

THE HON'BLE JUSTICE G. SRI DEVI
AND
THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI
F.C.A.Nos.22 and 33 of 2015

COMMON JUDGMENT: *(per Justice G. Sri Devi)*

1) Since both the appeals are filed against the common order dated 26.09.2014 passed in O.P.Nos.766 of 2001 and O.P.No.274 of 2003 on the file of the Judge, Additional Family Court, Hyderabad, they are being disposed of by this common judgment. By the impugned common order, the learned trial Judge while dismissing the O.P. filed by the husband, appellant herein, seeking divorce, allowed the O.P. filed by the wife, respondent herein for restitution of conjugal rights. The relief of custody of children became infructuous on account of their becoming majors as on the date of the judgments in the O.Ps.

2) The appellant herein is the husband and the respondent herein is the wife. For the sake of convenience, the parties will hereinafter be referred to as the husband and wife.

3) The facts, in brief, which led to filing of the present appeals are as under:-

4) Both the husband and the wife are from socially affluent families and are highly educated. While the husband's family is a reputed business family, the wife's family has different professionals ranging from doctors, academicians and a judge. The husband filed O.P.No.766 of 2001 under Section 13 (1) (i)(a) and 13 (1) (iii) (a) and (b) of the Hindu Marriage Act, seeking dissolution of marriage and for custody of two minor sons. The wife filed O.P.No.274 of 2003 under Section 9 of the Hindu Marriage Act, seeking restitution of conjugal rights to direct the husband to join the wife in matrimonial life and to lead marital life. Both the petitions were clubbed and evidence was ordered to be recorded in O.P.No.766 of 2001. On behalf of the husband, P.Ws.1 to 12 were examined and Exs.P1 to P20 were marked. The evidence affidavit of P.Ws.13 and 14 was eschewed. On behalf of the wife, R.Ws.1 to 8 were examined and Exs.R1 to R179 were marked.

5) After considering the pleadings and evidence on both sides, the learned trial Court dismissed the divorce petition filed by the husband and allowed the petition filed by the wife seeking restitution of conjugal rights. Aggrieved by the same, the present appeals have been filed by the husband.

6) The case of the husband in brief is that the wife has subjected him to mental cruelty from the early days of marriage and that she has been suffering from mental disorder. The case of the wife in brief is that the husband has left the company of the wife and their children and is having an affair with an employee of a company owned by the husband and wife and except for this reason there is no other detriment in their married life which has been a smooth journey, as such, she is entitled to the relief of restitution of conjugal rights.

7) Before we analyze the respective pleadings and the evidence filed by both the parties, it is seen that the battle for the reliefs as sought for by both the husband and wife is more than two decades. Both the husband and the wife have spent agonizing amounts of time in this litigation.

The children born out of the wedlock have also been affected by the present litigation. While the husband has submitted extensive pleadings in support of his stand, the wife has also submitted extensive pleadings apart from leading evidence of detective agencies, who have submitted reports of their investigation on the instructions of the wife in relation to the day-to-day movements of the husband and another lady with whom the wife suspects that the husband is having an affair. It is also seen that though the main concern of the wife is that the husband left her company on account of an affair with a lady employee, the said person is not made a party to the proceedings.

8) As per the pleadings of the husband, upheavals in the marriage started just two years into the marriage and the wife started to behave indifferently towards him, his friends, family members and employees of the company. The substance of the pleadings of the husband reveal that the wife was non co-operative, indulged in day to day bickering on account of trivial issues, was derogatory towards the family members and behaved hysterically at

times. The husband also alleged that the wife spoilt her health on account of daily indulgence in quarrels and disturbed state of mind. It is the further case of the husband that since the wife belonged to a different monetary and social background than the husband, she always behaved in a manner of mistrust and suspicion, feeling insecure and thereby creating friction in the marital relationship. The husband with an intention to save the marriage, had kept up with the tantrums of the wife for many years and with a view to divert the mind of the wife from bickering, put her in control of a company owned by the husband namely TCI Finance. In spite of the same, the wife continued her indifferent attitude and in fact had gone a step ahead by not treating the employees with respect. On account of the said indifferent attitude many employees left the company.

9) It is also the case of the husband that since the husband was running a vast business organization in the name and style of M/s. Gati, he was required to frequently travel and whenever he came back home, the wife made his

life miserable. The husband would further contend that the wife never behaved properly with the business associates of the husband, nor did she socially acknowledge their presence when they visited the house. It is also pleaded that the wife tried to inflict physical harm to herself on one occasion and that the wife has a vicious mind and relied on her overbearing argumentative skills. The husband also pleaded that the wife did not have proper relations with her own family members.

10) Per contra, the wife countered the allegations made by the husband and contended that everything was rosy in their marriage and that she did not suffer any mental disorder and that she was having some gynecological issues. The wife denied all the allegations of the husband and on the contra alleged that the trouble in her married life started when one Meera Madhusudhan entered the life of the husband. The said Meera Madhusudhan was an employee of TCI and the husband started showing more interest in her and that when she had questioned her husband about the said affair with another lady, the

husband himself had left the house and filed the aforesaid case with all false allegations.

11) The learned Family Court after analyzing the evidence and pleadings has come to a conclusion that the allegation of mental cruelty as pleaded by the husband is not made out and that the wife is entitled for restitution of conjugal rights. It has to be therefore, seen as to whether the conclusions arrived at by the learned Family Court is correct.

12) Since the reliefs claimed by the parties though contra to each other, a decision in these appeals hinges on the examination of the aspect as to whether there are any acts of mental cruelty by the wife and whether the acts attributed to the wife can be considered to be cruelty.

13) It is the contention of the husband that the trial Court has not considered the petition seeking dissolution of the marriage in proper perspective. Per contra, the wife contends that the trial Court has considered every aspect and has arrived at a logical conclusion.

14) Heard the learned Senior Counsel appearing for the husband as well as the learned Senior Counsel appearing for the wife. Perused the material available on record.

Arguments of the learned Senior Counsel appearing for the husband:

15) The learned Senior Counsel appearing for the husband would contend that the husband is a business man and his family owned reputed business concerns. He is also a highly educated person with a graduation in Engineering from a University in U.S.A. He would contend that from the early days of marriage itself, the wife began to show her cold attitude and appears to have an inferiority complex on account of the social status of the husband. Just two years into the marriage, the wife drove the husband to take a decision to walk out of the house and remain incognito for more than a day and half. This was the first sign of tremors in the marriage which appeared to be well set for outsiders. The husband was subjected to untold trauma on account of the bickering of the wife for very small things. Since the husband belonged to an orthodox family,

he kept up with the behavior of the wife, hoping that some day she will mend her ways.

16) The learned Senior Counsel further contended that the wife never mended her ways and instead started to behave more indifferently towards the acquaintances of the husband thereby demeaning him in front of his friends and well wishers. She appeared very indifferent, cold and abusive as time passed by. The situation reached such a stage that the husband did not have any mental peace on account of the taunts of the wife and had to bear the load of the business and family without any complaint. To the outer world he had to mask his feelings and could not express his anguish to anybody since they belong to a respectable family. However, he had on few occasions shared his plight with his acquaintances and the same is reflected in the evidence of P.Ws.10 and 11. He further contended that in order to keep her away from these constant squabbles, the husband made her a part of TCI Finance, a company owned by the husband's family. After joining the company, the wife became even more indifferent

and treated the employees and her Secretaries with disdain and abusive. He further contended that the wife harboured suspicion about an alleged affair of the husband with an employee of the company, Meera Madhusudhan. With this state of mind, the wife treated the husband with even more contempt and tortured him to every end. She made it known to everybody that she will control things in the company and everybody have to subservient to her. She did not even consider age as a barrier and disrespected even experienced elders in the family and business. Ultimately, she watched every move of the husband clandestinely and questioned him for every movement of his using the excuse of Meera Madhusudhan and escalating the issue into big fights. She went to the extent of engaging detective agencies to spy on the movements of the husband and the said Meera Madhusudhan and she wrecked the mental peace of the husband. Vexed with the attitude, the husband started to live separately from the wife, but even then the wife started creating trouble by visiting the work place and his residence, as a consequence

of which the husband was even constrained to report the matter to the police. The wife used the children as a tool and put them in front to create evidence to be used later in the Court. The husband has given cogent evidence by examining eleven witnesses excluding himself, who have stated about the cruel behavior of the wife and there is nothing to doubt the veracity of the same.

17) The learned Senior Counsel further contended that the learned Family Court completely misdirected itself and gave prime importance to the aspect concerning Meera Madhusudhan when she was not even made a party to the proceedings. The Senior Counsel further contended that the learned trial Court committed a fundamental error in giving credence to the incidents pertaining to the said Meera Madhusudhan while granting the relief of restitution of conjugal rights to the wife and that the learned Family Court ignored the crucial evidence submitted by the husband while deciding the case against the husband and thereby denying the relief sought for by the husband. The learned Senior Counsel submitted that the trial Court

committed serious lapses while considering the case and the trial Court might have considered the evidence submitted by both the parties and finally requested to *set aside* the order passed by the learned Family Court and grant the relief of dissolution of marriage between the husband and wife, consequently to allow the O.P. filed by the husband and to dismiss the O.P. filed by the wife seeking restitution of conjugal rights. It is also submitted by the learned Senior Counsel that the parties have been litigating for quite a long time till now and in view of the bitterness that the parties have developed against each other which is apparent from the pleadings and the acts which have subsequently taken place after filing of the respective O.Ps, there is no chance of reconciliation and living together again. The wife has on numerous occasions spied on the husband and his acquaintances, thereby violating their privacy. Both the parties are nearing their twilight years and in view of the admitted situation of having developed sufficient animosity towards each other, the tether of marriage may be released, so that the parties

can live their next stage of life peacefully. Written arguments have also been filed by the learned Senior Counsel for the husband and the same are taken on record. The learned Senior Counsel relied on the following judgments:-

- 1. *Samar Ghosh v. Jaya Ghosh*¹**
- 2. *Vishwanath v. Sarla Vishwanath*²**
- 3. *N.G.Dastane v. S. Dastane*³**
- 4. *Naveen Kohli v. Neelu Kohli*⁴**

Arguments of the learned Senior Counsel appearing for the wife:

18) Per contra, the learned Senior Counsel appearing for the wife would contend that the husband would contend that the O.P. is filed for dissolution of marriage on two grounds namely, mental cruelty and mental disorder and that the husband has given up the ground of mental disorder and has pressed for mental cruelty. He would further contend that marriage is a sacred institution and hence its sanctity must be maintained. He would further

¹ (2007) 4 SCC 511

² (2012) 7 SCC 288

³ (1975) 2 SCC 326

⁴ (2006) 4 SCC 588

contend that from 1980-1982 there is only a solitary instance of bickering and that too is trivial in nature. The allegations leveled by the husband are omnibus and no specific instances are pointed out and the same is without any evidence. He would further contend that the multiple video and photographs clearly demonstrate the intimacy and proximity of the husband with the other lady namely Meera Madhusudhan. The learned Senior Counsel would strenuously contend that no visitation rights were even asked by the father showing reluctance to his children and that he has ill treated the children. The Singapore trip after the notice, dated 30.11.2000 is a waiver and withdrawal of notice. Learned Senior Counsel also tried to draw a distinction between the qualifications of the husband and wife and would contend that the husband was into the business of transport, whereas the wife has a business and academic background. He would further mention that the husband was poor in English language whereas the wife is fluent and excellent in English and expressed that the husband might have an inferiority

complex. He would stress on the point that the lady by name Meera Madhusudhan used to work for Rs.3,000/- initially as salary and then rose upto the level of Vice President and when the wife questioned the same and then the bickering started.

19) Learned Senior Counsel would contend that there is no whisper in the pleadings either for mental cruelty or mental disorder between 30.11.2000 to 19.01.2001, therefore it is not only written waiver but waiver by action too. He would contend that the vacation trip was not for a patch up of the differences and reconciliation and that it was a pleasure trip. He further contends that all the witnesses i.e., P.Ws.2 to 12 were paid money and hence their depositions be discredited. It is further argued that unrealistic/derogatory and abusive language is not a ground for divorce under the Hindu Law. He further contended that the wife suffered a gynecological disorder and not any mental disorder. He further referred to the evidence on record and vociferously contended that all the evidence adduced on behalf of the husband is false and

cooked up for the purpose of the case, hence cannot be relied upon. He gave individual instances and denied every instance adverse to the wife. He made a valiant attempt to demonstrate that all the witnesses from the husband side, have some connection with the company or have been benefited from the husband, as such their evidence cannot be relied upon. He further contended that the affidavit filed by the elder brother is at the instance of the younger brother and the same cannot be relied upon. He further contended that the lady Meera Madhusudhan is the person, who has wrecked havoc in the life of the wife and the children and as far as the wife is concerned she cannot be termed to have caused any cruelty to the husband warranting interference by this Court.

20) In summary, the learned Senior Counsel argued that there is no cause of action itself for initiation of the original petition in the light of the fact that there was an implied condonation of the alleged acts of cruelty as alleged in the notice prior to the original petition and that since the husband stayed cordially and infact arranged pleasure

trips, the O.P. should not have been entertained at all. The learned Senior Counsel debunked the evidence of the husband and termed it to be unreliable while further relying heavily on the evidence submitted by the wife pertaining to videos and photographs showing the alleged intimacy of Meera Madhusudhan and the husband. Finally, the learned Senior Counsel argued that the Family Court rightly rejected the evidence filed by the husband and has rightly rejected the relief of dissolution of marriage while allowing the relief of restitution of conjugal rights to the wife. The learned Senior Counsel submitted that the order passed by the learned Family Court is well reasoned as such the present appeals may be dismissed. In support of his contentions, he relied upon the following judgments:-

- 1) ***Amar Lal Arora v. Shashi Bala***⁵
- 2) ***Hitesh Bhatnagar v. Deepa Bhatnagar***⁶
- 3) ***Neelam Kumar v. Dayarani***⁷
- 4) ***Ajaypal Singh Johl v. Meera Johl***⁸
- 5) ***Shyam Sunder Kohli v. Sushma Kohli***⁹

⁵ 2011 Law Suit (Del) 2354

⁶ (2011) 5 SCC 234

⁷ (2010) 13 SCC 298

⁸ 2010 Law Suit (P&H) 4061

⁹ (2004) 7 SCC 747

- 6) ***Chetan Das v. Kamla Devi***¹⁰
- 7) ***Hirachand Srinivas Mangaonkar v. Sunanda***¹¹
- 8) ***R.K.Saxena v. Delhi Development Authority***¹²
- 9) ***Subhash Parshuram Seth v. Madhu Mancharsingh Bhandari***¹³
- 10) ***Debjanee Sinha v. Bikash Chandra Sinha***¹⁴
- 11) ***Darshan Gupta v. Radhika Gupta***¹⁵
- 12) ***Lakshmi Shanmugham v. P.R.Shanmughan***¹⁶

21) Since the present appeals involve the question as to whether there is any element of mental cruelty attached to the alleged acts of the wife, the meaning of cruelty in the context of a matrimonial dispute has to be examined. Since it is not a new question and the Courts across the Country have dealt with the same, the judgments of the Supreme Court on the issue can help to better understand the concept and its application to the facts of the present appeals. The Hon'ble Supreme Court has taken assistance of the true meaning of the concept of cruelty from well

¹⁰ (2001) 4 SCC 250

¹¹ (2001) 4 SCC 125

¹² (2001) 4 SCC 137

¹³ 2012 Law suit (Guj.) 195

¹⁴ 2006 Law Suit (Cal.) 59

¹⁵ (2013) 9 SCC 1

¹⁶ 1995 Law Suit (Mad.) 536

known international treatises on the subject, it would be apt to adopt the same recourse to better understand the concept of cruelty in its application to matrimonial disputes.

22) The concept of cruelty has been dealt with in Halsbury's Laws of England [Vol.13, 4th Edition Para 1269] as under;

“The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse.”

23) In **Gollins V. Gollins**¹⁷ Lord Reid stated:

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

24) In **N.G. Dastane v. S. Dastane** (supra) the Apex Court held thus:

"The enquiry therefore has to be whether the conduct charges as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent..."

25) In **V.Bhagat v. V.Bhagat**¹⁸ the Apex Court held as under:-

"Mental Cruelty in Section 13(1)(ia) 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 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

¹⁷ 1964 AC 644

¹⁸ (1994) 1 SCC 337

then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment or 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 **Vinita Saxena v. Pankaj Pandit**¹⁹

"It is settled by a catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create

¹⁹ (2006) 3 SCC 778

in the mind of the injured appellant such apprehension as is contemplated in the section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such willful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case. The word "cruelty" has not been defined and it has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted".

It was further held that:

"Each case depends on its own facts and must be judged on these facts. The concept of cruelty has varied from time to time, from place to place and from individual to individual in its application according to social status of the persons involved and their economic conditions and other matters.

The question whether the act complained of was a cruel act is to be determined from the whole facts and the matrimonial relations between the parties. In this connection, the culture, temperament and status in life and many other things are the factors which have to be considered.

The legal concept of cruelty which is not defined by the statute is generally described as conduct of such character as to have caused danger to life, limb or health (bodily and mental) or to give rise to reasonable apprehension of such danger. The

general rule in all questions of cruelty is that the whole matrimonial relations must be considered, that rule is of a special value when the cruelty consists not of violent act but of injurious reproaches, complaints, accusations or taunts. It may be mental such as indifference and frigidity towards the wife, denial of a company to her, hatred and abhorrence for wife, or physical, like acts of violence and abstinence from sexual intercourse without reasonable cause. It must be proved that one partner in the marriage however mindless of the consequences has behaved in a way which the other spouse could not in the circumstances be called upon to endure, and that misconduct has caused injury to health or a reasonable apprehension of such injury. There are two sides to be considered in case of apprehension of such injury. There are two sides to be considered in case of cruelty. From the appellants, ought this appellant to be called on to endure the conduct? From the respondent's side, was this conduct excusable? The Court has then to decide whether the sum total of the reprehensible conduct was cruel. That depends on whether the cumulative conduct was sufficiently serious to say that from a reasonable person's point of view after a consideration of any excuse which the respondent might have in the circumstances, the conduct is such that the petitioner ought not be called upon to endure."

27) In **Samar Ghosh v. Jaya Ghosh** (supra), the Apex

Court held:

"No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

- (i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.*
- (ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.*
- (iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.*
- (iv) Mental Cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.*
- (v) A sustained course of abusive and humiliating treatment calculated to torture, discommodate or render miserable life of the spouse.*
- (vi) Sustained unjustifiable conduct and behavior of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.*
- (vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.*
- (viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.*
- (ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.*
- (x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to*

cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behavior of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

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

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

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

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

28) Therefore, the concept of mental cruelty is a fluid concept depending on various circumstances and cannot be straight jacketed. It is a combination of instances and situations which may differ from a couple to couple. The social setting, financial backgrounds, education, customs, rituals are all factors which have to be taken into account in order to arrive if there is any truth in the allegation of

mental cruelty as alleged by one of the parties to the marriage. As marriage is a sacrament, the sacramental thread that permeates the behavior of the parties has to be studied and examined in the background of the allegations and counter allegations made by both the parties to a marriage.

29) What may constitute mental cruelty for one person, may not be the same for another on account of the different governing situations. Tolerable behavior also differs from person to person. From the judgments as referred to above, it is clear that the Court has to examine the conduct of the party against whom mental cruelty is alleged as to whether the conduct has been so reprehensible to cause a reasonable belief in the mind of the other party that it may not be possible to continue the relationship of marriage further. The instances of such conduct are many, but there cannot be an exhaustive list drawn, since the circumstances and the settings differ from case to case.

30) Coming to the present case, it has to firstly be seen as to whether the learned Family Court has considered the pleadings and evidence placed by both the parties in the proper perspective in order to arrive at a conclusion so as to not to grant the relief of Divorce as claimed by the husband and granting the relief of restitution of conjugal rights to the wife.

31) As already stated above, the husband hails from a reputed business family and the wife hails from a family of highly qualified professionals. Both the husband and wife are highly qualified in terms of education and have respectable social status.

32) It is seen that the husband has examined himself as P.W.1 and P.Ws.2 to 12 are either relatives or known acquaintances of the husband. Whereas the wife examined herself as R.W.1 and R.Ws.2 to 3, who are Detective Agency People, R.W.4 is a doctor, R.W.5 is an Architect, R.W.6 is building contractor, R.Ws.7 and 8 are the friends of the wife.

Evidence of the husband.

33) It is seen that the evidence of P.W.1, the husband is in tune with the pleadings made in the petition. He deposed that there were constant squabbles with the wife from the early days of marriage and the wife's behavior was of very adamant, abusive nature without even caring for the circumstances and surroundings around her. She used to get hysterical and on account of which her health also got spoilt. She never cared for the relatives of the husband and did not tolerate any person from the husband's side whenever they visited their house. She had an over reacting behavior and there were several occasions pursuant to which he had to keep himself busy with his work instead of reacting to her tantrums. The husband also deposed that even after the wife was made the head of the company by name T.C.I. Finance, she did not mend her ways and instead her abusive behavior became more targeted towards the husband as well as the employees of the company. He further deposed that many of the secretaries assigned to the wife had resigned only on

account of her over bearing attitude. Thereafter the husband issued legal notice on 30.11.2000 unable to bear the attitude adopted by the wife. The husband further stated that vexed with the attitude of the wife, he started to stay separately from the year 2001. Even thereafter, the wife did not allow him to live in peace and often came to his residence as well as office and tried to spoil the atmosphere. The husband further deposed that he had to complain to the police also regarding the nuisance created by the wife on 14.07.2001, 14.09.2001 as well as on 06.10.2001. The affair with one Meera Madhusudhan as alleged by the wife was denied by the husband. Ultimately, unable to bear the harassment meted out by the wife and since the acts as stated by him amounted to mental cruelty, the husband approached the Court seeking for dissolution of the marriage.

34) In the cross-examination, nothing particular was elicited from the husband except for discrepancies in the dates of the alleged incident involving the death of the father of the husband and with regard to the medical

condition of the wife. Extensive cross examination with regard to the role of Meera Madhusudhan was also done, but nothing much could be elicited to discredit the evidence of the husband.

35) P.W.2 is a person known to the family of the husband and he deposed that he attended the marriage of the husband and wife, and the wife was very arrogant and unreasonable from the beginning and that she never used to reciprocate pleasantries whenever they used to wish her. He further deposed that contrasted with the mother of the husband, the wife used to be very cold and indifferent. He deposed about an incident after about an year and half of the marriage that the husband suddenly left the house and in spite of search could not be found. Later, after he came back, when he enquired the husband told him that there was a big fight with the wife and being dejected he left the house. He also deposed that in the year 1984, one day when the husband came to the office with deep scratches on his cheek and looked dejected, upon enquiry, the husband started crying and tears rolled down on his cheek.

He further deposed that it was the same problem of fight with the wife. He further deposed that the wife wanted everyone to treat her as a boss.

36) P.W.3 is an employee of T.C.I. He deposed that he knew both the wife and the husband. He deposed that P.D. Aggarwal, the patriarch of the husband treated all the employees very well, but on the contrary, the wife of P.W.1 was very indifferent and referred to an incident at the airport where according to him, the wife was very angry with him for not giving priority to her. He also deposed about the incident when the husband went missing for sometime.

37) P.W.4 is a friend of the husband and he has deposed that the wife of P.W.1 had a very cold attitude and that on one occasion when he along with his wife were travelling with the husband and the wife, he found them very tense and that the wife shouted at the husband in a very demeaning manner. He also deposed that his wife used to be reluctant to interact with the husband and wife on

account of the perceived indifference of the husband and wife. He further deposed that the wife had threatened him in a very angry tone and did not even care about him being elder to her. Nothing was elicited from the cross-examination of the said witness on this aspect. Per contra, it was contended by the wife that R.90 is a tape recording of the conversation by the wife of P.W.4 and the respondent in O.P.No.766 of 2001. However, the wife of P.W.4 was not called to the witness box to depose regarding the telephonic conversation. The learned Family Court has come to a conclusion that since P.W.4 has stated in the cross-examination that his wife is continuing her friendship with the respondent in O.P.No.766 of 2001 (wife), the chief examination of the P.W.4 that his wife was reluctant to interact with the respondent is not correct.

38) P.W.5 is a person known to both the husband and the wife, he deposed that he had occasions to interact with the husband and the wife and during the said interactions he regularly observed that the wife suffered with some acute complex. He also deposed that his wife, who is a doctor,

avoided the wife (respondent in O.P.No.766 of 2001) on account of her cold attitude. He also deposed that the wife had openly derided the husband in their presence on a very trivial issue of an invitation to a famous doctor for dinner at their place. Nothing specific was elicited during the cross examination of this witness on the above aspect, however, the learned Family Court did not give credence to this aspect since the incident referred to is of the year 1994 and that the husband lived with the wife upto 2000, as such, the husband condoned the act of the alleged cruelty.

39) Coming to the evidence of P.W.6, it is seen that P.W.6 is a Project Coordinator for the housing project of Banjara Hills in 1989. He deposed that the wife has constantly interfering in the designs of the house and used to make last minute changes in the designs thereby delaying the project. Countering the evidence of P.W.6, the evidence of R.W.5 and 6 was considered by the Court to the effect that the project was not delayed and that the wife never interfered with the project.

40) The evidence of P.W.7 is important, P.W.7 is known person to the family of the husband. He deposed about an incident during the memorial function of the father of the husband. He deposed that the father of the husband P.D.Aggarwal was a staunch believer of anti dowry and that though matches from many wealthy families had come for his sons, he expressed that he would like to perform the marriage of his sons without dowry and that too with eligible girls from good families, though from the financial background who cannot afford to pay big dowry. He deposed that he had talked about the same in the memorial function and that the wife took strong exception to his words and started fuming at him and insisted for a written apology. He deposed that he had passed on a note to the husband at his instance that he was sorry. He further deposed that the reaction of the wife was absolutely uncalled for and unnatural. He further deposed that after the said incident, his interactions with the husband became limited. He further deposed that later when he went to the residence of the husband, though the husband

received him well, the wife continued to be indifferent. The learned Family Court did not treat this incident to be a cruel circumstance.

41) P.W.8 is the elder brother of the husband. He deposed that the husband used to share and confide that he was not happy with the marriage. He also deposed about various instances of the friction between the husband and the wife. He deposed elaborately about the indifferent attitude of the wife. However, the learned Family Court disbelieved the evidence of P.W.8 on the ground of certain inconsistent statements of the said witness.

42) P.W.9 is an ayurvedic doctor and was known to both the husband and wife. He deposed that the wife was very indifferent towards him and that she was cold, indifferent and deliberately insulting person. He had also deposed that whenever he met the husband in social functions between 1992 to 2003, on his enquiry about the husband's family, he never sounded happy and avoided the issue, the learned Family Court did not consider the facts as deposed

by P.W.9 as a cruel circumstance during the marital life between the husband and the wife.

43) P.W.10 was an employee in T.C.I. He deposed that during his interactions with the wife he found her to be very dominating and demanding. He further deposed that when he and the husband were discussing some important issues during office hours, the wife barged into the chamber and demanded the husband to immediately attend to her by keeping aside whatever he was doing there and then. He also deposed that the husband tried to explain to her that she could wait for a while and they would do the needful immediately afterwards. He also deposed that inspite of the same, the wife was very demanding and insisted that the husband should then and there stop what he is doing and ultimately had her way. P.W.10 also deposed that one day, the husband came to the office and found that he was having a bruise on his cheek and was looking totally haggard and upon asking, almost broke down. He also deposed that the husband on number of occasions had to intervene and explain about

the behavior of the wife. The learned Family Court only considered the part of the evidence with regard to the husband having a bruise on his cheek and observed that P.W.1 did not state the same in his evidence. The learned Family Court further considered that even if the evidence of P.W.10 is taken into consideration, since the husband lived with the wife till 2000 and that it is normal in matrimonial life that there are some bickering and misunderstandings between wife and husband and those misunderstandings and those misunderstandings would continue for a short period and after that wife and husband became normal and live happily. In every matrimonial life there are some ups and downs and misunderstandings. There cannot be any matrimonial home without any misunderstandings and ups and downs.

44) P.W.11 is the cousin of the husband, he has deposed that his marriage and the marriage of both the parties was performed on the same day in the year 1980. He further deposed that when he later enquired with the husband about the married life, the husband appeared to be tense

and told him that as far as the husband is concerned, the whole thing was a disaster. P.W.11 further deposed that whenever, he interacted with the husband and the wife, he found the wife to be very cold and used to talk to the husband in a demeaning manner. He also deposed that the apparent underlying tension was visible even during short visits and occasions. He also deposed about an incident where the wife had a dominating talk with the wife of P.W.11 and that she had talked rudely as if giving dictates to her employee. The learned Family Court discarded the evidence of P.W.11 as not trustworthy and on the ground that he did not witness the matrimonial disputes between the husband and the wife personally.

45) P.W.12 is a very important witness. He is the close friend of the husband and he deposed that he studied engineering in Bangalore with the husband and that he knows him from a very young age. He also deposed that the husband had invited him along with his family to Hyderabad and that they stayed in the house of the husband. He further deposed that during the said stay,

the wife behaved very indifferently and unfriendly. He further deposed that some of his other batchmates also expressed the same experience during their visits to Hyderabad. The learned Family Court held that merely because courtesies are not extended, the same cannot be taken into consideration as a cruel circumstance in the married life of the husband and wife.

46) Having looked at the salient aspects of the evidence let in by the husband it is now appropriate to look at the evidence let in by the wife.

Evidence on behalf of the wife:

47) The wife examined herself as R.W.1. She filed a detailed chief examination affidavit and narrated her version of the case right from the early days when the marriage alliance took place and till the filing of the O.P. by the husband. The sum and substance of the evidence of the wife is that even from the days just before the marriage the wife and husband were constantly in touch with each other and that their friendship blossomed into full fledged

love and both of them were in love with each other. After honeymoon, they settled down at Hyderabad and that the family of the husband loved her and had great respect for her education and background. The wife deposed that the marital relationship was smooth for two decades and began to sour only on the entry of a woman employee into the life of the husband. The husband started to live separately on account of the said woman and was chastised by his own family members. The wife denied the incident of 1982 when the husband left home for two days. She also denied that she had any mental issues and that she was suffering from gynecological problems. The wife reiterated that she is from a family of academicians, professionals, landlords comprising of doctors, professors, lawyers, engineers, judges and I.A.S. officers. She deposed that the 1985 incident at Paris was twisted by the husband and projected as though she suffered from a mental disorder. She deposed that she was treated for a gynecological problem and relied on the medical reports pertaining to the same.

She denied reacting violently to P.W.7 and termed the entire event of commemoration as a cooked up story.

48) The wife further deposed that she never overreacted nor was she unrealistic, nor was there any occasion for the husband to keep himself busy for the purpose of keeping himself away from her. She further deposed that the husband took her to different places and had visited her frequently during her treatment at Mumbai. She further deposed that the allegation of the husband that he has involved her in the business of T.C.I. in order to keep her busy to take her mind away from the bickering is completely false and stated that she was involved in the business of T.C.I. from 1981 itself. She stated that she was the one who stood by the side of the husband when the public issue failed and had the privilege of using the staff of the husband and his exclusive assistants and secretary, at no point of time did she have a secretary exclusively for herself. She denied being cold to the guests of the husband and had, in fact, hosted many functions successfully at home. She further deposed that the

husband, herself and her children have travelled together to different places and that the conjugal relationship was perfect till the end of 2000. She denied all the other allegations as made by the husband and deposed that her life turned upside down upon the entry of a woman by name Meera Madhusudhan from Diwali 2000 onwards when it had come to light that the husband was deeply getting involved with the said Meera Madhusudhan. She further deposed that when she confronted the husband regarding the said Meera Madhusudhan, he had told her she is there to stay. She further deposed that the husband was inaccessible to them after January, 2001 and after a family meeting, the husband asked for three months time to rehabilitate Meera Madhusudhan, either she would go to Dubai to join her husband, or the husband would find an alternative job for her outside his business through his contacts. She further deposed that the husband reneged on his promise and confessed that if she did not give into his demand of accepting Meera, he will give free hand to his lawyers to state whatever they want. She also deposed

certain incidents pertaining to the children and alleged that Meera Madhusudhan was instigating the husband to abuse his own son and that police complaints were also filed against the son at her instance. She further deposed that the husband did not keep his promise, rather shifted the said Meera Madhusudhan to Singapore and that he started living with her. She further deposed that the said Meera Madhusudhan is having a stranglehold on the husband either through blackmail or any other mode, which is not known to her. She further alleged that the husband has tried to project her in a negative manner and that the witness who gave evidence in support of the husband are his former employees, some of whom have been rehabilitated.

49) The wife further deposed with regard to the Singapore episode and had referred to various evidences gathered regarding the intimacy of the husband and Meera Madhusudhan at Singapore. She further alleged that the husband is squandering away the family wealth depriving the children and family of the basic and minimum comforts

apart from daily necessities of life. She further deposed that the husband has resorted to depriving the children and her of every basic necessity and is trying to take advantage of his own wrongdoing. Finally, the wife deposed that the petition filed by the husband is based on lies and it is projected as if the wife is a person of mental unsoundness and suffering from deep complexes. She further deposed that she comes from a family where divorces are unheard of and that the husband is manipulated by Mrs. Meera Madhusudhan for her vested interests and that there are no merits in the petition and prayed to dismiss the petition.

50) The learned Family Court considered the evidence of the wife and arrived at a conclusion that the evidence of R.W.1 coupled with documentary evidence established that the husband left the house voluntarily without any fault on the part of the wife and that the extra marital affair with Meera Madhusudhan has been proved by the evidence of R.W.1 and that the disputes between the husband and the wife arose on account of the involvement of Meera

Madhusudhan and that after evaluating the entire evidence on both sides and documentary evidence, there is no fault on the part of the wife, so the claim of the wife for restitution of conjugal rights cannot be denied on the ground that she filed the restitution case two years after filing of divorce case by the husband.

51) R.W.2 is a journalist by profession. He deposed that he joined A.P. Times, an English Daily, which was owned by the husband and one another person. He further deposed that during his meeting with the wife, she came across as a cultured, well mannered and courteous lady. He also deposed that during the interaction with the husband, he found him to be very fond of his wife and children. He further deposed that Meera Madhusudhan was introduced as an authorized representative of A.P. Times and that she used to attend meetings with the husband. He also deposed that he and his colleagues were shocked at the way the husband and Meera Madhusudhan grew familiar and intimate with each other. He also deposed about being witness to Meera Madhusudhan and

the husband walking hand in hand wearing identical T-Shirts and jeans. He further deposed that he came to know that the husband had abandoned his family and is living separately with Meera Madhusudhan. Certain photographs were also marked through him to corroborate the stand taken by the wife.

52) R.W.3 belongs to Simmon Security and Investigation Services Private Limited, Singapore. He deposed that first surveillance and investigation conducted on the husband and co subject Meera Madhusudhan by Simmon Security and Investigation Services Private Limited, client Mrs. Neera Aggarwal through her attorney N.K.Rajaiah, Advocates and Solicitors, directed that a second surveillance and investigation on the movements of Mr.M.K. Aggarwal and co subject Meera Madhusudhan be conducted on the 3rd day of March, 2007. He further deposed that on the brief being assigned to his company, he conducted surveillance and investigation as requested and submitted three sets of report, out of which one copy containing original photographs meant for Court use and

an original digital videotape in respect of the surveillance conducted on the husband and co subject Meera Madhusudhan. Exs.R157 being a DVD, Ex.R158 being a report, Exs.R88 and R89 have been marked through him.

53) R.W.4 is a Cardiologist doctor, he deposed that he knew both the husband and the wife. He further deposed that as the Chief Cardiologist of Medicity, he had many occasions to visit the house of the husband. He further deposed that during all these visits, the wife had accorded warm hospitality and took care of all the guests very well.

54) R.W.5 is an architect, who according to him designed a number of residential and commercial buildings. He deposed that he designed the house of the husband and wife. He further deposed that he had a number of discussions with the wife, husband and children to understand their requirements. He further stated that though he used to stay at the company guest house during his stay at Hyderabad, he used to have lunch and dinner at the residence of both the parties. He deposed that he fond

fond of the Aggarwal family and the work assigned to him was completed in the stipulated time. He also deposed that when he met the husband in the year 2000 at a common friend's house warning function in Baroda, the husband looked very happy and spoke very fondly about his wife.

55) R.W.6 is engaged in the construction business and he deposed that he was involved in the construction of the house of both the parties. He deposed that the construction of the house was done in a professional way from start to finish and was non stop. He further deposed that the wife was courteous and polite whenever she met him. He further deposed that she never interfered nor imposed her opinion. He further deposed that the husband and his wife are friends and the husband and wife used to visit Treasure Island resorts and that when there was a small accident involving the husband, the husband insisted that Meera Madhusudhan be informed instead of the wife.

56) R.W.7 is a family friend of the husband and the wife and deposed that she knew them very well. She further deposed that the wife and herself are active members of various ladies clubs. She also stated that her sons are of the same age as that of the husband and wife. She further deposed that the wife is one of the best hosts in town hosting great parties with good food, ambience and people. She also deposed that it was hard to believe that the husband walked out of the house and is staying with a lady Meera Madhusudhan, who was working in his office. She further deposed that practically everyone in her social circle has been discussing this and that the husband has been attending some parties with Meera Madhusudhan.

57) R.W.8 is also a family friend of the husband and wife and deposed that she knew both the husband wife from 1983. She deposed that she found the wife to be a very reasonable, well informed and cultured lady, which is expressed by many. She further deposed that the husband and the wife have always been known for togetherness and are known to be a fun loving happy and loving family till

recently. She further deposed that it was hard to believe that the husband is now staying with a lady employee and that she had witnessed the husband and Meera Madhusudhan together in a shopping store and at a wedding function.

58) Having considered the evidence adduced on both sides, it is necessary to weigh each of the deposition of the witnesses to arrive at a fair conclusion as to whether the husband has made out a case for relief of dissolution of the marriage on the ground of mental cruelty. Before advertng to the same, the case of the husband that he is entitled to the relief of dissolution on the ground of the wife suffering from mental disorder, appears to be not correct in view of the fact that there is no iota of evidence to suggest that the wife had suffered any form of mental disorder. From the pleadings and the evidence on record, it is safe to conclude that the relief as sought for by the husband on this ground cannot be granted, hence, the consideration of the appeal is limited only on the consideration of the aspect of mental cruelty.

59) Before the evidence on record is discussed and analysed, it is apt to deal with a contention of the learned Senior Counsel appearing for the wife that there is condonation of any act of alleged cruelty by the husband in view of his going on tours with the wife. In this connection, it is to be seen that in the Hindu System of Matrimony, it is not easy to get out of a legal tie in the social context. A reasoned reaction to an act of cruelty and bearing in silence for a continued period of time cannot be treated as a condonation of an act of cruelty. It is common in a country like India where there are many customs and social adherences which make it imperative that though there may be acts of cruelty, a spouse would not react immediately, he/she would give time for wounds to heal and in the process may take active steps to save a marriage. Such acts may include trips on a vacation, only to salvage a situation and not to let things go from bad to worse. If the contention of the wife is taken to be reasonable, no husband would try to save a marriage when there are critical signs of breakdown. The husband has

categorically stated in his pleadings and evidence that he has suffered for twenty long years on account of the over bearing attitude of the wife and that it has caused sufficient mental trauma. Merely because the husband has taken the wife and children on vacation trips, it would not take away the right of a husband to seek dissolution of the marriage on the ground of mental cruelty. The contention that going on vacation trips after issuing a notice for dissolution would take away the right to file a petition seeking divorce is baseless. Such a proposition flies in the face of logic and tries to introduce a bar which is not traceable to any statutory provision, therefore the contention is rejected at the threshold.

60) Having rejected such contention, it is appropriate to deal with the respective merits of the parties.

Analysis of the evidence:

61) The learned Family Court did not undertake any exercise to analysis the evidence of the husband in order to arrive at a conclusion that the same can be discarded since

no circumstances have been proved by the husband that may have amounted to mental cruelty, instead the learned Family Court gave prime importance to the incidents in the early stage of marriage in the year 1982, when the husband left the house for a few days. The Court found that the father of the husband had died during the relevant period and that there was some discrepancy in the dates as mentioned by the husband in relation to his leaving the house in the year 1982, vexed with the attitude of the wife. The fact of leaving the house was deposed by the husband himself and other witnesses namely P.Ws.3, 8 and 10. On the contrary, the wife claimed that there was no such incident and that the same was cooked up and that the witnesses, who have deposed regarding the same, are under the control of the husband, as such their evidence cannot be believed.

62) It is to be seen that the wife in her evidence had bluntly denied the incident and had stated that the family atmosphere during that time was very tense due to the ill health of the patriarch of the family. According to her, the

entire story was concocted with the help of the employees of the company. This incident appears to have been the first instance according to the husband, where he had to take a decision to leave the house on account of the treatment meted to him by the Wife. The factual correctness of the same has a bearing on the future incidents as alleged by the husband. On critical examination of the facts relating to the said incident, it is clear that the version of the husband is supported by three other witnesses, who have deposed regarding their knowledge of the fact that the husband had left the house for few days in September, 1982. Contrastingly, except the vague denial of the wife regarding the said incident, there is no other witness, who had deposed to the contra. The evidence of these witnesses namely P.W.3, P.W.8 and P.W.10 cannot be discarded completely on the ground that they are known persons of the husband. In matrimonial matters, it is the evidence of the known relatives and friends that is available to depose regarding the

circumstances surrounding the spouses and the events leading to their misunderstandings.

63) The learned Family Court had taken into consideration the fact that the husband had returned back and condoned the attitude of the wife and stayed upto 2000 and blessed with two children. The learned Family Court also took into consideration the fact that the husband along with the wife had visited various countries during holidays. The learned Family Court held that the evidence of the husband regarding the 1982 incident is a cruel circumstance is not correct. In this regard, it is to be seen that the efforts of the husband to save the marriage cannot be put against and held to be condonation of the acts of cruelty. It is to be borne in mind that in the Hindu system of marriage, every effort is made by the spouses to see that their differences do not come out in the open. In the present case, both the spouses belong to Aggarwal community, which is a prominent Hindu business community. The level of orthodoxy is a bit more and the members of the community are very strict in following their established social norms

and customs. Therefore, merely because the husband has returned to the house and thereafter lived with the wife for almost twenty years, the same cannot be termed as condonation of an act of cruelty meted out by the wife. In view of the evidence of P.W.1 coupled with the evidence of P.Ws.3, 8 and 10, the incident of 1982 cannot be held to have been concocted, as such the finding of the learned Family Court on this aspect is erroneous.

64) The learned Family Court has also taken into consideration, the plea of the husband that while the wife was heading T.C.I. Finance, she was critical towards staff members and business associates and 16 secretaries, who worked under her, resigned their jobs. While the husband asserted that the staff and the secretaries were unable to bear the overbearing attitude of the wife, however, the wife, in her evidence has plainly denied such behavior.

65) In this context, the evidence of P.W.3 coupled with Exs.P15 to P19 can be taken into consideration to see if there is any iota of truth in the allegations made by the

husband. P.W.3 is an employee of T.C.I. and deposed that the wife has behaved in an accusing tone and shouted at him at the airport over a trivial issue. Nothing specific is elicited in the cross-examination regarding this aspect. However, Exs.P15 to P19 are marked on behalf of the husband. These are letters written to the Managing Director, GATI (the husband) by former employees of T.C.I., who had been working with the wife. All the letters indicate that the said employees were not happy working under the wife and that they had to leave the employment on account of her over bearing attitude. Though the persons, who have written the said letters, have not been examined, they can definitely taken into account for the purpose of arriving at the opinion regarding attitude of the wife in her dealings with the employees. However, the learned Family Court has not at all considered this aspect.

66) The deposition of P.W.4 that the wife was cold and indifferent towards him is not rebutted. The deposition of P.W.4 to the extent of the threatening demeanor towards the friends and business associates of the husband can

definitely be taken into account for the purpose of arriving at a conclusion as to the general nature of the wife and her conduct towards the husband in front of his known people. The learned Family Court was not correct in appreciating a part of the evidence of P.W.4 and discarding the rest of it.

67) With regard to the evidence of P.W.5, the learned Family Court misdirected itself towards the aspect of condonation of the alleged acts of cruelty by the wife when it was required to examine as to whether the acts as deposed by the witness constitute mental cruelty or not. Merely because the husband made all efforts to stay in the marital relationship, it would not amount to condonation of the acts of the wife. Instead of the efforts of the husband being called as condonation, it may be appropriate to term the period of stay with the wife in spite of insinuations and demeaning behavior as a sufferance in silence.

68) The evidence of P.W.6 does not reveal anything with regard to the strained relationship of the wife and husband. It may be normal for any person to have a house

constructed in their taste and interest. With that objective, the wife may have insisted for change of designs, such a behavior is absolutely normal and does not throw any light on the matrimonial relationship of the husband and wife. Therefore, the evidence of P.W.6 as well as R.Ws.5 and 6 is not of much importance.

69) It is to be seen from the evidence of P.W.7 that the said witness was a person elder to the husband and a close associate of the patriarch of the family of the husband. The reaction of the wife and the subsequent demeanor of asking for a written apology clearly points to the cruel attitude as alleged by the husband. Berating the husband and insisting for a written apology from P.W.7 would clearly reveal the state of mind of the wife.

70) A perusal of the deposition of P.W.8 clearly reveals the constant tone and tenor that he has been witnessing the decline in the relationship of the husband and the wife and that the same has gone from worse to worst as told to him by the husband. The inconsistencies as found by the

learned Family Court are too trivial in nature and cannot be magnified to completely discard the evidence of P.W.8.

71) Coming to the evidence of P.W.9, there is nothing unusual in what has deposed in order to discredit the evidence given by him. The said witness is an ayurvedic doctor associated with the family of the husband for almost 12 years, the incidents narrated by him are also believable and are not to be shrouded in doubt. From the deposition of the said witness, it can be gathered that the wife did not care about the feelings of the people, who are associated for a long time. What has to be seen from the deposition of P.W.9 is that the wife could have at least treated him with minimum courtesy, but completely ignoring and being cold to a person can be very insulting. This fact was not considered by the learned Family Court.

72) With regard to the evidence of P.W.10, the learned Family Court however lost sight of the fact that the wife used to come to the office during office hours and interfere with the meetings of the husband. Moreover, it was also

the evidence of P.W.10 that the wife was insisting on getting her work done at the cost of anything else, thereby revealing a dominant attitude which did not matter whatever the setting may be.

73) Merely because P.W.11 is the cousin of the husband, his evidence cannot be termed as untrustworthy, more so when nothing rendering the deposition to be untrustworthy has been elicited in the cross examination. It is natural conduct to share the experiences of marital life between the husband and P.W.11 both being cousins. The evidence of P.W.11 clearly reveals that the husband has shared his concerns regarding the matrimonial life with the wife and the attitude of the wife has been once again demonstrated to be over bearing and dominating.

74) With regard to P.W.12, it is to be seen that any husband would expect that his acquaintances be treated with minimum respect. Cold shouldering of close friends by the wife would amount to silent insult to the guests who have visited the house. It is a shrewd way of making it

known to the acquaintances of the husband that they are not welcomed and received well and had to stay away from the husband. Such sort of attitude as narrated by the witness an important circumstance could not have been overlooked by the learned Family Court. The deposition of P.W.12 definitely throws light on how the wife remained indifferent from the early days of marriage.

75) The deposition of the wife as R.W.1 read with the counter to the petition filed by the husband clearly reveals that the husband and wife are now sharing a bitter relationship on account of certain events that according to the wife have disturbed her family. The wife has deposed that all was very rosy and the husband loved her and her children and that the trouble erupted only when one lady employee Meera Madhusudhan entered their life. The evidence of the wife does not clearly rebut the incident of 1982 when the husband left the house. Merely denying the incident is not sufficient when the said incident has been spoken to by atleast three witnesses i.e., P.Ws.3, 8 and 10. The wife has simply brushed aside the said incident and on

the contrary sought to downplay the alleged incident on the ground that the husband has stayed with the wife subsequent to the said incident. The deposition of the wife further reveals that the husband used to write letters to the wife on a regular basis before the marriage and that they were in love with each other. The said aspect cannot be disputed since it is normal for any young people to share their mutual love before the nuptial tie is entered into. The wife though has stated that she comes from a family of academicians and professionals, has not chosen to examine even a single relation, who could vouch for the normalcy of the relations between the husband and wife. A reading of her evidence would indicate that she has tried to project a very happy married life with the husband and that there were not even small bickering at all. The wife deposed that she has held some functions at her house and has treated everybody, who came to her house, with respect, but in view of the evidence let in by the husband through P.Ws.1 to 12, the self serving evidence of the wife does not show the correct picture.

76) Be that as it may, even according to the wife, the problem in her marital life erupted on account of a lady employee named Meera Madhusudhan. It is normal behavior in Indian society that a woman, who feels wronged by another woman in relation to her husband would not tolerate the same and at some point of time confront the said person for wrecking her marital life. In the entire deposition of the wife, there is no instance that speaks about any confrontation with the said Meera Madhusudhan by the wife. On the contrary, it is the deposition of the wife that the said Meera Madhusudhan has a stranglehold on the husband and that the husband has started living separately with her. A perusal of the evidence of R.W.1 would further reveal that she harbours deep seated animosity against the said Meera Madhusudhan and has made her the reason for wrecking her family. She has further deposed on the basis of evidence gathered clandestinely by engaging detectives that the husband is living in Singapore along with Meera Madhusudhan and that he is squandering away the wealth

of the family. In these circumstances, it is prudent to expect that the wife could have taken appropriate legal measures to make the said Meera Madhusudhan accountable for her acts. However, nothing is forthcoming from the evidence led by the wife, that she has resorted to such an action. Merely stating that she has been a good wife and that she has supported the husband and except for vague denials of the allegations of the husband, the wife has devoted much of her time in clandestinely monitoring the activities of the said Meera Madhusudhan. The wife being a well educated person, ought to have been aware of her rights in situations like this, but it is very unusual that the wife has remained silent when her husband was allegedly drawn into a relationship by the said Meera Madhusudhan. Though varied aspects have been adverted to by the wife, it is rather strange that she did not oppose the relationship with the manner that an educated wife ought to have opposed. Therefore, the evidence of the wife though voluminous in nature may not help in dislodging

the evidence of the husband qua the aspect of mental cruelty as pleaded by the husband.

77) The evidence of R.W.2 reveals that he knows both the husband and wife and except for stating that the wife is a courteous and well mannered person, it is not of much use. The evidence with regard to the alleged proximity of the husband with Meera Madhusudhan does not throw any light on the alleged acts of cruelty as alleged by the husband.

78) The evidence of R.W.3 reveals that his company was engaged to spy on the husband and Meera Madhusudhan and the entire evidence in this regard does not in any manner touch upon the acts of cruelty as alleged by the husband.

79) The evidence of R.W.3, a Cardiologist in a hospital where the husband had business interests has deposed to the general attitude of the wife and that she was cordial whenever he visited the house. The evidence of the said

witness is too general and cannot throw any light to disprove the allegations of the husband.

80) The evidence of R.W.5, an architect also reveals about his personal experiences with the husband and wife and it may not be proper to expect that the husband would share his inner trauma with everybody whom he meets. Given the social status, it cannot be expected that a husband would share his personal grievances with the people, who are engaged for their professional competence, hence the evidence of R.W.5 cannot be considered to disprove the allegations of the husband.

81) The evidence of R.W.6, a builder, who built the house of the husband, and wife cannot also be considered for the same reason as above.

82) The evidence of R.Ws.7 and 8, the friends of the wife also speak about the cordial nature of the wife and about Meera Madhusudhan and are no way helpful to ascertain or arrive at a conclusion to disprove the claim of the husband.

83) The parties have also marked certain documents i.e., Exs.P1 to P20 and Exs.R1 to R.179.

84) In the backdrop of the discussion made above, the contentions of the parties to these appeals have to be considered.

85) It is apparent that all is not well between the parties and from the date of the institution of the O.P.s, things have gone from worse to worst. The pleadings and evidence of the husband clearly indicate that he is not happy in his relationship as a husband. He has taken an unequivocal stand that the wife is in the habit of bickering and used to treat everybody associated with him indifferently. The evidence as discussed above also points to a general picture where the wife has been indifferent towards the acquaintances of the husband. In the Indian society, indifferent attitude more so when a guest arrives at home is treated as an insult, the said attitude can have a very drastic effect and can sever relations very badly. Though a very valiant effort is made by the wife to contend

that the relationship between the husband and wife was normal, as can be seen from the documents filed by the wife, every effort was made by her to rope in the children into the mess between both the spouses. In fact on a reading of the pleadings, it is also apparent that the wife is more worried about the life style of Meera Madhusudhan and had pleaded that the husband is plundering the wealth of the family and that what the children have to get is being splurged upon on the said Meera Madhusudhan. The wife has also been very vocal to project the husband in bad light and focused only on the relationship of the husband with Meera Madhusudhan. A reading of the pleadings and evidence let in by her indicate that she has a feeling of victory when she could secure evidence of the alleged movements of the husband and Meera Madhusudhan without realizing the damage that has caused to her marital life on account of such behavior. It is natural that a wife would not tolerate a husband closely moving with another woman, but a combined consideration of the acts of the wife would indicate that the wife intends

to prolong the issue and take maximum advantage of the alleged cohabitation of the husband with Meera Madhusudhan. What is surprising is that the wife has not reacted in the manner that a person of reasonable prudence would react to such a situation. Except for using the instances of close proximity for the purpose of this case, she has not even pleaded that she has ever confronted the husband or the said Meera Madhusudhan. It is also seen in the pleadings that the said Meera Madhusudhan and her henchmen have assaulted the son of the parties and that there was a police complaint lodged against the son, yet there is no reaction nor any intention to atleast confront the said Meera Madhusudhan. This act of the wife is a bit strange and the only logical conclusion that can be arrived is that the wife only wanted to gain sympathy by projecting that the husband is having illegal intimacy with someone else, and that she has been bearing with the same and that there is no cruelty on her part. Instead of leading cogent evidence to disprove the allegations of the husband, the wife sought to rely on the

slightest gaps in the evidence of the husband and his witnesses. The said contentions are in the face of the judgment of the Apex Court in ***Vishwanath v. Sarla Vishwanath Agarwal*** (supra).

86) Acts of cruelty are not manifest to the outside world and silent insinuations, cold and indifferent behavior do constitute cruelty towards the other spouse and though may appear less in intensity, actually they are more intense. These acts are always confined to the four walls of the house and only when the spouse out of his helpless situation, shares his agony, do the acts of the spouse become known to the other members of the inner circle of the family. It is not by singling out an instance of alleged cruelty that a just decision is arrived, it is upon considering the cumulative acts and the situations, that a just decision can be arrived at. The judgment of the learned Family Court has exactly adopted this method of singling out events and terming them as not a cruel circumstance. Therefore, the approach of the learned Family Court was erroneous. There are innumerable

instances as deposed by the witnesses of the husband, like instances where the wife used to disturb the office meetings, being indifferent to that staff, rebuking elderly persons and maintaining stoic attitude even to people, who are close to the husband, which point to the irresistible conclusion that the cumulative effect of the behavior of the wife, definitely caused mental trauma to the husband and can be termed as mental cruelty inflicted upon the husband thereby legally entitling him for a dissolution of the marriage. In view of the finding with regard to the entitlement of the husband for dissolution of marriage on the ground of mental cruelty, the relief sought by the wife for restitution of conjugal rights becomes otiose.

87) Apart from the aforesaid findings, a perusal of the entire record what has been emerged from the facts of the case is that, ever since the beginning of the marriage. there was no compatibility between the parties. According to the husband, due to constant bickering, he could not lead happy marital life with the wife. It is the specific case of the husband that the wife is in the habit of humiliating him

in front of his friends, relatives, business partners and other staff members. Except making the allegations and counter allegations against each other, bitterness grew in the minds of both the parties there was no attempt whatsoever made by either of the parties to amicably resolve their misunderstandings and an attempt for their reunion to lead happy marital life for the rest part of the life and therefore, under the aforesaid circumstances, it is clear that both the parties have parted their ways and there is no chance of their reunion. It is the contention of the husband that the wife belittled him before others and in view of such situation he was constrained to leave the house. According to the wife, only because of the introduction of another lady into the life of the husband namely, Meera Madhusudhan, he himself has left the house and there were no bickerings whatsoever as alleged by the husband. Whatever the reason may be, it is true that the marital bond between the parties is beyond retrievable. There is no harmonious relationship between the parties and they are staying separately from each other

for the past 22 years. From a perusal of the averments and the evidence available on record, it shows that except bitterness no love is lasting between the parties.

88) In a similar situation, the Apex Court in the case of **Naveen Kohili v. Neelu Kohili** (supra), has observed as under:-

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

Undoubtedly, it is the obligation of the Court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that

event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. The course which has been adopted by the High Court would encourage continuous bickering, perpetual bitterness and may lead to immorality.

In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

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.

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.

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.

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 this case also there appears no emotional substratum in the marriage. The marriage has been wrecked beyond the hope of salvage. As rightly argued by the learned Senior Counsel for the husband, in view of the admitted situation of having developed sufficient animosity towards each other, not to grant a decree of divorce would be disastrous for the parties. Accordingly, this Court is inclined to grant a decree of divorce to the parties, so that they can lead their next stage of life peacefully.

89) In view of the aforesaid facts and circumstances of the case, both the appeals are allowed setting aside the common order, dated 26.09.2014 passed in O.P.Nos. 766 of 2001 and 274 of 2003 on the file of the Judge, Additional Family Court, Hyderabad. Consequently, the O.P.No.766 of 2001 is allowed dissolving the marriage between the parties and O.P.No.274 of 2003 filed by the wife for restitution of conjugal rights is dismissed. No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

JUSTICE M.G. PRIYADARSINI

Date: 28.09.2022

Tsr/gkv

THE HON'BLE JUSTICE G. SRI DEVI
AND
THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

F.C.A.Nos.22 and 33 of 2015

Date: 28-09-2022

Tsr/gkv

