

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

FAO-M-128-2017

Date of decision:- 05.01.2023

Neetu Chauhan @ Sonakshi

....Appellant-Wife

vs.

Sanjay Aswal

...Respondent-Husband

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI  
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. V.K. Jindal, Sr. Advocate with  
Mr. Gopal Soni, Advocate and  
Mr. Neeraj Kumar, Advocate  
for the appellant.

Dr. Anmol Rattan Sidhu, Sr. Advocate with  
Mr. Shiv Kumar Sharma, Advocate  
for the respondent.

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**Ritu Bahri, J.**

By way of filing the present appeal, the appellant-wife is seeking setting aside of judgment and decree dated 23.02.2017 passed by District Judge, Panchkula, whereby petition filed by the respondent-husband under Section 13 (1) (i-a) (i-b) of the Hindu Marriage Act, 1955 (for short 'Act 1955'), for dissolution of marriage between the parties by a decree of divorce on the grounds of cruelty and desertion, has been allowed.

Brief facts of the case as stated by the respondent in the Court below are that the marriage between the parties was solemnized on 18.01.1999 according to Hindu rites and ceremonies at Delhi. After marriage, they lived together as husband and wife at Chandigarh. Out of this wedlock, two daughters namely Shokhi and Lavanya were born on

02.02.2000 and 02.09.2007 respectively, who are residing with their mother i.e appellant-wife. The respondent further pleaded that he is B.E. & LLB and the wife is a graduate and her father bears political influence and is a rich person. His father had continuous interference in the marital life of the parties.

After solemnization of marriage, the behavior of the appellant did not remain justifiable with him and his parents. The appellant has been a woman of extreme aggressive, arrogant nature and her conduct lacked cultural values of an Indian woman and believed in leading a free life. The respondent alleged that appellant never respected him and his parents and inflicted grave cruelty upon them with her irresponsible and cruel behavior and eventually deserted him on 19.08.2009, which necessitated him to file the divorce petition.

The respondent further pleaded that after the marriage, he took his wife to Goa, Mumbai etc. for honeymoon, where, she insisted upon taking liquor in front of him that shocked him and on his stopping to consume liquor, she became annoyed and slashed her veins of her hand. He became afraid and returned from his honeymoon. The respondent further alleged that his wife is in habit of visiting her parental home as and when she liked, without informing him and his family members. Further the appellant has faith in witchcraft and she used the same on him. The respondent pleaded that the wife used to ask him not to sit with his parents and her behavior towards his family members i.e parents, brother and sisters, remained of hatred, that caused great cruelty to him. The respondent pleaded that in the year 2000, once the appellant threw magazine on his face in the presence of his brother, which humiliated him a lot.

the appellant left the government accommodation of his father in the presence of orderly and other employees and went to the house of Shri Gopal Bansal at a distance of 4-5 kilometers, by leaving behind her nine months old daughter crying without informing anyone. While the respondent and his brother kept on searching her, the appellant refused to return home with the respondent in that night and on the next day, she came back in the presence of Charanjit Singh. After gap of ten days, she again left the house of her husband and went away in night. In the year 2001, the parties shifted to Panchkula. However, she continued to torture him. She used to take out money from his purse and used to go out of home alone without informing anyone and also objected to his running the coaching classes. All her conduct caused mental cruelty to the respondent.

The respondent further pleaded that he tried to convince the wife several times that she should mend her ways and should respect the respondent and his family members, on the contrary, she got extremely annoyed and went to the second storey of the house and extended threats to commit suicide in the presence of family members, then he convinced her and brought her downstairs. The respondent informed wife's father in Delhi about the said act of his wife, who contrary told that he did not have time to hear such nonsense things.

The respondent pleaded that his wife and her father pressurized him to reside and do business in Delhi, so that appellant should stay in Delhi and on his refusal, the behavior of his wife and her father became more grave. The appellant used to try to control the respondent through witchcraft. Once at 11.00 O'clock in the night at Panchkula, the appellant left home leaving the child without informing anyone and on searching,

appellant used to insult the respondent in presence of his friends and kept on harassing the respondent mentally due to her habits and nature. Fearing infamy, respondent's parents shifted to Jaipur at house No. A-224, Hanuman Nagar, Vaishali Nagar, in the year 2004, and settled there.

The respondent further pleaded that in the year 2005, they along with their daughter Shokhi shifted at Jaipur. His parents provided separate accommodation to them on the first floor of the house, but the conduct of the appellant remained cruel towards him. The father of the appellant also extended threats to the respondent and terrorized him as and when he disclosed the cruel behavior of the appellant. The respondent alleged that on 25.08.2005 and 08.10.2005, appellant left for her parental home leaving the daughter-Shokhi at home without informing the respondent and thus, the respondent faced huge hardship and tension. The appellant along with her daughter, ornaments and costly clothes left the house, the respondent and his family members including uncle tried to stop her by advising her, but the appellant did not pay any heed and instead threatened to collect the crowd that caused huge mental agony.

The respondent pleaded that after few days of the incident, appellant's father convened a meeting at the house of the respondent , appellant, father of the appellant and her relatives namely Tarachand Khichi, D.S.P. attended the said meeting, in which, all people advised the appellant to mend her behaviour, but she put deaf ears towards the advices of everyone and in anger, she left for Delhi with her father. Thereafter, on 28.08.2006, the appellant wrote a letter to the respondent and admitted all her mistakes, promised not to repeat the same in future. The respondent further pleaded that thereafter, the appellant again returned to the matrimonial home but continued to inflict cruelties upon him and

sometimes, did not cook food for him and for her daughter Km. Shokhi. The respondent pleaded that once the appellant consumed liquor in excess and vomited on the bed itself, on which, he convinced her not to consume liquor, but instead of improving herself, she extended threat to leave the house of the respondent and in anger threw wicket at the respondent. In the year 2007, appellant extended the threat to respondent to the extent that she has restrained her relative D.S.P. otherwise he would have broken his hands and legs. The appellant used to extend threat that she would teach a lesson to the respondent and his family members and the whole Aswal family would remember the same forever.

It is further pleaded that in the month of December, 2010, on the insistence of the appellant and for the better future of his wife and his daughters, he bought a new flat for them. Respondent pleaded that he has been paying all the expenses of the appellant and both his daughters, but despite this, no change came in the cruel behavior of the appellant. She did not behave properly with her minor daughters, also. Subsequently, the appellant restrained the respondent to meet his daughters. For the better education of his daughters, the respondent got daughter-Shokhi admitted in the hostel in the year 2010, but in the month of August, 2011, the appellant made the daughter Shokhi to leave hostel with the help of her father and the appellant took her away forcibly.

The respondent further pleaded that on 11.08.2011, father of the appellant, her uncles & two other companions along with the driver came at the residence of parents of respondent at A-224, Hanuman Nagar and abused and threatened to break his legs and involve in cases if he happens to visit Delhi, and also dictated to act as per the dictates of the

station Vaishali Nagar, Jaipur. It is alleged that said episode extremely horrified the respondent and his family and he apprehends danger to their life, health and property. The respondent further pleaded that the appellant has deserted the respondent since 19.08.2009.

It has been pleaded that now it has become impossible for them to continue to live together for the rest of their life and it has reached such a dead end that said marriage has become meaningless and hence broken. All the efforts and chances of their mutual meeting, discussion have come to an end and thereby, creating a situation of irretrievable break down.

On notice, the appellant puts in appearance and contested the petition by filing her written statement. She admitted the marriage of the parties but denied that they last resided as husband and wife up to 19.08.2009 at A-224, Hanuman Nagar Vaishali Nagar Jaipur. She pleaded that in order to harass her, a petition on false facts have been filed. The appellant pleaded that under conspiracy, she was sent to Delhi and respondent also stayed in his matrimonial home, where the marriage was lastly cohabited. She also raised challenge to the jurisdiction of the court at Rajasthan. The appellant pleaded that her father never interfered in the marital life of the parties and the respondent made false allegation to defame the name of her father, who is a respectable person and a politician. She fulfilled the marital obligations but due to the unauthorized demands raised by the respondent-husband and his family members, they made her life hell.

The appellant pleaded that her father gave Zen Car at the time of her marriage but on demand for another by respondent and his family members, another Maruti Car was also provided to them on the same day,

but they continued raising their illegal demands from the family of the

appellant and tortured her physically as well as mentally. The appellant denied that she ever asked the respondent to serve her liquor or cut her veins on his refusal. She alleged that allegations are concocted. Rather, pleaded that the respondent is a habitual drinker and under the influence of liquor he is unable to control him and used to indulge in intolerable acts and used to beat and cause sexual harassment to her.

The appellant pleaded that she never visited her parental home without the consent of the family of the respondent, nor she is believer of black (tantric) magic. The appellant never stopped the respondent to sit with his family members, nor ever had hatred towards them. The appellant further pleaded that she and her father never asked the respondent to reside in Delhi or to do service or business there. The appellant, rather pleaded that in the year 2011, under a conspiracy, the respondent made her to shift at Delhi by proposing that they would settle in Delhi in the flat/ floor situated at Guru Har Krishan Nagar Delhi but later on did not take her to said flat on the pretext of some dispute with his brother with regard to the said flat. The appellant further pleaded that in the year 2011 on the asking of the respondent, she shifted to Delhi with her children as respondent stated he would also come and settle at Delhi after them and also continued coming to Delhi, showing he was searching for some place for their residence.

From the pleadings of the parties, the following issues were framed for adjudication vide order dated 21.09.2013-

1. Whether the respondent, after marriage, committed cruelty with the petitioner as alleged in the petition.?
2. Whether the respondent deserted the petitioner since 19.08.2009 without any reasonable cause?
3. Whether the petitioner is entitled for a decree of

divorce?

4. Relief.”

Vide order dated 01.10.2015, an application under Section 24 of the Hindu Marriage Act was partly allowed by the then Additional District Judge, Panchkula, awarding 40,000/- per month as maintenance pendente-lite alongwith litigation expenses of Rs. One lac to the appellant, from the date of application under Section 24 of the Act during the pendency of divorce proceedings. Considering the facts at that point, particularly the statement of the children, whereby they had refused to meet the respondent, the application under section 26 of the Act was dismissed, by granting the liberty to the respondent to file the same after finding some neutral or suitable venue.

In support of his case, the respondent appeared as PW1 and tendered his duly sworn affidavit as Ex.PW1/A, reiterating the facts mentioned in the petition. He also examined Charanjit Singh as PW2, P.W.3 Kulbhusan Nagar (cousin brother of the respondent-husband), P.W.4 J.P. Aswal (father of the respondent-husband). The respondent also tendered in evidence the following documents ie

- Ex-P-1 Respondent's Handwritten Note dated 31.12.2001
- Ex-P-2 Respondent's Medical Prescription dated 05.08.2005
- Ex-P3 Respondent's Missing Report dated 25.08.2005  
got registered by petitioner with Police Station Vaishalinagar (Jaipur City)
- Ex-P-4 Appellant's Handwritten Note showing hatred against petitioner and his family members
- Ex-P-5 Application dated 09.10.2005 by petitioner to Police Station Vaishalinagar (Jaipur City) informing that Neetu @ Sonakshi has returned (whose missing report was reported by him)
- Ex-P-6 Respondent's Handwritten Apology Letter dated 28.08.2006 (Three Pages)

- Ex-P-7 Handwritten Note of Respondent's threatening the petitioner-husband either to part his ways from his family and separate his business or to leave the appellant-wife alongwith the daughter-Shokhi
- Ex-P-8 Handwritten Note of respondent threatening the petitioner not to live in in-laws house and even she **will so far away** from petitioner so that she cannot see anybody
- Ex.P9 Handwritten Note of Respondent's threatening the petitioner to chose between petitioner and his parents.
- Ex.P10 Respondent's spoiled the Science Teaching Notes of the petitioner by writing a threatening note for committing suicide.
- Ex.P11 Registration Certificate with stamp of Bank showing that the there was hypothecation of Bank on the vehicle, which was later on cleared
- Ex.P12 Six Medical Prescriptions showing that the Respondent was regularly being taken care of by the petitioner by consulting the doctors at places of his residence
- Ex.P13 Three Pathology Reports of Respondent's, showing that the she was regularly being taken care of by the petitioner
- Ex.P14 (Rent Deed and it's Renewal Deed) executed between petitioner and the landlord of the flat at Jaipur, taken on rent by the petitioner at the instance of the respondent-wife to live separately from the petitioner nd parents-in- laws.
- Ex.P15 Payment Receipts showing that the petitioner used to deposit the School Fees of the daughter
- Ex.P16 Process Server Report dated 27.09.2011 that the respondent has received the summons of the court at Jaipur Address.
- Ex.P17 Affidavit dated 16.07.2012 of Respondent's submitted in Family Court, Jaipur showing her address of Jaipur
- Ex.P18 Documents/Pictures showing that the Joint Locker of petitioner and Respondent at State Bank of Bikaner and Jaipur, was being operated by the respondent alone that too after filing of the present Divorce Petition by the petitioner-husband
- Ex P19 Receipt of Police Report dated 11.08.2011 lodged by petitioner against Respondent's father and his musclemen

- for abusing, threatening and intimidating the petitioner.
- Ex.P20 Detailed Complaint dated 11.08.2011 lodged by petitioner against Respondent's father and his musclemen for abusing, threatening and intimidating the petitioner
- Ex.P21 Cervical Medical Prescription dated 08.06.2011 of Petitioner
- Ex.P22 Black Magic bag of Respondent (containing Red Cloth; Foot soil of petitioner and Paper with date of birth of petitioner)
- Ex.P23 Audio Recording C.D. dated 23.11.2012 and its transcription
- Ex.P24 Audio Recording C.D. dated 07.09.2011 and its transcription
- Ex.P25 Facebook Account Printout of Shokhi (daughter of parties) showing the surname of maternal side instead of paternal side
- Ex.P26 MRI Report dated 16.04.2014 and other Medical records of petitioner
- Ex.P27 Certified Copy of Application seeking amendment in Petition Under Section 125 Cr.P.C. titled as Neetu Chauhan and others Vs Sanjay Aswal", pending in TIS HAZARI COURTS, DELHI
- Ex.P28 Certified Copy of Amended application/Petition Under Section 125 Cr.P.C. titled as Neetu Chauhan and others Vs Sanjay Aswal", pending in TIS HAZARI COURTS, DELHI
- Ex.P29 Certified Copy of Original Petition (Before Seeking Amendment) Under Section 125 Cr.P.C. titled as Neetu Chauhan and others Vs Sanjay Aswal", pending in TIS HAZARI COURTS, DELHI
- Ex P30 Certified Copy of Petition Under Section 9 of HMA titled as "Neetu Chauhan Vs Sanjay Aswal, pending in TIS HAZARI COURTS, DELHI
- Ex.P31 Certified Copy of Transfer Petition No.1560 of 2015 Under Section 25 of CPC titled as "Neetu Chauhan Vs Sanjay Aswal", filed before Hon'ble Supreme Court of India
- Ex.PA Electricity Bill of Flat No.F-1, Plot No.322, Vidyut Nagar, Jaipur paid by petitioner
- Ex.PB Birth Certificate of Lavanya Aswal- daughter of parties (Born on 02.09.2007) Born at Jaipur
- Ex-P-C Payment receipt of Respondent and paid by petitioner
- Ex P10 Mobile Bill

showing the Rent paid for the flat at Jaipur (3 Pages)

Mark A-2 Photocopy of Bank Passbook of Sanjay Aswal, showing the Rent paid for the flat at Jaipur (2 Pages)

Mark A-3 Photocopy of Statement of Account of Sanjay Aswal, showing the Rent paid for the flat at Jaipur (1 Page)

Mark A-4 Photocopy of Pay Order got prepared by Sanjay Aswal for depositing School Fees of daughters.

Mark A-5 List of Documents dated 04.09.2014

Mark A-6 Photocopy of Petition (Before Seeking Amendment) Under Section 125 Cr.P.C. titled as Neetu Chauhan and others Vs Sanjay Aswal", pending in TIS HAZARI COURTS, DELHI

Mark A-7 Photocopy of Petition Under Section 9 of HMA titled as "Neetu Chauhan Vs Sanjay Aswal", pending in TIS HAZARI COURTS, DELHI

Mark A-8 Photocopy of Petition Under Domestic Violence Act titled as "Neetu Chauhan Vs Sanjay Aswal", pending in TIS HAZARI COURTS, DELHI

Mark A-9 Photocopy of Transfer Petition No.1424 of 2014 Under Section 25 of CPC titled as "Neetu Chauhan Vs Sanjay Aswal", filed before Hon'ble Supreme Court of India

Mark-A-10 Photo copy of School Fees Receipts (7 Pages) to Mark-A-16

Mark A-17 Tuition Fees Receipt of Shakhi Aswal

Mark A-18 FDR by Paternal Grandmother in favour of Shokhi Aswal

Mark A-19 Bank Statement of Shokhi under Guardianship of Paternal Grandmother

Mark-P-4/B Photograph of Event of 05.08.2005

Mark-P-4/B Photograph of Black Magic Effigy of appellant-wife

Mark-X Letter from School dated 19.10.2011 mentioning different addresses of petitioner and the respondent at Jaipur

Thereafter, the respondent closed evidence, vide order dated 06.08.2016.

On the other side, appellant examined herself as RW1 and

tendered on record her duly sworn affidavit Ex.RW1/A and reiterated her

version, stating that the respondent and his family members tortured her. She was deserted by the respondent in the year 2011. She never committed cruelty. She want's to live with her husband. She stated that the respondent demanded money and her parents gave the same several times. She alleged that respondent has performed second marriage. In support, she also examined Shamsher Shokeen as RW2, Raj Kumar Chauhan (father of the appellant-wife) as RW3, Mahesh Kumar @ Rinku as RW4, Rati Ram Ratwaya as RW5.

The appellant has tendered on record the following documents:

|                   |                                        |
|-------------------|----------------------------------------|
| Ex.RW2/BB         | Visiting card                          |
| Ex.DX             | Copy of statement of Shokhi            |
| Mark A2           | Copy of letter dated 11.07.2015        |
| Mark A3           | Copy of school letter dated 29.08.2016 |
| Mark A4           | Copy of Medical records                |
| Mark A to Mark AB | Photographs                            |

Thereafter, learned counsel for the appellant closed evidence, vide order dated 17.10.2016.

The respondent has narrated the following instances, that caused grave cruelty upon him, thereby making impossible for him so live anymore further with the appellant-wife

*“(1) That the wife is a woman of aggressive and arrogant nature and also hit him with belt and threw magazine on his face in front of other family members.*

*(2) She has suicidal tendencies and used to give threat to kill herself. She once cut her vein, on their honey moon, when respondent-husband did not allow her to drink liquor on her persistence. once she cut her hand with soap kit and went on the second storey of the house to commit suicide.*

*(3) She used to leave the house without intimation and*

*without caring for minor child.*

*(4) She did not co-operate with the respondent when he was preparing competitive examinations and spoiled his notes and also did not like his running the coaching classes.*

*(5) She believed in superstition, tantriaks*

*(6) She denied physical relations with him and labelled him alcoholic.*

*(7) She used to stop the respondent to talk with his parents/brothers and insisted to live separately and shift to Delhi.*

*(8) She defamed his family before relatives and friends. Despite writing apology letters and given various opportunities.”*

The Family Court after going through the evidence led by the parties, took both these issues together for adjudication. The Family Court decided Issue No. 1 in favour of the respondent and held that the respondent has been able to establish that the appellant committed cruelty upon the respondent. It has been held that the marriage has broken down irretrievably because of the acts of cruelty upon the respondent by the appellant. Mark-A8 further shows that the appellant has also filed petition under the Domestic Violence Act, alleging several incidents of violence against the respondent and his family members. The apology letters dated 28.08.2006 (Ex P6) written by appellant had been duly proved, as the appellant did not deny the same. The letters (Ex P1 and P-6) are original letters and bears signatures of the appellant. Further the appellant did not even examine handwriting expert to deny the fact that the letters are not written by her. The appellant admitted her signatures on the letters. She also admitted the incident of 07.05.2006 of leaving the matrimonial house with luggage and did not listen to the request of the respondent. She admitted

came to take her back. She also admitted that she had cut her vein on her honeymoon. She also admitted that she had once left her minor daughter crying and went out of home late night. The contents of Ex P6 fully substantiated the contents of the petition, whereby the respondent had detailed the cruel treatment meted out by the appellant to him and his family members. Similarly, Ex P4, P7, P8 and Ex P9 all the writings of the appellant wherein she raised threats to the respondent to make choice either to live with her or she would leave him. Thus, the respondent has proved on record the mental cruelty meted out to him and his family members by the appellant-wife.

With respect to Issue No. 3, the custody of the daughter-Shokhi was ordered to be handed over to the respondent, as Shokhi in her statement recorded before the Judge at Delhi on 22.09.2016, wishes to stay with her father. The respondent was also willing to take the custody of the child. The respondent was held to be responsible for the maintenance, education and well being and welfare of the child.

Feeling aggrieved of the impugned judgment, the wife preferred the present appeal. This Court on 25.07.2017 stayed the operation of impugned judgment during the pendency of the appeal. Thereafter, on 19.11.2018, this Court passed the following order on an application i.e CMM-69-20017 :-

*“This application is filed under Section 24 of the Hindu Marriage Act, 1955 for grant of maintenance pendente lite and the litigation expenses. Although the appellant has referred to various properties owned by the respondent in para-5 in the application, which has been substantially denied by the respondent, but the fact remains that the application filed by the appellant before the trial Court under Section 24 of the Hindu Marriage Act, 1955 was allowed on 01.10.2015, awarding a sum of Rs. 40,000/- per month as maintenance pendente lite and Rs. 1 lac as litigation expenses. The order dated 01.10.2015 was challenged by the*

*respondent by way of Civil Revision No.8657 of 2015, which was dismissed by this Court on 09.12.2015 which has become final between the parties as it has not been further challenged by the respondent before the higher court.*

*Thus, in view thereof, keeping in view the inflationary trend of the prices of necessary articles, the maintenance pendente lite is enhanced from Rs.40,000/- to Rs.60,000/- as the appellant is also looking after two daughters as well, one of whom has grown up and studying in the First Year of her graduation and also award the litigation expenses to the tune of Rs. 1.5 lacs. The amount of maintenance pendente lite shall be paid by the respondent from the date of filing of the present application.*

*The respondent is further directed to bring the arrears of maintenance pendente lite and the litigation expenses on the next date of hearing by way of a demand draft drawn in name of the appellant, to be handed over to her or to her counsel.*

*Adjourned to 28.01.2019. It is needless to mention here that if the respondent is already paying the amount of maintenance pendente lite to the appellant under any other provision of law, then the said amount shall be adjusted.*

On 17.05.2019, the matter was referred to Mediation and Conciliation Centre of this Court. However, the parties did not settle their dispute before the Mediation Centre of this Court. However, on 08.01.2020, parties were directed to appear in the Court along with children. On 21.04.2022, the matter was again referred for Mediation and Mr. Sachin Jain, Advocate was appointed as Mediator. This Court passed the following order:-

*“Parties are present in Court today. On their request, the matter is referred for mediation and Mr. Sachin Jain, Advocate is appointed as Mediator to resolve the dispute.*

*After mediation, the Mediator states that an attempt has been made for an out of Court settlement. The parties have decided to part their ways and have resolved their dispute amicably. Both the parties have agreed that the appellant-husband shall transfer one flat situated in Jaipur (Rajasthan) in the name of the respondent-wife and shall also pay a sum of Rs.20 lakh to the respondent as permanent alimony. Out of this amount, the appellant has paid the amount of Rs.5 lakh by way of cheque to the respondent in Court today itself and the remaining amount*

*of Rs.15 lakh shall be paid to her in the due course. The appellant shall also pay a sum of Rs.25 lakh each to both the daughters in the shape of FDRs. The respondent-wife shall also withdraw the proceedings under the provisions of Domestic Violence Act pending against the appellant-husband in Tis Hazari Court, Delhi before the next date of hearing. The Mediator is directed to record the statements of both the parties in respect of the terms of settlement today itself.*

*Adjourned to 25.05.2022.”*

On 19.05.2022, a report was received from Mediation Centre of this Court that the parties have settled their dispute and settlement deed dated 21.04.2022 was placed on record in which the respondent has agreed to pay Rs.25,00,000/- each to his daughters in the shape of FDR for their education and future needs on or before 25.05.2022. The respondent has further agreed that he will transfer one BHK flat (duplex) fully furnished No. 105-B, Star Residency Towers, Hira Nagar, D.C.M, Ahmer Road, Jaipur in the name of the appellant. The respondent has further agreed that apart from the above, he will pay a lump sum of Rs.20,00,000/- to appellant. Out of Rs.20,00,000/-, he has given demand draft of Rs.5,00,000/- and Rs.10,00,000/- on that day itself.

Thereafter, on 25.05.2022, learned counsel for the appellant informed the Court that the appellant does not want to go ahead with mediation. The appellant will return the draft of Rs.20 lakhs to the respondent-husband as received by her as per settlement/agreement. On 01.09.2022, this Court directed the appellant to deposit a sum of Rs.20 lacs in the name of the respondent. Thereafter, the appellant did not deposit the above said amount despite giving last opportunity by this Court. The appeal was ordered to be decided on merits.

On 29.11.2022, the matter was reserved and learned senior counsel for the respondent submitted that the respondent is ready to transfer

in the name of the daughters in the shape of FD's for their education. Learned senior counsel for the respondent has further informed the Court that application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 filed by the appellant-wife was also dismissed for non-prosecution on 19.04.2022 by THC, Delhi. This complaint was initiated by the appellant-wife in the year 2015 and respondent-husband has faced the agony of trial for the last 07 years. The order dated 19.04.2022 is taken on record as Annexure A-1.

Heard learned counsel for the parties at length.

It is not in dispute that the appellant has consistently harassed the respondent and his family members. Before the Family Court as well, it has been established on record that she has tortured the respondent. Now before this Court as well, firstly, she has compromised the matter and took Rs.20 lacs and thereafter, now she gave a statement that she does not want to go ahead with mediation. She was then directed by this Court to return the above amount of Rs.20 lacs, which was not done by her till date. Despite this fact, respondent is still ready to abide by the terms and conditions of the compromise/settlement deed, duly signed by both the parties. The respondent is not even claiming visitation rights, as granted by Family Court.

Keeping in view peculiar facts of the case, at this stage, it will not be possible to tell the parties to go for shared parenting. The daughters are staying happily with the appellant. The behaviour of the appellant shows that she is not responsible person especially keeping in view the fact that at one point of time, she has agreed to settle the dispute and at another point of time, she stated that she does not want to go ahead with mediation.

cruelty. The appellant is not even thinking about the future of her two daughters. The marriage is also irretrievably broken down as the parties are staying separately since 19.08.2009. Further the respondent has led sufficient evidence before the Family Court to show that the appellant was irresponsible wife and she was cruel towards him and his family members.

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 while considering a case where marriage was irretrievably broken down and held that in these cases, the decree of divorce can be granted where both the parties have levelled such allegations against each other that the marriage appears to be practically dead and the parties cannot live together.

Reference at this stage can be made to a judgment of three Judge Bench of Hon'ble the Supreme Court of India in case of ***A Jayachandra vs. Aneel Kaur, 2005 (2) SCC 22*** wherein Hon'ble the Supreme Court had 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 to 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, but the Court with a view to do complete justice and shorten the agony of the parties engaged in longdrawn legal battle, directed in those cases dissolution of marriage. In para 17, it has been observed as under:-

*17. Several decisions, as noted above, were cited by learned counsel for the appellant-wife 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.*

The three Judge 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 71<sup>st</sup> report of the Law Commission of India

Hon'ble the Supreme Court in a case of **K. Srinivas Rao vs. D.A. Deepa, 2013 (5) SCC 266** has observed that though irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, however, marriage which is dead for all purposes, cannot be revived by a Court's verdict, if parties are not willing to work out their differences. 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 an artificial reunion created by a Court decree.

Further reference can be made to a judgment of this Court in a case of **Imlesh vs. Amit** AIR 2014 (P&H) 89 wherein it has been held that where the wife files a false criminal complaint against the husband and his family members under Sections 406/498-A of IPC, which results in their acquittal, this act of the wife tantamount to mental cruelty and the husband would be entitled to a decree of divorce under Sections 13 (1) (ia) of the Act of 1955.

Hon'ble the Supreme Court in the case of **Naveen Kohli vs. Neetu Kohli**, 2006 (4) SCC 558 dealt with an issue where the wife was 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 being a cruel treatment by the appellant-wife and held 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 appellant-wife does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the appellant-wife 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 appellant-wife 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 appellant-wife 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 appellant-wife 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 appellant-wife within the stipulated period. In case the appellant fails to pay the amount as indicated above within the stipulated period, the direction given by us would be of no avail and the appeal shall stand dismissed. In awarding permanent maintenance we have taken into consideration the financial standing of the appellant.*

In the present case, the marriage between the parties has broken down irretrievably and there is no chance of their coming together, or living together again. Further, not to grant decree of divorce would be disastrous for the parties. The appellant filed an application under Section 12 of the

Protection of Women from Domestic Violence Act, 2005, which was dismissed for non-appearance of the appellant. She wants to linger on the litigation.

Applying the ratio of the above mentioned judgments to the facts of the present case and keeping in view the extra-ordinary facts and circumstances of the case, the appeal is dismissed. However, we direct the respondent-husband to pay an amount of Rs.25 lacs each in the name of her two daughters and further transfer one BHK flat (duplex) fully furnished No. 105-B, Star Residency Towers, Hira Nagar, D.C.M, Ajmer Road, Jaipur in the name of the daughters. This exercise shall be completed within a period of three months from the date of passing of this order.

**(RITU BAHRI)**  
**JUDGE**

05.01.2023  
G Arora

**(MANISHA BATRA)**  
**JUDGE**

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