

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**

FAMILY COURT APPEAL Nos.140 of 2009 & 141 of 2009

COMMON JUDGMENT: (Per Hon'ble Smt. Justice Juvvadi Sridevi)

Since the facts of the case, issue involved and the parties to the litigation are one and the same in both these appeals, both these appeals are taken up together and are being disposed of by this common judgment.

2. FCA Nos.140 and 141 of 2009, under Section 19 of the Family Courts Act, 1984, are filed by the appellant/husband-Brihaspati Sharma, challenging the order, dated 31.03.2009, passed in FCOP No.1010 of 2006, by the Judge, Family Court, Hyderabad, whereby, the Court below, while dismissing the petition filed by the appellant/husband under Sections 13(1)(ia) and 26 of the Hindu Marriage Act, 1955, seeking divorce against the respondent/wife-Smt.Rajlakshmi on the ground of 'cruelty', allowed the counter claim of the respondent/wife for restitution of conjugal rights, directing the appellant/husband to take back his wife and children within a month to live together and lead marital life with his wife.

3. We have heard the submissions of Sri K.K.Waghray, learned counsel for the appellant/husband in both these appeals, Sri P.Ravi Kiran, learned counsel for the respondent/wife in both these appeals and perused the record. For clarity, the parties will be hereinafter referred to, as per their array before the Court below.

4. Learned counsel for the appellant/husband would contend that though there is overwhelming evidence on record to substantiate that the petitioner was subjected to cruelty by the respondent, the Court below erroneously declined to grant divorce to the petitioner. Further, the Court below granted the relief of restitution of conjugal rights to the respondent on unjustified grounds, without valid and proper reasons, which resulted in miscarriage of justice. The respondent is non-cooperative, adamant and has nagging attitude. She tortured and humiliated the petitioner and caused severe mental agony to him. There is no mental compatibility between the petitioner and respondent. There is no possibility of reconciliation and reunion between the petitioner and respondent. The marriage between them has irretrievably broken down. The order under challenge is contrary to law, evidence on record and pleadings. The Court below reached to an erroneous conclusion, based on assumptions and presumptions. Since the petitioner had proved the cruelty meted

out to him by leading cogent and convincing evidence, the Court below ought to have granted decree of divorce dissolving the marriage between the petitioner and respondent and ought to have rejected the counter claim of the respondent for restitution of conjugal rights and ultimately prayed to set aside the order under challenge and allow the appeals as prayed for.

5. On the other hand, the learned counsel for the respondent/wife would contend that there is no iota of truth in the allegations levelled against the respondent by the petitioner. There is no cruelty meted out to the petitioner at the hands of the respondent, as alleged. In fact, it is the petitioner who has treated the respondent with cruelty. In spite of the same, the respondent, respecting the matrimonial tie, expressed her willingness to join the petitioner and claimed restitution of conjugal rights. There is unimpeachable evidence of RW.1 to RW.4 which establishes the cruelty meted out to the respondent at the hands of petitioner. The petitioner, with a *mala fide* intention to get rid of the respondent and evade the responsibility of the children, necked them out of his house and filed the subject divorce petition on flimsy grounds. The Court below, after analyzing the entire evidence available on record in correct perspective, rightly dismissed the petition for dissolution of marriage and rightly

allowed the counter claim of the respondent directing the petitioner to take back the respondent and live together and lead marital life. The grounds raised by the petitioner in both these appeals are untenable. There are no circumstances to interfere with the impugned order and ultimately prayed to dismiss the appeal.

6. I have considered the above rival contentions. The point that arises for determination in this appeal is as follows:

“Whether the order, dated 31.03.2009, passed in FCOP No.1010 of 2006, by the Judge, Family Court, Hyderabad, dismissing the OP filed by the petitioner to grant a decree of divorce and allowing the counter-claim filed by the respondent granting restitution of conjugal rights, is legally sustainable?”

POINT:-

7. The factual matrix of the case is that the marriage between the petitioner and respondent was solemnized on 11.05.1984. Immediately thereafter, disputes cropped up between the couple, which led the petitioner to initially file O.P.No.437 of 1985 seeking divorce on the ground of cruelty. However, reconciliation took place and the couple started living together. During their wedlock, the couple were blessed with two daughters and one son (RW.2 to

RW.4). At the relevant point of time, the petitioner was working in Punjab National Bank, Zonal Office, Saifabad, Hyderabad, and the respondent was working as a Teacher in Westside Grammar School, Hyderabad. While so, the petitioner filed the subject O.P.No.1010 of 2006 before the Court below seeking a decree of divorce dissolving the marriage between him and the respondent and custody of children, contending as follows:

“There are serious disputes between the petitioner and respondent. The respondent made the petitioner to live separately from his elderly parents. Though the petitioner, with his earnings, provided education to the respondent up to post-graduation, the respondent subjected him to torture, both physically and mentally. She did not respond to the basic needs of the petitioner, such as providing food, talking freely and also fulfilling conjugal rights. The respondent used to humiliate the petitioner and threaten him. The petitioner tolerated the mental torture of the respondent for the welfare of the children. The respondent tutored the children against the petitioner due to which, the children were distanced from him. The respondent used to go to her parents house several times in a month, without notice of the petitioner. The respondent used to criticize the petitioner for attending seminars and conferences. The father of the petitioner passed away on 29.03.2000. Taking advantage of the tragic situation, the respondent refused to stay at the matrimonial home even for the funeral of his father. Her attitude became aggravated and she lodged a complaint with Darga Police Station on 04.04.2006, but however, the police chided the respondent. Without any reason, the respondent left the company of the petitioner along with the children and started living at her parents' house. The petitioner tried to reconcile the matter and bring back the respondent and children, but in vain. The respondent even went to the extent of engaging goondas to set the motorcycle of the petitioner on fire at his residence at Manikonda for which, the petitioner lodged a complaint with Darga Police Station. During the 23

years of their marriage, the petitioner suffered enormous atrocities and mental agony meted out by the respondent, which had great impact on his official duties as well as health. The petitioner has great love and affection towards his children. The respondent developed attachment towards her parents and deprived the petitioner even for his biological needs. The petitioner, instead of making the situation still worse, has taken a decision to put an end to the marital tie. Since the petitioner is very much attached to his children, he is seeking custody of the children.”

8. The respondent filed counter denying the petition averments, along with counter-claim for restitution of conjugal rights, contending as follows:-

“The petition is filed with a *mala fide* intention to get rid of the respondent and to evade the responsibility of the children. The petitioner is in the habit of assaulting the respondent and ill-treat the children. The respondent was always cooperative with the petitioner. The respondent did her M.A. (English) and also took Hindi Pandit Training. The petitioner tried his level best to destroy the education of the respondent. From 20.04.2006, the petitioner did not even enquire about the welfare of the respondent and the children. From March, 2007, the petitioner sent Rs.3000/- per month to the respondent, that too only for four months. The petitioner is working in a nationalised bank and drawing Rs.37,000/- per month and he is having huge immovable properties at Hyderabad. Though the respondent and children have made their best efforts to join the petitioner, the petitioner did not allow them to join him. The petitioner never showed interest to live with the respondent. After coming to know about the death of the father of the petitioner, the respondent immediately rushed to the hospital. The petitioner misbehaved with the respondent at Begumbazar House. When the respondent questioned his misbehaviour, he became wild and abused the respondent in filthy language and asked her and the children to go out of the house. On 04.04.2006, the petitioner asked the respondent and the children not

to attend the ceremonies. The children are the eye witnesses to the cruel acts of the petitioner. On 20.04.2006, the petitioner necked out the respondent from her matrimonial home. The respondent is ready to join the petitioner to resume the conjugal relationship."

9. The petitioner filed counter to the counter-claim of the respondent, contending as follows:

"Arrogance is the prime attitude of the respondent. The respondent failed to respect the petitioner and also to their marital life. The petitioner was harassed by the respondent, by using the words which cannot be explained or put-forth before the Court. The petitioner tolerated all the ill-treatment for the sake of children. Denying the petitioner his rights as a husband on one hand and asking for restitution of conjugal rights on the other hand is a clear paradox. The respondent left the house of the petitioner without any reason on 04.04.2006. It is the respondent who is disturbing the peaceful atmosphere in their family. Seeking restitution of conjugal rights is only to harass the petitioner."

10. Basing on the above averments, the Court below framed the following the following points for consideration:

1. *Whether the petitioner/husband is entitled to the decree of divorce and custody of the children?*
2. *Whether the respondent/wife is entitled for restitution of conjugal rights?*

11. The Court below, after analysing the evidence on record, dismissed the petition filed by the petitioner seeking dissolution of marriage and allowed the counter-claim of the respondent, directing the petitioner to take back his wife and live together

and lead marital life with his wife. Aggrieved by the same, the petitioner filed both these appeals.

12. Before proceeding further, it is apt to state that the petitioner filed the subject OP before the Court below under Section 13(1)(ia) of the Hindu Marriage Act, seeking a decree of divorce on the ground of cruelty. Section 13(1)(ia) of the Hindu Marriage Act reads as follows:

13(1) – Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the petitioner or the respondent, be dissolved by a decree of divorce on the ground that the other party —

(i) xxx

(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or

(ib) xxx

(ii) xxx

(iii) xxx

13. The expression "cruelty" has not been defined in the Hindu Marriage Act. Cruelty, which is a ground for dissolution of marriage, may be defined as wilful and unjustifiable conduct of a spouse 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 to the other spouse. It is a course of conduct of a spouse, which adversely affects the other spouse. Cruelty may be physical or mental, 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 its impact 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. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept of proof beyond all reasonable doubt is applicable to criminal trials, but certainly not to the matters relating to delicate personal relationship as those of husband and wife. In a case of physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty, there may not be direct evidence.

14. 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 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 Hindu Marriage 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.

15. In Savitri Pandey Vs. Prem Chandra Pandey¹, the Hon'ble Apex Court held as follows:

"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 his or her mind that it would be harmful or injurious for the petitioner 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 petitioner 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."

¹ (2002) 2 SCC 73

16. In Vinita Saxena Vs. Pankaj Pandit², the Hon'ble Apex

Court held as follows:

"As to what constitutes the required mental cruelty for the purposes of the said provision, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home. If the taunts, complaints and reproaches are of ordinary nature only, the court perhaps need consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer."

17. In a recent judgment in Joydeep Majumdar Vs. Bharti

Jaiswal Majumdar³, the Hon'ble Apex Court held as follows:

"For considering dissolution of marriage at the instance of a spouse who allege mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. The degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party.

18. Keeping the above settled principles in mind, we would now venture to discuss the evidence on record. On behalf of the petitioner, the petitioner himself was examined as PW.1, apart from examining PW.2 and PW.3 and Exs.P1 to P4 were marked.

² (2006) 3 SCC 778

³ 2021 SCC Online SC 146

On behalf of the respondent, the respondent herself was examined as RW.1, apart from RW.2 to RW.4.

19. PW.1 is the petitioner/husband. In the affidavit filed in lieu of his examination-in-chief, he reiterated the petition averments. He further stated that the respondent has a nagging attitude in day-to-day life; Though the petitioner was supportive to the respondent in becoming self sufficient, the respondent further developed negative and egoistic attitude towards him; The respondent concentrated on her paternal home by visiting there frequently, without the knowledge and concurrence of the petitioner; When the father of the petitioner expired, the respondent neither did any notable help nor served the elder family members and left the house on 04.04.2006 after quarrelling and abusing his mother, sisters, brother and his wife, apart from other relatives. The respondent took away the children, articles, clothing and jewellery while leaving the house; Even she did not even allow the children to stay at his father's residence, even on the day of death of his father; The respondent lodged a report with the police on 04.04.2006 against the petitioner with false allegations; The petitioner suffered a lot of harassment and mental torture in the hands of the respondent; Though the petitioner contacted her and the children to come back, the respondent did

not heed to the said request; The respondent got burnt the vehicle of the petitioner on 08.05.2006 with the help of goondas; The petitioner suffered harassment, agony, abuses, torture, threats and assaults at the hands of the respondent; The respondent filed the counter-claim with vague allegations and concocted stories.

20. PW.1 was cross examined at length, wherein, he stated that since 04.04.2006, he and the respondent are living separately and since then, his children are also living with the respondent. He further admitted that he has not written any letter/sent legal notice asking his wife (respondent) to join him. He also admitted that the distance between his present residence and the respondent's residence is 3 to 4 kilometres. He admitted that he has no document to substantiate that he concentrated on the health of the respondent. He further stated that he is not prepared to allow the respondent to join him, but he is ready to accept the children.

21. PW.2-Homnidhi Sharma is the younger brother of the petitioner. He stated in his evidence that the respondent has an adamant attitude. On several occasions, she left the house to go to her parents' house and created unnecessary scenes. His brother was forced by the respondent to set up a separate family.

Since last two decades, there is no notable change in the attitude and behaviour of the respondent. He believes that the respondent, under the advice of her parents and brothers, tortures, abuses and disobeys his brother (petitioner). PW.2 also spoke about the respondent leaving the home at Begumbazar on the day of death of his father. He further deposed that though he tried to convince her to join the petitioner, she did not oblige the same. PW.2 was cross-examined, wherein, he reiterated what he deposed in his examination-in-chief.

22. PW.3-Amadullah Shareef deposed that he knows the petitioner and he has acquaintance with him for the last 20 years. He deposed that the petitioner is a perfect husband, doting father and a sincere friend. He deposed that he was surprised to hear hypothetical allegations made by the respondent against the petitioner. The respondent was aggressive and outrageous. She was not taking proper care of the petitioner, which an ordinary wife has to perform and exhibit. This witness also spoke about the respondent leaving the home at Begumbazar on the day of death of his father. PW.3 further deposed that the overall expressions, allegations, behaviour and inhuman actions of the respondent towards the petitioner are condemnable. PW.3 was cross-examined, wherein, he stated that he made several attempts

personally to reconcile the petitioner and respondent many times, but he failed.

23. RW.1 is the respondent/wife. In the affidavit filed in lieu of her examination-in-chief, she stated that the petitioner wanted to get rid of her by filing the petition for divorce with false and baseless allegations. The behaviour of the petitioner is destroying the growth of the children and he totally neglected their welfare. She has been satisfying the life standards of an ordinary woman. On 20.04.2006, she and her children were necked out by the petitioner from his house and thereafter, the petitioner never bothered to see the children. Though she made attempts to see the petitioner, it did not work out as the petitioner was determined not to see her. She attended all ceremonies in connection with death of her father-in-law, but however, the petitioner threatened her and her children. She informed the behaviour and threats of the petitioner to the police, but there was no criminal case registered against him. All the allegations made by the petitioner are concocted and fabricated. The petitioner filed a petition on 06.06.2007 praying the Court to grant interim custody of the male child. When the respondent expressed her consent to grant visitation rights to the petitioner, there was no positive response from him. The respondent's daughter Sangya Sharma filed a

petition claiming marriage expenses, but the petitioner did not come forward with a reasonable offer.

24. RW.1 was cross-examined at length, wherein, she stated that since beginning, the petitioner was not shouldering the responsibility of herself and the children. She is not prepared to give divorce to the petitioner. She used to visit her parents house now and then, occasionally along with the petitioner also. When the petitioner asked interim custody of the male child, she filed a case denying the same and she put a condition that the petitioner should take all the children, along with her. RW.1 categorically denied the suggestion that she was adamant in day-to-day life. She also denied the suggestion that she was going to her father's house three to four times in a month without consent, permission or knowledge of the petitioner. She also denied the suggestion that she has taken all her belongings such as utensils, clothing, books, jewellery along with her while leaving the place. She also denied the suggestion that she deserted the petitioner. When it was specifically suggested to RW.1 that the petitioner does not want to continue with her, she categorically stated that "I like to continue".

25. RW.2-Sangya Sharma is the daughter of the petitioner. She deposed in her evidence that she witnessed her father's ill-treatment, humiliation, torture towards RW.1. She further deposed that after the death of her paternal grandfather, they all went to participate in poojas celebrated consequent to the death. Her father created unhealthy atmosphere and necked them out from the house, in the presence of so many people. Thereafter, she, her younger sister, younger brother accompanied by her mother, reached their home situated at Manikonda. On 20.04.2006, her father (petitioner) necked out all of them from their house. After 20.04.2006, her father did not even bother to take care for her, her younger sister and younger brother. Though she went to see her father to his house, she was not allowed to enter into the house. She filed O.P.No.1098 of 2007 claiming marriage expenditure. Her father refused to pay money and filed I.A.No.517 of 2008 in the said OP praying the Court to dismiss the OP. She further deposed that her younger sister and younger brother are not prepared to go to her father's house, until her father invites her mother into his company. RW.2 was cross examined at length, wherein she had categorically denied the suggestion that her mother denied to discharge her obligations during the mourning period of death of her paternal grandfather.

26. RW.3-Miss Sanhita Sharma, is the younger daughter of the petitioner. She deposed in her evidence that she witnessed her father harassing, humiliating and insulting her mother (respondent) several times. She further deposed that her father did not take any care for them after separation. She is not prepared to join her father until her mother is invited into his house. RW.3 was cross-examined, wherein, she stated that her mother is willing to live with her father like other spouses/families, if her father invites her mother. She categorically denied the suggestion that her father never harassed, humiliated or insulted her mother.

27. RW.4-Panini Sharma is the son of the petitioner. He also deposed that he is the witness of harassment, humiliation, physical assaults on her mother by his father and his father used to abuse him and his two sisters and that he is ready to join his father, if he takes him, his sisters and his mother into the house. He also deposed that his father totally neglected the welfare and wellbeing of all of them. In his cross-examination, RW.4 reiterated that he is willing to join his father, if his father is ready to take his mother and sisters also.

28. The petitioner alleged that the respondent used to go to her parents house several times in a month, without the knowledge and concurrence of the petitioner. The act of the respondent in visiting her parent's house, in any case, even without the permission of the petitioner, does not amount to cruelty. The petitioner further alleged that the respondent has nagging attitude and that she did not do any notable help when the petitioner's father expired and that she abused him and his family members and that he suffered a lot of harassment and mental torture in the hands of the respondent. These general allegations of the petitioner cannot be treated as a gospel truth, without any cogent evidence on record. Though the petitioner contended that the respondent got his vehicle burnt with the help of goondas upon which, he lodged a complaint with the police concerned, nothing is placed on record to substantiate the same.

29. In **Samar Ghosh Vs. Jaya Ghosh**⁴, the Hon'ble Apex Court summed up the concept of 'mental cruelty' by holding that no uniform criteria can be laid down for guidance, but still the instances were enumerated for its application. The Hon'ble Supreme Court observed that the married life should be reviewed as a whole and a few isolated instances over a period of years will

⁴ (2007) 4 SCC 511

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, wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty. In the instant case, having regard to the totality of the facts and circumstances of the case, we are of the view that general allegations and bald statements are not sufficient to prove cruelty.

30. Further, the evidence of PW.2 and PW.3 is not helpful to the petitioner. PW.2 is the brother of the petitioner. PW.2 nowhere stated in his evidence that he visited the house of the petitioner and respondent while they were living together. Therefore, naturally he would not know what actually transpired between the petitioner and respondent while they were living together. Therefore, the evidence of PW.2 appears to be exaggerative and only intended to help the petitioner, who is none other than his brother. PW.3, in his cross-examination, stated that he made several attempts personally to reconcile the petitioner and respondent many times, but he failed. On the other hand, the children are the direct witnesses to the acts that took place between the petitioner and respondent, since they were living with them at the relevant point of time. RW.2 to RW.4 categorically

stated in their evidence that they witnessed her father (petitioner) harassing, humiliating and insulting their mother (respondent) several times. RW.2 further stated that though she filed O.P.No.1098 of 2007 against her father claiming marriage expenditure, her father refused to pay money and filed I.A.No.517 of 2008 in the said OP praying the Court to dismiss the OP. RW.4 deposed in his evidence that he is the witness of physical assault on her mother by his father and that his father totally neglected the welfare and wellbeing of all of them. However, RW.2 to RW.4 have stated in their evidence that they are ready to join the petitioner, if the petitioner is ready to take them along with their mother. The Court below recorded a finding that the evidence of RWs.1 to 4 is self-sufficient to dismiss the petition for divorce and also to grant the relief of restitution of conjugal rights as prayed for by the respondent.

31. Further, the petitioner admitted in his cross-examination that the distance between his residence and the residence of the respondents is 3 to 4 Kilometres. However, the petitioner did not care to go to the house of the respondent, even to see his children. If really the petitioner has got love and affection towards his children as contended by him in the subject OP, he would have visited them once in a while and would have taken care of their

educational and day-to-day expenses. He did not do so. RW.2 and RW.3 are of marriageable age. He simply sent Rs.3,000/- per month towards maintenance for all of them, that too only for three months. It is the duty of every husband to look after the welfare and wellbeing of his wife and children and he cannot shirk from his responsibility. The conduct of the petitioner goes to show that he was not inclined to meet either the educational expenses or the day-to-day expenses of his children. The petitioner, being educated and in respectable employment and getting considerable amount towards salary, ought to have taken back the respondent, even for the sake of his unmarried daughters and son, who have become majors. Under these circumstances, the contention of the petitioner that he made several efforts through his family members for reconciliation and get back his wife and children appears to be just for the sake of argument, but not an act in deed. Nothing is placed on record to substantiate the said contention. Further, though the respondent is not intending to put an end to the marital tie between herself and the petitioner and wants to join the petitioner, the petitioner is not willing to take her back, but expressed his desire only to take back the children. This, in fact, would amount to cruelty on the part of the petitioner towards the respondent. Further, the petitioner, in his cross-

examination, stated that the respondent used to refuse sex always and permit cohabitation rarely, prior to separation. This statement of the petitioner appears to be incorrect, in view of birth of the three children during their wedlock, who have become majors. Further, it was elicited from the cross examination of RW.1 that she was residing at her parents' house during the pendency of O.P.No.437 of 1985, as the petitioner was working at Bangalore at that time.

32. Applying the touch stone of preponderance of probabilities to the totality of the circumstances of this case, we are constrained to observe that the respondent was denied even the love and affection, which a wife would like to share with her husband. However, no reliance can be placed on the flimsy evidence of the petitioner, who may well be actuated by a strong motive in levelling false and exaggerated imputations against the respondent, in order to get rid of her and evade the responsibility of the children. The conduct of the petitioner himself leads to the conclusion that he was cruel towards the respondent. As held by the Hon'ble Apex Court in **Samar Ghosh's** case (4 supra), 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 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. 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. 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. In the instant case, the petitioner failed to prove cruelty from any act or conduct or behaviour of the respondent, by leading any evidence, much less cogent and convincing evidence.

33. As a last resort, learned counsel for the petitioner requested this Court to grant a decree of divorce on the ground that marriage between the petitioner and the respondent has broken down irretrievably. It is settled law that irretrievable breakdown of marriage by itself is not a ground for divorce under the Hindu Marriage Act. The children of the parties to the litigation have grown up to marriageable age. There is no contribution of the petitioner for their growth and development. The petitioner is irresponsible. He did not discharge his obligation towards his children. He utterly failed to honour the marriage in between him

and the respondent. He is not allowed to take advantage of his grave laches and misconduct. It is also not proper to slap the respondent with a decree of divorce for her no fault or laches. It is the duty of the petitioner to cooperate with the respondent and children and see that marriage of the children is performed in a respectable family. A decree of divorce between the petitioner and the respondent would also cast a stigma on the children in the society. In the facts and circumstances of the case, the request of the petitioner cannot be acceded to. So, this plea of the learned counsel for the petitioner is unsustainable and accordingly, rejected.

34. As regards the restitution of conjugal rights claimed by the respondent, the Court below, after analysing the entire evidence on record in right perspective, held that in view of the evidence of RWs.1 to 4, particularly RW.1, when the respondent does not want to put an end of the marital tie permanently and when she wants to join the petitioner along with their children, it is not proper to refuse relief of restitution of conjugal rights. We are in agreement with the said finding recorded by the Court below.

35. For the foregoing discussion, we do not find any illegality, irregularity or impropriety in the order under challenge in both

these appeals. Both the appeals are devoid of merit and are liable to be dismissed.

36. Accordingly, both the appeals are dismissed, confirming the order, dated 31.03.2009, passed in FCOP No.1010 of 2006, by the Judge, Family Court, Hyderabad.

Miscellaneous petitions, if any, pending in both these appeals, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

JUVVADI SRIDEVI, J

23rd September, 2022

KSK / BVV