

FAO-7375 of 2018 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

FAO-7375 of 2018 (O&M)

Date of decision: 05.04.2022

Priya Rani

.....Appellant-Wife

Versus

Rajiv Kumar @ Bobby

.....Respondent-Husband

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

Present: - Mr. Naresh Kumar Manchanda, Advocate,
for the appellant-Wife.

Mr. Varun Dhawan, Advocate,
for the respondent-Husband.

ASHOK KUMAR VERMA, J.

[1] The appellant-wife has come up in appeal before this Court seeking setting aside of judgment and decree dated 18.10.2018 passed by the District Judge (Family Court), Moga (hereinafter referred to as 'the Family Court'), whereby petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (for short 'the HMA) to dissolve the marriage between the parties on the grounds of desertion and mental cruelty, has been allowed.

[2] Briefly stated, respondent-husband filed a petition under Section 13 of the HMA before the Family Court pleading therein that marriage between the parties was solemnized on 29.06.2011 in a '*Dharamshala*' at Zira, District Ferozepur, by way of Hindu rituals in a very simple manner. After marriage, appellant and the respondent lived

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together and cohabited with each other as husband and wife at Dharamkot, District Moga. Soon after marriage, respondent-husband came to know that appellant-wife was a hot headed lady and she disclosed that her marriage has been solemnized with the respondent against her wishes by her parents forcibly otherwise she did not want to marry him as she had love and relations with somebody else at Zira. She wanted to marry him. With the passage of time twin baby boys were born on 16.07.2012 at Dharamkot, out of which one boy died after 15 days of birth and other son, who is about four years old (at the time of filing of the petition under Section 13 of the HMA), is residing with respondent-husband and is studying in a school at Dharamkot. All the expenses have been borne by him. Even after birth of the children, appellant-wife did not mend her behaviour and continued to insult the respondent-husband and his family members to make them to bow before her demand of separate residence. To save his matrimonial life, respondent's parents separated him along with appellant on the first floor of their house and also got published a notice of disinheritance of the parties in the newspaper 'Pehredar' dated 17.04.2013. But even after getting separate residence, appellant-wife did not restrain herself from insulting the respondent-husband and his family members in the presence of friends, relatives etc. She did all these misdeeds firstly to get rid of the matrimonial ties and secondly at the instigation of her brothers, who wanted her to purchase separate house. Respondent-husband continued to bear all such maltreatment and harassment only with the view to save his family life and for better future of the child. When the respondent-

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husband tried to make the appellant-wife understand not to do the aforesaid acts and to leave the demand of separate house, to pressurize and cause mental torture to him, she left the matrimonial home in July, 2013 without his consent. Thereafter, respondent-husband arranged panchayat with residents of Dharamkot to take the appellant-wife back in the matrimonial home. On the request of panchayat, appellant's father Ramesh Kumar left her in the matrimonial home and also executed an agreement in the shape of writing dated 23.10.2013 admitting mistake of the appellant-wife and also assured that in future respondent-husband and his family members will have no problem from the side of the appellant-wife. On the basis of the said writing and assurance given by appellant's father, respondent kept appellant in his house as his wife. After 2-3 months, appellant-wife again started misbehaving with him and to get rid of matrimonial ties, she started making allegations against the respondent-husband that he has illicit relations with his brother's wife (*bhabhi*) as his elder brother is living abroad. When the respondent tried to make her understand not to make such false allegations, appellant hanged the minor son in the street on the first floor with the threat that if he tried to stop her from leaving the house, she will kill the child. Thereafter, appellant-wife again left the matrimonial home along with gold ornaments and valuable clothes threatening respondent and his family members to implicate them in a false criminal case. Respondent-husband convened panchayats number of times to make her understand but she remained adamant to her behavior and flatly refused to join his company. It was pleaded that due to above mentioned acts and behavior of appellant, respondent has

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suffered mental cruelty, insult and depression. In continuation of harassment and humiliation given to the respondent-husband and his family members, appellant instigated her brothers and other family members on which they came to respondent's house and abused to him and his family members and also threatened to lodge a false complaint against them. Respondent-husband's sister-in-law (Bhabhi) Smt. Pooja moved an application to the Police Station, Dharamkot, against the brothers of the appellant and her family members. It was alleged that appellant had caused mental cruelty to him to such an extent that he could not expect to live with her with an ordinary wear and tear of married life as she has also deserted him. Therefore, respondent-husband sought decree of divorce on the ground of cruelty and desertion.

[3] Appellant-wife contested the petition admitting the marriage between the parties but she denied that it was solemnized in a '*Dharamshala*' at Zira. Appellant stated that marriage was solemnized in Hotel G.N. Zira and her father spent ₹7 lakhs on the marriage. It has been denied that appellant is a hot headed lady or that she disclosed the respondent-husband that she had married him under pressure of her parents rather she got married him with her own will. It has further been denied that she had any love or relation with somebody else at Zira. She had never any liking for any other person except the respondent-husband. It has also been denied that she ever insulted respondent's parents rather respondent had been insulting her parents as he insisted and pressurized her to bring money from her father. On two occasions appellant brought ₹20,000/- each from her father and gave the same to the respondent but he

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was not satisfied with the same as he insisted and pressurized her to bring at least ₹3 lakhs from her father but her father is a poor man. It has also been asserted that respondent kicked her out of the matrimonial home and she will take appropriate legal recourse to get the custody of minor child. She always served and treated the respondent and his family members with utmost sincerity and devotion. Appellant's *jethani* Smt. Pooja has been interfering in her matrimonial life as her husband has gone abroad and she has been living in the same house where appellant and the respondent were residing. Demand of separate residence and mess has been denied by the appellant. It has also been denied that she ever resided separately on the first floor of the house. It was stated that respondent has been residing in the same house along with his parents and is doing business of *karyana* at Dharamkot. It has also been denied that she ever insulted the respondent and his family members in the presence of friends and relatives or that her brothers instigated to purchase separate residence. It was the respondent who maltreated the appellant and gave beatings to her. He also insulted her at the instigation of his *bhabhi* Pooja. It has also been denied that she left the matrimonial home in July, 2013. The story of panchayat has also been denied being false and concocted. The writing dated 23.10.2013 has not been denied but it has been asserted that it was only to save her matrimonial life as she and her father were made to sign the said writing as they were openly told that if they do not sign the same, appellant will not be allowed to enter the matrimonial home. It has been asserted that appellant neither levelled allegation that respondent has illicit relations with Smt. Pooja nor she left the matrimonial home along

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with gold ornaments and valuable clothes. Appellant was kicked out of her matrimonial home in the second week of November, 2016. Thereafter, appellant's father along with some other persons went to the house of the respondent with the request not to desert the appellant and to allow her to join the respondent in the matrimonial home but respondent and his parents insisted for ₹2.50 lakhs to allow her to enter the matrimonial home. Sending of any panchayat by the respondent to her parental house has been denied. It has been stated that appellant has always been and is still ready and willing to join the respondent. It has been denied that there was any act or behaviour on her part which could be treated as mental cruelty, insult or depression. It has been asserted that appellant's brothers namely Sanjeev and Vishal were beaten and manhandled by the respondent. Other material allegations have also been denied and appellant made a prayer to dismiss the petition.

[4] Respondent-husband filed rejoinder to the reply of the appellant-wife controverting all the preliminary objections and reply on merit, reiterating the contents of the petition.

[5] From the pleadings of the parties, following issues were framed by the Family Court on 22.05.2017: -

- “1. Whether respondent has caused cruelty to the petitioner, if so, its effect? OPP
2. Whether respondent has deserted the petitioner, if so, its effect? OPP
3. Whether petition is not maintainable? OPR
4. Relief.”

[6] In order to prove his case, respondent-husband stepped into witness box as PW1, besides examining Satish Kumar as PW2, Manohar

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Lal Nohria as PW3 and Raj Kumar @ Surinder Singh as PW4. Thereafter, respondent closed his evidence.

[7] On the other hand, appellant-wife examined Kewal Krishan as RW1 and Sanjeev Kumar as RW2. Appellant herself stepped into witness box as RW3. She also examined Ramesh Kumar as RW4 and Tarsem Lal as RW5. Thereafter, appellant closed her evidence.

[8] Vide judgment and decree dated 18.10.2018, the Family Court allowed the petition of the respondent-husband filed under Section 13 of the HMA and decree of divorce has been passed in favour of the respondent-husband by observing that respondent-husband had been able to prove his case that acts and conduct of the appellant-wife had caused mental as well as physical cruelty to him. She had deserted him without reasonable cause and without his consent and against his wish for a continuous period of more than two years.

[9] Learned counsel for the appellant-wife has contended that the impugned judgment and decree passed by the Family Court are based on mere surmises and conjectures as it is without application of its judicious mind. Appellant had proved on record that the petition filed by the respondent was based on false and frivolous allegations. Learned counsel has further contended that writing dated 23.10.2013 was signed by the appellant and her father under pressure to save the matrimonial life of the appellant-wife. Respondent and his parents are greedy persons as they had been insisting and pressurizing the appellant-wife to bring money from her father. It was contended that in the second week of November,

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2016 respondent-husband kicked out the appellant-wife from the matrimonial home.

[10] Per contra, learned counsel for the respondent-husband supported the judgment and decree passed by the Family Court and has contended that appellant leveled false allegations against the respondent that he had illicit relations with his brother's wife (*bhabhi*). Further, learned counsel has contended that respondent-husband has been rightly granted divorce by the Family Court as he successfully proved on record that appellant-wife had caused mental and physical cruelty to him and deserted him without any reasonable cause against his wish. Learned counsel for the respondent has also contended that respondent-husband convened panchayats number of times to make her understand but appellant-wife remained adamant to her behavior and flatly refused to join his company.

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

[12] Matrimonial cases 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 controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit,

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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.

[13] It is undisputed fact that the marriage between the appellant and respondent was solemnized on 29.06.2011 and they are living separately since November, 2016.

[14] There is no litmus test by which cruelty can be found. It is to be judged by taking into consideration numerous factors in particular when the allegations of cruelty relate to mental cruelty. Mental cruelty can only be perceived. There cannot be any water tight compartments i.e. particular facts shall alone constitute mental cruelty. It has to be determined in each case keeping the peculiar facts in view of each case. In a given set of circumstances, an act by itself may constitute cruelty while in the others it may not. The Hon'ble Supreme Court in ***Dr. N.G. Dastane v. Mrs. S. Dastane, A.I.R. 1975 Supreme Court 1534***, pointed out some of the factors which should be taken note of while appreciating the evidence in order to come to a finding of mental cruelty viz, peculiar habits of the parties, ideas, susceptibilities and expectations of profession, their belonging to the strata of society. It was further forewarned that since the fact of finding of cruelty affects the status of the parties, it demands a closure look than those required in cases of pronotes etc. as it is likely to impair the integrity of the matrimonial union which has a significance. The spouses are required to take each other as such with temperamental disharmony and incompatibilities, One has to see the circumstances and the environments in which the parties have been brought up.

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[15] Undoubtedly, the conduct of the party guilty of cruelty should be of such a nature as it would imperil one's sense of personal safety, mental happiness, job satisfaction, reputation, or it has an adverse affect on the livelihood, status of the person, his right to work, peace of the matrimonial home, or there is likely adverse effect on the off-spring, social status, tradition, caste and community, public opinion prevailing in the locality. The character of allegations, the mode of life led by the parties and their health are to be kept in view. The acts and omission which injure the feeling of the other spouse resulting in causing mental agony, which one of them suffers is to be judged not from the magnitude of it but from its nature whether an act should be taken as an ordinary wear and tear of the married life or an act of cruelty of such nature that it may not be possible but difficult to live with a particular amount of mental peace in those environments. 'Home' consists of matrimonial home in which husband and wife with the children live. It was once considered to be a fort of a person where one sheds his/her inhibitions and wants, the minimum mental peace in a cordial atmosphere for getting the miseries, difficulties and other hard realities faced by him/her during the day while making his/her living. Mental respect, regard consideration, fore bearing or each other's faults is the concept of the matrimonial home. Though the concept of marriage being a religious affair was kept intact by the Hindu Marriage Act to some extent but the fact the Legislature attempted to break the old shackles and bondage which were permanent in nature and were used to come about on account of marriage cannot be lost sight of.

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Still a great importance was attached to the purity of matrimonial relations and chastity or character of a person.

[16] Marriage cannot be considered to be a drab existence of aliveness. It is a launching for a meaningful life and right to live in peace and harmony. Marriage thrives of consistencies and traditions. In matrimonial relations one is expected to respond and not to react. One is required to exercise a reasonable care before attributing allegations of unchastity or living in adultery. The stability of marriage is based on the pillar of mutual understanding and bilateral respect as well as sympathetic understanding to each other. To trust is a greater accomplishment than to be loved as trust provides trust and suspicion breeds suspicion.

[17] It is proverbial that men may lie but not the circumstances. The scenario of circumstances which emerges from the evidence on record is that the appellant got sceptical of the character of the husband. Resultantly, one pillar of faith of the matrimonial life stood shaken.

[18] In order to prove her case, appellant-wife Priya Rani appeared in the witness box as RW3 and tendered her duly sworn affidavit. In her cross-examination, she stated that *I have received the summons of this case in my parental house at Zira. I am residing separately from the petitioner since two years i.e. dated 13.07.2016. I have filed a case for taking custody of my minor child. It is correct that my child is residing with my husband from the date of my separation. At the time of separation my son was about 4 years old. It is correct that my son is studying under the care and custody of my husband at Dharamkot.*

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It is correct that I have knowledge that my father in law disinherited me and my husband from his property. It is correct that thereafter, me and my husband were residing separately in the matrimonial house in the upper portion of the house and we have a separate mess. It is correct that petitioner belongs to a good family and they are economically fit. It is correct that the main dispute between us is that I leveled an allegation against the petitioner that he has an illicit relation with his Bhabhi Pooja. It is correct that my brother also forces me to take a separate house from our matrimonial house. I have seen the document Ex.P-2 dated 23.10.2013 which bears the signatures of my father, my mother and myself and I identified the same which are already Mark-A, B and C. I had not got registered any complaint before the police regarding the maltreatment and demand of dowry as mentioned in my affidavit. It is correct that there is no dispute regarding the demand of dowry. It is correct that two baby boys were born but one died after 15 days. It is correct that our main dispute with my husband is that Bhabhi of petitioner is a big interference in our life.

[19] Ramesh Kumar, father of the appellant-wife, appeared in the witness box as RW-4, who in his cross-examination stated that *family of the petitioner-husband is economically and financially fit. I do not know the date, month and year of amount as alleged in my affidavit in para No.3. I have not filed any complaint about the alleged demand in para No.3 of my affidavit before any police official till today. I have not filed any complaint about the alleged force used by the family of the petitioner as alleged in para No.5 of my affidavit to the police. It is correct that*

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summons of this case were received by my daughter in law in my uncle's house at Zira. It is correct that the child born to the parties is residing with the petitioner and he maintains his child. It is correct that respondent-wife has not filed any case under Section 9 HMA and for taking the custody of minor child till today. I do not know whether father of petitioner disinherit the petitioner and respondent from his property. It is correct that Rajiv Kumar and Priya Rani were living in the matrimonial house on upper portion and have separate mess. I earned Rs.12/13,000/- per month by selling the clothes on the cycle to different villages. It is correct that I have not filed any complaint about the illicit relation as alleged by my daughter (respondent) with petitioner-husband to the police till today. I have seen Ex.P-2 dated 23.10.2013 which bears my signature and I identified my signature on the same. Similarly, I have also seen the signatures on Ex.P-2 duly signed by my wife Seema Rani and my daughter Priya Rani in my presence.

[20] From the above deposition of the RW-3 Priya Rani appellant-wife and her father Ramesh Kumar RW-4, it is axiomatic that entire case set up by appellant stands totally falsified. Appellant-wife has admitted that she has the knowledge that her father-in-law has disinherited her and her husband from his property. She further admitted that thereafter she and her husband were residing separately in the matrimonial house in the upper portion of the house and they had separate mess. She could not tell the date, month and year of arranging the panchayat as mentioned in her affidavit. She admitted signatures of her father, mother and herself on writing dated 23.10.2013 (Ex.P-2). Though she has

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leveled allegations that respondent-husband had raised demand of ₹20,000/- twice and ₹3 lakhs but she could not be able to tell the date of making any such demand. She has also deposed that she has not got registered any complaint with the police regarding the maltreatment and demand of dowry as mentioned in her affidavit. Rather she has admitted that there is no dispute regarding demand of dowry and voluntarily deposed that only dispute is regarding her maltreatment by the respondent. Appellant admitted that she had leveled allegation against the respondent-husband that he had illicit relation with his *bhabhi* Pooja. Further, RW-4 Ramesh Kumar, father of the appellant also deposed in his cross-examination that he had not filed any complaint regarding alleged demand of dowry with the police. He has also not filed any complaint regarding alleged force used by family of the respondent-husband. He also admitted that the appellant had not filed any case under Section 9 of the HMA and for obtaining custody of minor child. He has voluntarily deposed that there is dispute regarding the demand of dowry but contrary to it appellant has admitted in her cross-examination that there is no dispute regarding demand of dowry.

[21] Perusal of writing dated 23.10.2013 Ex.P-2, which admittedly has been signed by the appellant, her father and mother, reveals that appellant-wife had admitted her mistake and further assured that she will not raise any quarrel in future. Her parents left the appellant in her matrimonial home stating that she will not commit any such mistake in future. This writing fully corroborates the whole version of the respondent-husband. Though appellant has tried to get over this by saying

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that the aforesaid writing dated 23.10.2013 was made under pressure and she and her parents were made to sign over the same in order to save her matrimonial life but it seems highly improbable that the respondent-husband and his family members who are financially good would have maltreated the appellant. Further, instead of reporting the matter to the police or taking action against them as per law, appellant and her family members executed the above writing in favour of the respondent and also put/affixed their respective signatures over the same.

[22] It is further evident that the appellant never complained of alleged cruelty or harassment meted out to her. She never filed any petition under Section 9 of the HMA for restitution of conjugal rights. There is nothing on record to show that she ever tried to contact the respondent or made an effort to meet the minor child. There is no iota of evidence that she ever filed any petition for seeking custody of minor child.

[23] Moreover, appellant levelled false allegations against the respondent of having illicit relations with his *bhabhi*, which caused great mental agony to the respondent and his family members. False defamatory, scandalous, malicious, baseless and unproved allegations made against the spouse amount to cruelty.

[24] It is now well settled that leveling disgusting allegation of indecent familiarity with a person outside wedlock and allegation of extra marital relationship constitute grave assault on the character, honour, reputation, status as well as health of the spouse. Such aspersions of perfidiousness attributed to the spouse would amount to worst form of

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insult and cruelty, sufficient by itself to substantiate cruelty in law. Such allegations made in the evidence or suggested in the cross-examination satisfy the requirements of law. It is, therefore, in this background that this Court is also to examine whether the allegations made by the appellant-wife amounted to cruelty which may entitle the respondent-husband to the grant of decree of divorce.

[25] Hon'ble Apex Court in the case of ***Vijay Kumar Ramchandra Bhate v. Neeta Vijay Kumar Bhate, AIR 2003 SC 2462*** considered "whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitute mental cruelty to claim decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act" and has observed as under: -

"Where the spouse in the written statement makes allegations extensively with enumeration of instances and incidents against wife branding her as unchaste woman, keeping illicit relations-sexual and otherwise, with a neighbour's son, the same would clearly amount to cruelty even if the husband wanted to withdraw these allegations by amending the written statement. It was held that leveling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship constitute grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards, would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed.

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Such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law.

[26] In ***GVN Kameswara Rao v. G. Jabilli, 2002(2) RCR (Civil) 15 (SC)***, it was held that making of false complaint and consequent loss of reputation and standing in society at the instance of one's spouse would amount to cruelty. In another judgment of the Hon'ble Supreme Court reported as ***R Balasubramanian v. Vijayalakshmi Balasubramanian, 1999(3) RCR (Civil) 636 (SC)***, it was held that unfounded allegations of adultery against wife were serious allegations amounting to cruelty and entitles the wife to seek relief against the husband under the Act or otherwise.

[27] The allegations of appellant without any corroborating evidence are of such quality, magnitude and consequence as to cause mental pain, agony and suffering, amounting to the reformulated concept of cruelty in matrimonial law, causing profound and lasting disruption and driving the husband to feel deeply hurt and apprehend that it would be dangerous for him to live with her, who rendered the maintenance of matrimonial home impossible.

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

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

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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.”

[29] 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.

[30] The three Judges' Bench of Hon'ble the Supreme Court in a case of ***Samar Ghosh vs. Jaya Ghosh, 2007 (4) SCC 511*** passed the decree on the ground of mental cruelty but the concept of irretrievable breakdown of marriage has been discussed in detail referring the 71st report of the Law Commission of India.

[31] 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

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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.

[32] 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.

[33] In the present case, the appellant and the respondent are living separately for about five years.

[34] For the reasons afore-stated, the Family Court was perfectly justified in granting divorce to the respondent-husband as there are hardly any chances that the appellant and the respondent could lead a happy married life because a lot of bitterness has been created in their relationship.

[35] Learned counsel for the appellant-wife is unable to point out any illegality or infirmity in the impugned judgment and decree which calls for interference by this Court.

[36] Consequently, this appeal is dismissed.

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[37] In view of disposal of the appeal, civil miscellaneous application, if any pending, also stands disposed of.

	(RituBahri)	(Ashok Kumar Verma)
	Judge	Judge
April 05, 2022		
R.S.		
	Whether speaking/reasoned	Yes/No
	Whether Reportable	Yes/No