appellant-husband and decided issued No. 1 in favour of the respondent-wife. It was observed that as far as cruelty is concerned, it had been alleged that she had suffered miscarriage during her first pregnancy and on being asked about it, she had replied that she did not want to carry his child. This is a vague statement. So also the allegation that she was rude and harsh to the appellant and his family and did not do the house hold work. No specific instance nor any impact of such incidents has been disclosed from which this Court can infer that she was being cruel to the appellant as envisaged under section 13 of the Act. In the second pregnancy, she jumped from the second floor. This act was condoned by him in so far as he had started looking after her and lived together independently till their separation in November 2003. Thus, the alleged incidents of cruelty are not such which can reasonably be expected to cause any mental or physical trauma or pain to the appellant. It was held to be solitary episode in which the respondent jumped off in a probable state of mental trauma and frustration at the

altercation which the parties had just had. The incident occurred on the night of 17/18.08.2002 and the parties lived together till November, 2003. There were no further such episode or threats thereof. Thus, the ground of cruelty was not made out against the wife.

With respect to ground of desertion, the parties admitted that they lived together till November, 2003. The appellant was working in Chandigarh and used to visit Shivpuri over weekends. On fateful weekend, he found the premises vacated without any prior intimation to him. He also claims that she had taken away all the valuables. The respondent had explained that landlord had got her to vacate the premises as he required the same for his son's wedding and shifted with the help of landlord to nearby premises. Thus, the contention that she and her family refused to respond the overtures made by appellant to get her back, have not been substantiated. Though the appellant contends that he had made many efforts to fetch her back, but he had not led any evidence to prove any such efforts except his own self-serving statement, the appellant had assailed the testimony of four witnesses of the respondents RW2 to RW5 claiming that none of them were previous acquaintances of the appellant and the alleged efforts made by them were mostly after the institution of the instant petition.

The Family Court held that though some efforts were made on the part of the respondent to patch up the matter but there is no similar evidence on his part to show that he had made efforts in this direction. In these circumstances, the allegation of desertion is also not substantiated even though the parties are residing separately for more than a decade. During this period, the appellant had been visiting her and assuring her that he would take her back. Her version seems more plausible as there was no

reason for the appellant to remain silent for so long if the respondent had expressed complete disinterest in rejoining him.

Heard learned counsel for the parties at length.

The appellant filed the present appeal in the year 2015 and on 24.08.2015, this Court issued notice to the respondent and parties were directed to remain present in the Court on the date fixed. On 05.10.2015, the parties were directed to appear before the Mediation and Conciliation Centre of this Court on 15.10.2015. On 26.11.2015, this Court was informed that the mediation has failed between the parties. This Court then directed the parties to remain present in the Court on the next date of hearing. On 05.12.2015, the parties were again directed to appear before the Mediation and Conciliation Centre of this Court. On 07.12.2015, this Court was informed that the mediation has again failed between the parties. On 28.01.2016, the appeal was admitted.

Thereafter, C.M. No. 9821-CII-2016 was filed by the respondent for referring the matter to Mediation Centre of this Court, which was allowed and the matter was referred to Mediation Centre of this Court again. The parties were again directed to appear before the Mediation and Conciliation Centre of this Court on 18.05.2016. The application bearing C.M. No. 1896-CII-2017 was again filed by the respondent for fixing an early date of hearing as the respondent has a proposal to settle the entire matrimonial dispute and notice of this application was given to the appellant, returnable for 06.03.2017. Vide order dated 28.04.2017, the application i.e C.M. No. 1896-CII-2017 was disposed of and the main appeal was order to be listed on 21.08.2017 for final hearing. Again an application i.e C.M. No. 26666-CII-2017 was filed for fixing the actual

date of hearing and notice was issued of this application, returnable for 25.01.2018. On 25.01.2018, the application i.e C.M. No. 26666-CII-2017 was disposed of and the main appeal was order to be listed on 14.05.2018 for final hearing. On 12.07.2018, this Court again observed that no amicable settlement could be arrived at between the parties. On 24.07.2018, the parties were again directed to appear before this Court on 28.08.2018. On 21.09.2018, this Court observed that chances of amicable settlement are remote and the case was adjourned for 22.11.2018 for final disposal. Again an application bearing C.M. No. 697-CII-2021 was filed for early hearing of the main appeal in which notice was issued to the appellant, returnable for 26.03.2021. The application was disposed of on 26.03.2021 and the appeal was ordered to be listed in the month of July, 2021. Another application bearing C.M. No. 4656-CII-2021 was filed for early hearing of the main appeal and the same was disposed of on 14.07.2021 and the appeal was ordered to be listed on 28 July, 2021. Mr. Swaran Sandhir, Advocate was appointed as Mediator in the case. However, on 28.07.2021, it was informed that the mediation has again failed between the parties. The appeal was ordered to be listed on 15.09.2021.

On 16.09.2021, this Court passed the following order:-

“The parties are staying separately for the last 18 years. Respondent-wife is handicapped and is working as a permanent lecturer. In this case, mediation has taken place 5/6 times and has failed.

Adjourned to 11.10.2021 to enable learned counsel for the parties to assist, as to how relation between the parties can be revived.

On 11.10.2021, the appellant-husband has made an offer of

Rs.7,50,000/- towards permanent alimony. The respondent was given time

to apply her mind to the said offer especially keeping in view the fact that she and her husband are staying separately for the last about 18 years.

Finally the case was heard and reserved on 12.10.2021, as the respondent was not ready to settle the dispute.

In the present case, it is not the case of the respondent-wife that she is not financially secure as she is working as permanent lecturer. The parties are staying separately for the last about 18 years and this Court made several attempts to settle the dispute amicably but in vain. Living together is not a compulsory exercise. But marriage is a tie between two parties. The Court below did not find adequate material to come to the conclusion that the appellant was entitled to divorce on the grounds of cruelty. The marriage never took off from the first day. All mediation efforts have failed. Now, the marriage cannot be revived after 18 years of separation. The respondent is insisting to stay with the appellant but the appellant was not ready to take her back. The respondent is a secured women but still she is not ready to settle the dispute amicably. She does not want to move ahead and she is adamant that even appellant should not move ahead in his life.

The issue for consideration in the present appeal would be whether the relationship of the husband and wife has come to an end and if the respondent-wife is not ready to give mutual divorce to the appellant-husband, whether this act of her, would amount to cruelty towards husband, keeping in view the fact that she is not staying with her husband for the last 18 years and there is no scope that they can cohabit as husband and wife again.

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Chandra Kala Trivedi vs. Dr. S.P.***

Trivedi, 1993 (4) SCC 232 wherein Hon'ble the Supreme Court was considering a case where marriage was irretrievably broken down and held that in these case, the decree of divorce can be granted where both the parties have levelled such allegations against each other that the marriage appears to be practically dead and the parties cannot live together.

Reference at this stage can be made to a judgment of three Judge Bench of Hon'ble the Supreme Court of India in case of **A Jayachandra vs. Aneel Kaur, 2005 (2) SCC 22** wherein Hon'ble the Supreme Court was having an occasion to consider the case of divorce on the basis of cruelty including mental cruelty. While examining the pleadings and evidence brought on record, the Court emphasized that the allegation of cruelty is of such nature in which resumption of marriage is not possible, however, referring various decisions, the Court observed that irretrievable breaking down of marriage is not one of statutory grounds on which Court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in longdrawn legal battle, directed in those cases dissolution of marriage. In para 17, it has been observed as under:-

17. Several decisions, as noted above, were cited by learned counsel for the respondent to contend that even if marriage has broken down irretrievably decree of divorce cannot be passed. In all these cases it has been categorically held that in extreme cases the court can direct dissolution of marriage on the ground that the marriage had broken down irretrievably as is clear from para 9 of Shyam Sunder case. The factual position in each of the other cases is also distinguishable. It was held that long absence of physical company cannot be a ground for divorce if the same was on account of the husband's conduct. In Shyam Sunder case it was noted that the husband was leading

adulterous life and he cannot take advantage of his wife shunning his company. Though the High Court held by the impugned judgment that the said case was similar, it unfortunately failed to notice the relevant factual difference in the two cases. It is true that irretrievable breaking of marriage is not one of the statutory grounds on which court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in long- drawn legal battle, directed in those cases dissolution of marriage. But as noted in the said cases themselves, those were exceptional cases.

Hon'ble the Supreme Court in a case of **Naveen Kohli vs. Neetu Kohli**, 2006 (4) SCC 558 was considering a case of irretrievable break down of marriage. In this case, wife living separately for long but did not want divorce by mutual consent only to make life of her husband miserable. Thus, the decree of divorce was granted and held it is a cruel treatment and showed that the marriage had broken irretrievably. In para 62, 67, 68 and 69, it has been observed as under:-

“62. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

xxx

xxx

xxx

67. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant

case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

68. *In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the Trial Court. In our opinion, wisdom lies in accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties.*

69. *Consequently, we set aside the impugned judgment of the High Court and direct that the marriage between the parties should be dissolved according to the provisions of the [Hindu Marriage Act, 1955](#). In the extra-ordinary facts and circumstances of the case, to resolve the problem in the interest of all concerned, while dissolving the marriage between the parties, we direct the appellant to pay Rs.25,00,000/- (Rupees Twenty five lacs) to the respondent towards permanent maintenance to be paid within eight weeks. This amount would include Rs.5,00,000/- (Rupees five lacs with interest) deposited by the appellant on the direction of the Trial Court. The respondent would be at liberty to withdraw this amount with interest. Therefore, now the appellant would pay only Rs.20,00,000/- (Rupees Twenty lacs) to the respondent within the stipulated period. In case the appellant fails to pay the amount as indicated above within the stipulated period, the direction given by us would be of no avail and the appeal shall stand dismissed. In awarding permanent maintenance we have taken into consideration the financial standing of the appellant.*

In the present case, the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. Further, not to grant decree of divorce would be disastrous for the parties.

The three Judges' Bench of Hon'ble the Supreme Court in a case of ***Samar Ghosh vs. Jaya Ghosh, 2007 (4) SCC 511*** passed the decree on the ground of mental cruelty but the concept of irretrievable breakdown

of marriage has been discussed in detail referring the 71st report of the Law Commission of India

Hon'ble the Supreme Court in a case of ***K. Srinivas Rao vs. D.A. Deepa, 2013 (5) SCC 266*** has observed that though irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, however, marriage which is dead for all purposes, cannot be revived by Court's verdict, if parties are not willing since marriage involves human sentiments and emotions and if they have dried up, there is hardly any chance of their springing back to life on account of artificial reunion created by court decree.

In the present case, the appellant and the respondent are living separately since November, 2003. This Court thereafter made several attempts to settle the dispute amicably between the parties. The appellant-husband has also made an offer of Rs.7.50 lacs to the respondent, if the parties get mutual divorce through mutual consent. However, on 12.10.2021, the Court was informed that the respondent-wife is not ready to give mutual divorce to the appellant-husband. The respondent-wife who is a permanent lecturer, could use the above money to secure her future.

Now, once the respondent-wife who is not staying with the appellant for the last about 18 years and is not ready to give mutual divorce to the appellant-husband, reference at this stage can be made ***Naveen Kohli's case (supra)***, which was a case of cruelty (physical and mental) where Hon'ble the Supreme Court considered the concept of irretrievable breakdown of marriage. In this case as well, the parties were living separately for the last 10 years and the wife was not ready to give divorce to the husband. Hon'ble the Supreme Court granted decree of divorce but

directed the husband to pay a sum of Rs.25 lacs towards permanent maintenance. In para 58, it has been observed as under:-

“58. The High Court ought to have considered the repercussions, consequences, impact and ramifications of all the criminal and other proceedings initiated by the parties against each other in proper perspective. For illustration, the High Court has mentioned that so far as the publication of the news item is concerned, the status of husband in a registered company was only that of an employee and if any news item is published, in such a situation, it could not, by any stretch of imagination be taken to have lowered the prestige of the husband. In the next para 69 of the judgment that in one of the news item what has been indicated was that in the company, Nikhil Rubber (P) Ltd., the appellant was only a Director along with Mrs. Neelu Kohli whom held 94.5% share of Rs.100/- each in the company. The news item further indicated that Naveen Kohli was acting against the spirit of the Article of the Association of Nikhil Rubber (P) Ltd., had caused immense loss of business and goodwill. He has stealthily removed produce of the company, besides diverted orders of foreign buyers to his proprietorship firm M/s Navneet Elastomers. He had opened bank account with forged signatures of Mrs. Neelu Kohli and fabricated resolution of the Board of Directors of the company. Statutory authority-[Companies Act](#) had refused to register documents filed by Mr. Naveen Kolhi and had issued show cause notice. All business associates were cautioned to avoid dealing with him alone. Neither the company nor Mrs. Neelu Kohli shall be liable for the acts of Mr. Naveen Kohli. Despite the aforementioned finding that the news item was intended to caution business associates to avoid dealing with the appellant then to come to this finding in the next para that it will by no stretch of imagination result in mental cruelty is wholly untenable.

In the present case, firstly efforts were made to resolve the

matrimonial dispute through the process of mediation, which is one of the effective mode of alternative mechanism in resolving the personal dispute but the mediation failed between the parties.

Applying the ratio of the above mentioned judgments to the facts of the present case and keeping in view the extra-ordinary facts and circumstances of the case, the appeal is allowed and judgment dated 04.05.2015 passed by District Judge Family Court, Gurgaon is set aside and the decree of divorce is granted to the parties. Decree-sheet be prepared accordingly. However, we direct the appellant-husband to make an F.D of Rs.10 lacs in the name of the respondent-wife.

(RITU BAHRI)
JUDGE

20.12.2021
G Arora

(ARCHANA PURI)
JUDGE

***Whether speaking/reasoned* : Yes/No**
Whether reportable : Yes/No