

FAO-1931 of 2019

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

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Reserved on : 04.03.2022

Date of pronouncement: 09.03.2022

Rajveer Singh

.....Appellant

Versus

Gaganjot Kaur

.....Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Argued by: -Mr. Amitabh Tewari, Advocate,
for the appellant.

Mr. Dhruv Gupta, Advocate,
for the respondent.

ASHOK KUMAR VERMA, J.

[1] The appellant-husband has come up in appeal before this Court seeking setting aside of judgment and decree dated 11.12.2018 passed by the Principal Judge, Family Court, Ambala, whereby petition filed by him under Sections 12 and 13 of the Hindu Marriage Act, 1955 (for short 'the Act of 1955') for a decree of nullity and dissolution of marriage between the parties by a decree of divorce on the grounds of cruelty and desertion, has been dismissed.

[2] It is the case of the appellant that marriage between him and the respondent was solemnized as per Sikh rites and ceremonies at Sirhind

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Club, Ambala Cantt on 18.11.2010. The marriage was performed in simple manner, in which no dowry was given or taken. After the marriage the parties resided together for a short span of time. The marriage could not be consummated due to delaying tactics being adopted by the respondent. From the very beginning of the marriage the attitude and behaviour of the respondent was not good and cordial towards the appellant and his family members. Respondent pressurized the appellant to live separately in her parental home as 'Ghar Jawai'. The marriage between them could not be consummated due to ill advise given to the respondent by her mother. The respondent even did not allow him to co-habit with her. Mother of the appellant was suffering from cancer and his father was a heart patient. The respondent flatly refused to look after his aged ailing parents. On the asking of the respondent, on 18.05.2011 appellant left the respondent at her parental home at Lucknow as there she wanted to get admission in Ph.D. She took away a diamond ring, a gold chain with diamond pandle, two gold karas, a pair of diamond tops, a gold chain with pandle, a diamond pandle, one necklace, a pair of gold rings, one silver ring, five suits, six sarees and makeup kit along with her without informing the appellant. At that time, appellant was serving as a Field Major in the Indian Army and was posted at intense counter insurgency and high-altitude area. When appellant came back from his job in the month of August 2011, he along with his mother Gurbachan Kaur went to Lucknow on 17.08.2011 to bring back the respondent to her matrimonial home but the respondent refused to go with them. Thereafter, appellant's sister Rajinder Kaur went to Lucknow on

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25.01.2012 to bring back the respondent to her matrimonial home but she again refused to come back. Number of panchayats were convened but the respondent flatly refused to join appellant's company. Even the appellant filed petition under Section 9 of the Act of 1955 seeking restitution of conjugal rights wherein the respondent was proceeded ex parte by the Family Court vide judgment and decree dated 23.12.2013. The Indian Army Wives Welfare Association also made lot of efforts to reconcile the marriage of the parties. Two sessions of joint counselling were held at Astha Brave Heart Cell, Central Command, Lucknow during the month of January, 2014, but proved futile as the respondent refused to join the company of the appellant-husband. It is further the case of the appellant that marriage between him and the respondent is voidable to be annulled by a decree of nullity on the ground that marriage has not been consummated under Section 12(1) of the Act of 1955. The respondent willfully deserted the appellant without any reasonable cause. She also subjected him to cruelty, physical as well as mental. Therefore, appellant sought decree of divorce on the ground of cruelty and desertion.

[3] Respondent-wife contested the petition admitting the relationship between the parties. She denied that the marriage was performed in a simple manner or that no dowry was given or taken in the marriage. In fact, the marriage was solemnized with great pomp and show. Her father spent more than Rs.25,00,000/- on the marriage. A Swift Dzire car, a bullet motorcycle, costly household articles and cash amount were given to the appellant and his family members as per the demand made by them at the time of ring ceremony and the marriage

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ceremony. The appellant did not get the car registered in his name. He returned the documents of the car only after interference by their close relatives. Respondent denied that the marriage was not consummated. It was duly consummated during her stay with the appellant. She denied that her behaviour had been cruel towards the appellant or his family members. In fact, the appellant himself had not performed his marital obligations. It was further denied that respondent's mother used to interfere in her marital affairs. Respondent was turned out of her matrimonial home by the appellant. Appellant was reluctant to give permission to her to take admission in Ph.D. Appellant and her parents used to quarrel with her. She denied that appellant and his mother came to Lucknow to take her back. She alleged that rather they raised an illegal demand of money and refused to take her along with them till their demand was met. It was denied that she refused to join the company of the appellant. Respondent alleged that appellant gave her beatings and turned her out of her matrimonial home. It was further pleaded that respondent engaged a counsel to appear in the proceedings initiated by the petitioner under Section 9 of the Act of 1955 but due to some lapse on the part of her counsel, neither she nor her counsel could appear in the Court. As soon as she came to know about the ex parte decree, she filed application under Order 9 Rule 13 of the Code of Civil Procedure. Respondent denied that Army Wives Welfare Association at Lucknow made any effort to settle the matrimonial dispute. No registered envelope containing the copy of the decree sent by the appellant was received by her. Respondent denied that she refused to join the company of the

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appellant during any conselling held in the month of January, 2014 at Astha Brave Heart Cell, Central Command, Lucknow. She denied that she abused and insulted the appellant and his mother in the public. It is alleged that in fact appellant visited her place of study with an ulterior motive so as to cause annoyance to her. Respondent denied that she did not try to adjust herself in the family of the appellant. It is the appellant who has spoiled her life by making unreasonable demand of dowry and deserted her. Appellant cannot take advantage of his own wrong. She thus sought dismissal of the petition.

[4] From the pleadings of the parties, following issues were framed by the Family Court on 06.08.2015: -

- “1. *Whether the petitioner is entitled to a decree of divorce on the grounds pleaded as alleged?*
OPP
2. *Whether the petition is not maintainable in the present form? OPR*
3. *Relief.*

[5] In order to prove his case, appellant-husband stepped into witness box as PW1, besides examining his maternal uncles Colonel Surinder Singh as PW2 and Hardev Singh as PW3. He also tendered documentary evidence as Ex.P1 to Ex.P6 and various other documents which were marked on the record.

[6] On the other hand, respondent herself appeared as RW1 besides examining her mother Harjinder Kaur as RW2. She also led documentary evidence from Ex.R1 to Ex.R6 and mark RB to mark RJ.

[7] The Family Court has returned the findings against the appellant-husband and decided issue No.1 in favour of the respondent-

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wife. It was observed that appellant had miserably failed to prove that the respondent had withdrawn from his society without any sufficient cause with an intention to put the matrimonial relationship to an end permanently. Therefore, the appellant was not held entitled to a decree of divorce under Section 13(1)(i-b) of the Act of 1955.

[8] Learned counsel for the appellant-husband contended that the impugned judgment and decree passed by the trial Court dismissing the petition filed by the appellant-husband under Sections 12 and 13 of the Act of 1955 is erroneous and contrary to the material on record. He further contended that the wife herself has left the matrimonial home in the month of May 2011 and the efforts made by the appellant and his relatives went in vain since she refused to come to matrimonial home and there were also no issues. Being sick and tired of her behaviour and in order to save his marriage, appellant filed a petition under Section 9 of the Act of 1955 for restitution of conjugal rights and the same was decreed ex parte in his favour vide judgment and decree dated 23.12.2013 passed by the Family Court, Ambala. Instance of mental cruelty to the appellant is clear from that fact that respondent is not willing to stay with the appellant as she filed application dated 19.03.2014 for setting aside the judgment and decree for restitution of conjugal rights dated 23.12.2013. Furthermore, the Indian Army Wives Welfare Association also made efforts to reconcile their marriage, which proved futile. Respondent-wife also bent upon destroying the career and reputation of the appellant. She wrote a letter dated 29.11.2012 to the Chief of Army Staff levelling false and baseless allegations with regard to physical and mental abuse, non-

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maintenance, non-registration of car and sodomy. It was further contended that respondent is a habitual litigant and has filed innumerable cases against the appellant in order to mentally harass him. She filed a petition under Section 24 of the Act of 1955 and application under Section 125 Cr.P.C., which were withdrawn later on. She also lodged false FIR No.224 dated 25.11.2015 under Sections 498-A, 323, 504 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 against the appellant and his family members, wherein mother of the appellant has been given clean chit. Learned counsel, thus, contended that there is no possibility of reconciliation of the marriage and the marriage is irretrievably broken and they are residing separately for more than 10 years which aspect has not been considered by the trial Court while passing the impugned judgment and decree. In support of his contentions, learned counsel for the appellant placed reliance on the judgments in the cases of *AnagallaPadmalatha v. A. Sundershan Rao*, 1999 SCC Online AP 689; *K. Srinivas Rao v. D.A. Deepa*, AIR 2013 SC 2176; *Ashok Kumar Rath v. Smt. Annapurna Rath*, 2019(2) ILR (Cuttack) 316; *Lakhwinder Kaur v. Gurmel Singh*, FAO-5-M of 1994 decided on 07.01.2016; *Joydeep Majumdar v. Bharti Jaiswal Majumdar*, (2021) 3 Supreme Court Cases 742; *Shino G. Babu v. Beena M.S.*, Mat. Appeal No.43 of 2020 decided on 04.02.2022; *Munish Bajaj v. Manisha Bhutani*, FAO-5254 of 2015 decided on 20.12.2021 and *DebanandaTamuli v. SmtiKakumoniKataki*, Civil Appeal No.1339 of 2022 decided on 15.02.2022.

[9] Per contra, learned counsel for the respondent-wife sought to justify the impugned judgment and decree passed by the trial Court and

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contended that the appellant has not made out any ground to grant divorce as contemplated under the provisions of Section 13(1)(i-b) of the Act of 1955. It is the appellant who subjected the respondent to cruelty by maltreating her and by demanding dowry and left her at her matrimonial home with an intention to get rid of her. The respondent made every effort to reconcile the marital discord with the appellant. Appellant obtained ex parte decree of restitution of conjugal rights under Section 9 of the Act of 1955 against the respondent by playing fraud and by concealing true and material facts from the Court. Appellant has failed to prove any act on the part of the respondent, which may amount to physical or mental cruelty. Pursuing of legal remedies by the respondent, does not amount to cruelty. Only vague and baseless allegations have been levelled against the respondent. Therefore, he sought to dismiss the present appeal. In support of his contentions, learned counsel for the respondent placed reliance on the judgments of the Hon'ble Supreme Court in ***Ram Dass v. Smt. Kusam***, 2001(3) R.C.R.(Civil) 632 and ***Ravi Kumar v. Julmi Devi***, 2010(2) R.C.R.(Civil) 178.

[10] We have considered the rival submissions made by learned counsel for the parties and perused the records.

[11] Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be

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controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general.

[12] It is undisputed fact that the marriage between the appellant and respondent was solemnized on 18.11.2010 at Sirhind Club, Ambala Cantt. but they had no issues. In the month of May 2011, the respondent left the company of the appellant and went to her parents' house on the pretext of getting admission in Ph.D. When the appellant went and requested her to comeback, she refused to accompany him. All the efforts made by the appellant and his relatives went in vain. It is the specific case of the respondent-wife that appellant- husband himself deserted her. The Family Court, considering the averments of both the parties, dismissed the petition filed by the husband under Section 12 and 13 of the Act of 1955.

[13] In view of the above circumstances, before proceeding with the appeal on merits, taking into consideration the fact that the parties are residing separately for about ten years, the matter was adjourned from time to time to see the possibility of settlement. Vide order dated 12.03.2019, the parties were directed to appear before the Mediation and Conciliation Centre of this Court on the same day. On 21.05.2019, this Court was informed that the mediation has failed between the parties and the appeal was ordered to be listed for arguments. Finally the case was heard and reserved on 04.03.2022.

[14] It is not in dispute that, according to the appellant, in the month of May 2011, the respondent deserted the appellant and went back

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to her parents' house and never returned. Appellant has already been ready and willing to take back the respondent with him. After trying his best to get back the respondent to her matrimonial home and when the respondent refused to join his company, he filed a petition under Section 9 of the Act of 1955 for restitution of conjugal rights in which twice the respondent was proceeded ex parte. Even after passing of ex parte judgment and decree in petition filed under Section 9 of the Act of 1955, respondent filed application for setting aside the said judgment and decree, which clearly shows that she never intended to join the company of the appellant.

[15] Respondent was making various complaints to the superiors of the appellant in the Army so that appellant's career progress got affected. She wrote a letter dated 29.11.2013 to the Chief of Army Staff levelling serious allegations against the appellant regarding demand of dowry, non-maintenance and harassment made to her by the appellant and his family members. She requested that strict disciplinary action may be taken against the appellant. Respondent also made various complaints to other authorities and posted defamatory materials on other platforms. The net outcome of the above is that the appellant's career and reputation had suffered. The explanation given by the respondent that she was pursuing her legal remedies in accordance with law is not tenable in the light of the observations made by the Hon'ble Supreme Court in the case of **Joydeep Majumdar v. Bharti Jaiswal Majumdar**, (2021) 3 Supreme Court Cases 742, wherein the Hon'ble Supreme Court held as under: -

“14. The explanation of the wife that she made those complaints in order to protect the matrimonial ties

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would not in our view, justify the persistent effort made by her to undermine the dignity and reputation of the appellant. In circumstances like this, the wronged party cannot be expected to continue with the matrimonial relationship and there is enough justification for him to seek separation.”

[16] Pursuant to the abovesaid letter, joint counselling of the parties was done by the Brave Heart Cell/Aastha Cell, HQ Central Command, but its efforts proved futile. As per report prepared by the Chairperson, Brave Heart Cell, it has been observed as under: -

“(a) Mrs Gaganjot’s parents are over possessive of their only child.

(b) The mother of Mrs Gaganjot Kaur is not inclined towards the settlement of her daughter with Maj Rajveer Singh.

(c) Her parents are neither inclined for a reconciliation nor a divorce. It can be best construed that the parents want status-quo be maintained i.e. the girl stays at Lucknow with them.

(d) Maj Rajveer Singh’s parents are a simple couple his mother is suffering from cancer. Their only desire is to make all efforts for reconciliation, however, all their efforts by bringing in relatives has had no effect on the girl/her parents.

(e) Maj Rajveer Singh is inclined to seek resolution of the case and has made all out efforts to bring Mrs Gaganjot Kaur back but he has not been successful.

(f) The officer had filed a civil case under Section 9 of Hindu Marriage Act 1955 for grant of restitution and restoration of conjugal rights at Family Court, Ambala. Total 11 hearings were held. Mrs Gaganjot Kaur had never presented herself for the court

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hearings and judgment has been given in favour of Maj Rajveer Singh.”

[17] Learned counsel for the respondent is unable to point out any evidence on record, which would prove that respondent was not able to join the company of her husband due to an act/misconduct on his part. The respondent deserted the appellant without reasonable cause and she refused to comply with the decree dated 23.12.2013 passed under Section 9 of the Act of 1955. Rather she made false complaints to the superiors of the appellant to affect his career progress. The appellant-husband has succeeded in proving desertion on the part of the respondent, who has been unable to prove any reasonable or sufficient cause to withdraw from the company of the appellant. Had she been interested in joining the company of the appellant, she would have obeyed the decree of the Family Court instead of filing an application for setting it aside.

[18] As a counterblast to the petition filed by the appellant-husband, respondent lodged aforesaid FIR under Sections 498-A, 323, 504 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 against the appellant, his mother and father. According to the learned counsel for the appellant, name of the mother of the appellant has been dropped from the aforesaid FIR. The conduct of the respondent-wife in filing a complaint making unfounded, indecent and defamatory allegations against her mother-in-law, who is suffering from cancer, indicates that she made all attempts to ensure that appellant and his parents are put in jail and the appellant is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant-husband.

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[19] The issue for consideration in the present appeal would be whether the relationship of the husband and wife has come to an end and if the respondent-wife is not ready to give mutual divorce to the appellant-husband, whether this act of her, would amount to cruelty towards husband, keeping in view the fact that she is not staying with her husband for the last ten years and there is no scope that they can cohabit as husband and wife again. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Chandra Kala Trivedi vs. Dr. S.P.Trivedi, 1993 (4) SCC 232*** wherein Hon'ble the Supreme Court was considering a case where marriage was irretrievably broken down and held that in these case, the decree of divorce can be granted where both the parties have levelled such allegations against each other that the marriage appears to be practically dead and the parties cannot live together.

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

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longdrawn legal battle, directed in those cases dissolution of marriage. In

para 17, it has been observed as under:-

“17. Several decisions, as noted above, were cited by learned counsel for the respondent to contend that even if marriage has broken down irretrievably decree of divorce cannot be passed. In all these cases it has been categorically held that in extreme cases the court can direct dissolution of marriage on the ground that the marriage had broken down irretrievably as is clear from para 9 of Shyam Sunder case. The factual position in each of the other cases is also distinguishable. It was held that long absence of physical company cannot be a ground for divorce if the same was on account of the husband's conduct. In Shyam Sunder case it was noted that the husband was leading adulterous life and he cannot take advantage of his wife shunning his company. Though the High Court held by the impugned judgment that the said case was similar, it unfortunately failed to notice the relevant factual difference in the two cases. It is true that irretrievable breaking of marriage is not one of the statutory grounds on which court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in long- drawn legal battle, directed in those cases dissolution of marriage. But as noted in the said cases themselves, those were exceptional cases.”

[21] Hon'ble the Supreme Court in a case of **Naveen Kohli vs. Neetu Kohli, 2006 (4) SCC 558** was considering a case of irretrievable break down of marriage. In this case, wife living separately for long but did not want divorce by mutual consent only to make life of her husband

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miserable. Thus, the decree of divorce was granted and held it is a cruel treatment and showed that the marriage had broken irretrievably. In para 62, 67, 68 and 69, it has been observed as under:-

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

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67. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

68. In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the Trial Court. In our opinion, wisdom lies in accepting the pragmatic reality

of life and take a decision which would ultimately be conducive in the interest of both the parties.

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

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

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

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

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

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

[26] In the present case, the appellant and the respondent are living separately since May, 2011. Firstly efforts were made to resolve the matrimonial dispute through the process of mediation, which is one of the effective mode of alternative mechanism in resolving the personal dispute but the mediation failed between the parties.

[27] Applying the ratio of the above-mentioned judgments to the facts of the present case and keeping in view the extra-ordinary facts and

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circumstances of the case, the appeal is allowed, judgment dated 11.12.2018 passed by Principal Judge, Family Court, Ambala, is set aside and decree of divorce is granted accordingly in favour of the appellant-husband. Decree-sheet be prepared accordingly.

	(RituBahri) Judge	(Ashok Kumar Verma) Judge
March 09, 2022		
R.S.		

Whether speaking/reasoned	Yes
Whether Reportable	Yes