

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.653 of 2018

Navin Kumar Rai @ Nabin Kumar Roy S/o Sri Sushil Kumar Rai, Resident of Mohalla- Mogalpura, P.S.- Town, District- Darbhanga.

... .. Appellant/s

Versus

Sudha Rai W/o Navin Kumar Rai, Resident of Village- Shridilpur, P.S.- Bahadurpur, District- Darbhanga, Presently residing at Mohalla- Rambag, P.O.- Rambag, P.S.- LNM University, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mrs.Soni Shrivastava, Adv. Mr.Ravi Bhardwaj, Adv. Mr.Gaurav Singh, Adv.
For the Respondent/s	:	Mr.Bimal Kumar, Adv. Mr.Birendra Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 19-09-2024

The present miscellaneous appeal has been directed against the judgment dated 19.01.2018 and decree dated 25.01.2018 passed by the Principal Judge, Family Court, Darbhanga in Matrimonial Case No. 10 of 2009 whereby the learned Principal Judge, Family Court, Darbhanga passed the decree of judicial separation under Section 10 of the Hindu Marriage Act against the divorce petition filed under Section 13 of the Hindu Marriage Act, 1955 and directed for payment of additional maintenance allowance of Rs. 5,000/- per month over and above the maintenance allowance of Rs. 25,000/- per month



already being paid by the appellant-husband to the respondent-wife.

2. Briefly stated the fact of the appellant's case is that the appellant and respondent solemnized the marriage on 06.05.2001 in Mohalla-Mishratola, Town P.S., District-Darbhanga as per Hindu rites and customs. It is further averred that after marriage both parties came to Darbhanga, residence of the appellant from where on 13.05.2001 both parties went to Chandigarh where the appellant was working as Assistant Manager, NABARD. It is further averred that respondent stayed with the appellant at Chandigarh for about three months and returned to her father's house for performing Madhushrawani festival but when respondent came back in the month of September 2001, the appellant noticed radical change in the attitude of the respondent. The respondent started behaving indecently with appellant's cousin brother and started disliking to appellant's colleague. It is further stated by the appellant that male child was born on 24.04.2002 out of the wedlock and after birth of male child respondent went to the residence of her parents. It is further stated that the appellant came to Chandigarh on 10.05.2002 and respondent came to the residence of the appellant but she started behaving abnormally with the



appellant's mother and the respondent made allegation that her mother-in-law would kill her son and remained awaking whole night keeping the volume of television very high, expressing disrespect to the elders. It is further averred that respondent did not pay attention to her child and the situation has become bad to worse. It is further averred that all the reasonable steps have been taken by the appellant to pacify the matter, but same went in vain. It is further stated that respondent was taken to Dr. P.K. Singh (mental doctor) when she gave bite in the stomach of Sri Rishi Kumar Rai (Principal, Nagendra Jha Mahila College, Darbhanga), the youngest uncle of the appellant. It is further averred by the appellant that the respondent all of a sudden started running on open road. Several doctors have been consulted but condition of the respondent did not improve rather the same started deteriorating day by day. It has also been averred in the petition that respondent wanted to cut off all the relations with the family of her in-laws and started saying witch (*DAIN*) to her mother-in-law. The appellant has taken all precaution for better treatment of respondent and he took the respondent to Nehru Hospital, Chandigarh as the respondent stopped taking medicine prescribed by the doctor at NIMHANS. Despite being costly treatment rendered to the respondent, the



respondent could not be recovered. It is also asserted by the appellant that the doctor reached at the conclusion that respondent is a chronic patient of Schizophrenia and has dual personality and cannot have an affectionate relationship. The appellant has taken proper care, nourishment and treatment to the respondent but same went in vain and appellant found himself alone. Even one male child is not being imparted with better education and his career is being spoiled. It is further averred in the petition that the sole son is being poisoned against the appellant as he has been taught to hate his father as the respondent and her family members are not ready to give the son (Harshit Kumar) in the custody of the appellant. It has further been stated that appellant tried his level best for curing his wife and for living a happy conjugal life but the marriage between the appellant and respondent has been broken and the appellant has no option rather to file the petition for divorce. It is further averred in the petition that there is no co-habitation between appellant and respondent since more than a year after 2007 and the respondent deserted the appellant willfully and neglected him. Hence, the appellant filed divorce petition.

3. Respondent had filed written statement. She gave para wise reply to the petition filed by the appellant under



Section 13 of the Hindu Marriage Act, 1955 for grant of decree of divorce. The respondent admitted the factum of marriage and birth of a son but she added that Rs. 11,00,000/- was spent and additionally car was demanded upon which respondent did not agree and under social compulsion respondent-wife was brought to Chandigarh by the appellant without performing Dwiragaman ceremony (*Bidagari*) and the respondent alleged that appellant gave undue respect to one of the lady colleague of the same rank and used to spend valuable time with the said lady. When the said act was protested by the respondent-wife, same resulted into torturing and assaulting her. It is alleged that respondent-wife conceived and when same fact came to knowledge of the appellant-husband, he pressurized the respondent to abort to which the respondent did not agree which led to ugly behaviour meted out from the appellant. It has been alleged by the respondent-wife that due to torture made by the appellant, she became ill. On 24.04.2002 a son was born after due operation and now respondent is being maintained by her parents and appellant-husband did not take care at all. It is claimed by the respondent-wife that appellant and his family members tried to get maximum dowry if appellant will be married and it is alleged by the respondent-wife that appellant and in-laws



wanted to end the life of respondent-wife. It is further averred by the respondent-wife that she was not allowed to visit Kuldevi to offer obeisance. The respondent stayed at the village home of appellant but at the relevant time the appellant and in-laws did not turn up in the village in spite of full knowledge of fact that respondent has no alternative but to return to her parents' residence at Darbhanga. She has accepted the contention of para 1, 2 and 3 of the divorce petition. She has fully admitted para 4 and 6 of the divorce petition. she has denied that there was radical change and abnormal behaviour. She has denied the allegation of mental disorder and she has also stated that there was bodily relation on 23.08.2008 and further in October, 2008 on the eve of Durga Puja as the appellant-husband stayed ten days. The respondent-wife has denied the main allegation that she is suffering from Schizophrenia. She has not committed any torturous behaviour against the appellant-husband rather the appellant and his family members committed torturous behaviour against her. She has also denied that she has no any relation with the appellant-husband.

4. The respondent denied to seek dissolution from the appellant-husband rather she sought separate relief against the appellant seeking restitution of conjugal right against



her husband-appellant by filing counter claim under Section 23 A of the Hindu Marriage Act, 1955. She denied all the allegation which has been made the grounds for seeking divorce under Section 13 of Divorce Petition and she has asserted in the petition of restitution of conjugal rights that she is ready to live with her husband-appellant and her son and she has sought the relief to live with her husband. She has prayed that appellant be directed to keep the respondent as wife.

5. Written submission on behalf of the appellant to the counter claim dated 23.07.2012 filed by the respondent-wife under Section 23 A of Hindu Marriage Act, 1955. The appellant-husband has totally asserted the claim of petition as mentioned in the divorce petition filed under Section 13 of the Hindu Marriage Act. He has stated that for all purposes the hope of reconciliation went in vain as respondent-wife has denied the sexual intercourse from the appellant since more than 8 years after 2007 and the petition under Section 23 A has been filed after more than three years and same is fit to be dismissed.

6. The application under Section 23A has been allowed by the Principal Judge, Family Court, Darbhanga and same has been challenged in CWJC No. 21489 of 2014 in MA No. 72 of 2013 and a Single Bench of this Court dismissed the



writ application, filed on behalf of the appellant-husband.

7. Learned counsel for the appellant submits that the learned Family Court failed to appreciate the evidences, medical discharge slip, prescription brought on record by the appellant supporting the fact that respondent is not fit to carry the matrimonial obligation. Learned counsel further submits that unsubstantiated allegation regarding extra marital affair levelled by the respondent-wife amounts to mental cruelty as same has been held to be a ground of divorce in the matter of *Narendra vs. K. Meena* reported in *AIR 2016 SC 4599*. Parties have not stayed together for the last ten years for which it can be reasonably inferred that marriage between the parties is broken down irretrievably and decree of divorce ought to be passed. Learned counsel has further submitted that since the date of judgment dated 19.01.2018 and decree dated 25.01.2018, six years have already been elapsed and no solution has come out for establishing matrimonial relation or matrimonial obligation by virtue of the said reason the ground of divorce on the basis of mental cruelty is necessarily to be allowed. Learned counsel further submitted that parties have been litigating for a long and have lost best part of their life and there is no possibility of living together, so it is necessary to mitigate their mental agony



through the decree of divorce. Learned counsel further submitted that so far as allegation of extra marital affair levelled by the respondent-wife is concerned, there is nothing on record which suggests that appellant has been in extra marital affair with his colleague. It has also been submitted by the learned counsel that Hon'ble Court has held that unsubstantiated allegation regarding extra marital affair levelled by the respondent-wife amounts to mental cruelty. Learned counsel further submitted that under the given facts and circumstances of the case appellant has spent much of his career in litigating against the respondent-wife for getting the decree of divorce. He has suffered lot of mental agony and led a solitude life. Learned counsel for the appellant has submitted that since the purpose of marriage would not be served as both parties are living separately after the year 2011 and even after the order of judicial separation, there was no room for living together, for all practical purposes marriage came to end. Learned counsel for the appellant relied upon the decision of ***Rakesh Raman vs. Kavita*** reported in ***2023 SCC Online SC 497*** in which it has been observed in para 20(xiv) which reads as under:-

"20(xiv). Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair.



The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

8. Learned counsel for the appellant further submits that in ***Rakesh Raman vs. Kavita (supra)***, the husband got the decree of divorce as he was living separately from his wife since long. In support of his contention, learned counsel for the appellant also cited decision of ***Subhransu Sarkar vs. Indrani Sarkar*** reported in ***2021 SCC Online SC 720***.

9. Learned counsel for the respondent-wife submits that respondent has denied the allegation made against her and she is ready to live with the appellant-husband along with son. Learned counsel further submits that respondent-wife has totally asserted the factum of written statement. She has denied the allegation of mental disorder and desertion. She claims to be an obedient wife and wants to live with her husband-appellant. She levelled allegation of illicit relation of appellant-husband with his colleague. She also levelled allegation of demand of dowry against the appellant. It has further been submitted that respondent-wife has been deserted by the appellant. He further submits that respondent expressed



her desire to live with her husband along with son but on account of fault of her husband, she failed to reside with her husband.

10. From the side of the appellant, three witnesses have been examined. AW-1 is appellant himself, AW-2 Sushil Kumar Roy is father of the appellant and AW-3 is Indrakant Thakur. Besides oral evidence, some documentary evidence have been filed on behalf of the appellant which are Ext-1-original letter dated 17.06.2008 of Dr. Suresh Kumar addressed to Sri Navin Kumar, Ext-2-Discharge and follow up card, PGI, Chandigarh bearing no. CR No. A137648 dated 08.10.2005 to 15.12.2005 and Ext-3-Certified copy of FIR of Mahila P.S. Case No. 49 of 2014.

11. From the side of the respondent, two witnesses have been examined. OPW-1 is Sudha Rai, who is respondent herself and OPW-2 is Baidhnath Choudhary, who is father of the respondent. Besides oral evidence, some documentary evidence have been produced on behalf of the respondent which are Ext-A-Certified copy of charge sheet no. 36 of 2015 of Mahila P.S. Case No. 49 of 2014 dated 08.07.2014, Ext-B-Certified copy of cognizance order dated 21.03.2016 passed in G.R. No. 1852 of 2014, Ext-C-Original



certificate dated 09.09.2012 of B.ed in name of Sudha Rai (respondent-wife), Ext-D-Original certificate issued by the Kendriya Vidhyalaya No. 2, Darbhanga dated 15.03.2010, Ext-E-Original experience certificate issued by Delhi Public School, Darbhanga dated 02.11.2009.

12. Thereafter, the Family Court recorded the finding of judicial separation. Being aggrieved with the said finding, the appellant has preferred the present miscellaneous appeal.

13. In the light of given facts and circumstances of the case, the question arises:-

(i) Whether the appellant has proved the case on the ground of cruelty as well as desertion ?

(ii) Whether respondent is suffering from Schizophrenia to such an extent that appellant cannot reasonably be expected to live with respondent ?

(iii) Or whether the counter claim for the relief of conjugal right is maintainable ?

The issues that have been decided against respondent by Principal Judge, Family Court has not been agitated before this court whatever decided against respondent attained finality.

14. It is necessary to analyze the evidence adduced on behalf of AW-1, who is appellant himself. During



course of examination-in-chief, AW-1 has asserted the factum of petition and he has specifically stated that conduct of the respondent-wife was indecent towards cousin, colleague and parents. He has also denied the allegation that he has given undue preference to the female colleague. He further stated that respondent's conduct was so improper that appellant found himself not conducive to reside with the respondent-wife. He has taken the help of doctor regarding the mental disorder of the respondent-wife but the doctor who treated the respondent has not been examined. Then whatsoever report submitted by the appellant lacks authenticity for perusal of the evidence. But from the evidence adduced by AW-1, it is crystal clear that both parties are living separately from each other. Even though in the year 2004, a son was born and after that relation between both the parties became bad to worse and union of both parties is impossible as the conduct of respondent-wife had turned to ugly shape when she made unsubstantiated allegation against the colleague of appellant and trust has fedded away from the life of appellant and respondent. AW-1 further stated that appellant witnessed changed behaviour of respondent-wife after returning back at Chandigarh in September, 2001 and in same breath he asserted that respondent compelled him not to have talking term



with the office colleagues and neighbours. The appellant has further stated that when he returned on 10.05.2002 at Chandigarh, the respondent made objectionable and insulting behaviour with his parents and the behaviour of the respondent has crossed all the limits of inhuman conduct despite being the best efforts undertaken by the appellant to pacify the matter. He further stated that mother of the appellant was named as a *Dain* by the respondent and she wished to break all the relationship with the family members of the appellant. The appellant has denied the allegation of extra marital affair as alleged by the respondent along with denial of allegation of abortion. He further stated that even her behaviour at hospital with the doctor and nurse was not good. The appellant admitted that Dipika was his colleague at Chandigarh. However, the respondent sometimes objected the arrival and departure of his colleague Dipika. The AW-1/ appellant during counter claim has clearly stated that respondent's indecent behaviour continued from September 2001 till May 2008 towards the parents and family members of the appellant. The appellant tried his best to lead a happy conjugal life but no reciprocity was shown from the respondent side to fulfill the marital obligation. During course of divorce proceeding, on the direction of the court appellant



took the respondent along with son to his house but after sometime the behaviour of respondent was found cruel against the appellant and his family members which was previously witnessed on earlier occasions. The respondent did not interact with the appellant's parents or family members and did not respect the parents of the appellant and confrontation was being witnessed when respondent was being called to have a dinner together. The appellant sustained physical injury when he was resided with the respondent-wife and the appellant's uncle also sustained injury. The appellant has also stated that an attempt of suicide was made by the respondent.

15. AW-2 Sushil Kumar Rai is father of the appellant. He has supported the evidence adduced by AW-1/appellant that respondent has made indecent behaviour towards family members and she was being treated by the Dr. P.K. Singh for mental disorder and there is no possibility of living together. He further deposed that respondent is residing at her parental house since the year 2008 but during course of cross-examination he is unable to point out the type of Schizophrenia and he has supported the version of AW-1 that respondent is not co-operating with any family member. He has also supported that respondent's behaviour was not conducive



with the parents. He has quite supported the version of AW-1/appellant on the point that respondent used to hear television at high volume at night.

16. AW-3 Indrakant Thakur has also supported the version of AW-1/appellant. AW-3 Indrajeet Thakur has supported on the point that respondent insulted her in laws. He also supported that mother-in-law of the respondent was named as Dain but AW-2 and AW-3 have not been examined in counter claim.

17. OPW-1 is respondent-wife herself. She has supported the factum of written statement and specifically stated that her husband-appellant has illicit relation with one lady colleague who is of same rank and on account of said reason, she was physically and mentally tortured. She further deposed that due to said reason the appellant-husband left her. She denied the allegation that she is suffering from Schizophrenia. She also denied the allegation of appellant in respect of her torturous behaviour. She has stated that the allegation that she was suffering from Schizophrenia was totally baseless and she was mentally and physically fit. She was neither mentally ill nor suffering from the said illness. She has stated that her husband-appellant worked in NABARD. She has alleged that her



husband-appellant has intimate relation with a lady colleague (Dipika) and she has also stated that appellant has illicit relation with the said lady. She denied the allegation that she watched the television at high volume. She denied the allegation that she was being treated at NIMHANS and Chandigarh. She denied the allegation of mental torture committed against the family members of the appellant. OPW-1/respondent in counter claim has stated that she has filed the counter claim for restitution of conjugal right for leading the conjugal life keeping in view the better future of his son and the appellant has deserted her without any reason as she was ready to live with the appellant. The appellant-husband made allegation of mental disorder against her for filing the divorce petition but she claimed that she is mentally fit on the basis of academic record as from 10th to B.A. she secured more than first class marks and she was computer instructor in D.P.S., Darbhanga from December 2008 to September 2009 and Central School, Darbhanga from September 2009 to February 2010. She obtained 82.30% marks in B.Ed. Course. She made allegation that appellant-husband made cruel behaviour sometimes on the demand of dowry and sometimes by establishing intimate relation with the lady colleague (Dipika). She further stated that all the efforts have



been taken by her father and relatives but they are very adamant to file the divorce petition and denied to keep her. When the appellant denied to keep her on account of said reason, she filed counter claim regarding restitution of conjugal right. During cross-examination, she requested from the court to allow her to reside with her husband-appellant. She has admitted that after the marriage, in the year 2001 when she came to reside with her husband, she remained at her Sasural for four months and in the year 2002, she remained with her husband-appellant for six months. She stated that on 24.04.2002 our son was born. She admitted that she resides with her husband in the year 2004 for whole year. She has stated that from the year 2001 till the year 2008 she spent much of time with her husband-appellant. She has stated that during that period her husband used to assault her. She has stated that 6 to 7 times her husband assaulted her but she never made any grievance of said behaviour to her parents and she did not make any complain and the behaviour of her in laws was non-cooperative. She has stated that she had no knowledge regarding the relationship of Dipika with her husband from 2008 to 2016. She has also admitted that on the basis of compromise initiated by the court in the year 2011, she went to her husband's house alongwith her son. She has stated



that on 22.05.2011 her husband-appellant gave application that respondent would be taken from the appellant's house by the parents of the respondent.

18. OPW-2/Baidhnath Choudhary is father of the respondent. He has supported the factum of OPW-1/respondent on the point of allegation. He has also asserted that appellant has illicit relation with one lady Dipika and same was protested by his daughter-respondent and on the point of said allegation torture was made by parents of the appellant against her daughter physically and mentally. He stated that his daughter was never treated by any Psychiatrist. She was mentally fit and she always used to express her desire to live with her husband and in laws. He further stated that his daughter has never made any complain regarding the affair of his son-in-law with Dipika. His daughter has never made any complain regarding the torture made by the appellant. OPW-2 in his counter claim stated that his daughter was brilliant student. Her academic career was excellent and he was quite positive that his son-in-law will keep his daughter (respondent) and son. He further stated that after filing the case, upto 07.03.2011 his daughter resides at Sasural and Maiké both. She also worked at Kendriya Vidhalaya, Ramnagar, Laheriasarai from 14.09.2009 to 28.02.2010 as a



computer instructor.

19. From perusal of evidence of both sides and material available on record, it is crystal clear that matrimonial life of appellant and respondent has become bone of contention and one child has taken birth who has become major now, as the said child was born on 24.04.2002. From the evidence of both the parties it is also clear that after the year 2011, both parties have not fulfilled the matrimonial obligation as the emotion and faith which are essential parts of marriage have been eroded and it is undisputed fact that there is no consummation of marriage between both the parties after 2011. Even after passing the order of judicial separation both parties are residing separately from each other and marriage has not been consummated since the passing of order of judicial separation. Both parties are residing separately. There was no room for reconciliation. In this way, since the year 2011 near about 12 years have elapsed and the relation has become stalemate.

20. It is prudently and pragmatically institution of marriage occupies an important place and plays an important role in the society and it is an established fact that Hindu Marriages are initially signifies as a sacrament but with the passage of time keeping in view the practical approach to lead



the life, now, it has become partially sacrament. In spite of increasing the trend of filing the Divorce proceedings in the courts of law, the institution of marriage is still considered to be a pious, spiritual, and invaluable emotional life-net between the husband and the wife in the present Indian society and many relationship initiated from and makes spaces on matrimonial relationship in society.

21. In the present case, the appellant through the evidence has stated that respondent negates the appellant on the ground that appellant has given unnecessary care to the colleague Dipika and he has intimate relationship with her and this relation has created a situation whereby the appellant made torturous behaviour against the wife. The allegation of respondent against the appellant gives mental agony to the husband-appellant who is Assistant Manager, NABARD and the behaviour of respondent-wife not to make normal relation with any member of the appellant's family showing the nature of conduct of the respondent creating imbalance in the life of the appellant. Though the respondent has made allegation against the appellant that he has affair with his colleague but there is nothing on record which entails that respondent has filed any grievance with regard to the intimate relation of the appellant



with his colleague and though allegation has been baldly made in the written statement as well as counter claim but the said allegation would be meaningless when she has not made party and she has not been given opportunity to defend the case. In this way, unsubstantiated allegation is purely in the self asserted factum in written statement and counter claim is useless and vague. Even the appellant has made allegation against his wife-respondent that she is suffering from Schizophrenia, a kind of mental disorder, is only the allegation on the part of the husband which is not supported by any cogent evidence. Neither author of the document is examined nor has the doctor been examined who has treated the patient. In absence of aforesaid material, the allegation is totally vague and meaningless which has no root in the process of evidentiary value.

22. It is necessary to quote *Samar Ghosh vs. Jaya Ghosh* reported in (2007) 4 SCC 511 wherein it has been observed by the Hon'ble Supreme Court that the Court has to decide as to what would constitute cruelty under Section 13(1) (1-a) of the Hindu Marriage Act. An important guideline in the above decision is on the approach of a Court in determining cruelty. What has to be examined here is the entire matrimonial relationship, as cruelty may not be in a violent act or acts but in



a given case has to be gathered from injurious reproaches, complaints, accusations, taunts etc. The Court relied on the definition of cruelty in matrimonial relationships in Halsbury's Laws of England which is reproduced here:-

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

23. In the present case, we take into consideration the facts as they exist. We are convinced that continuance of the marriage would mean continuance of cruelty, which each now



inflicts on the other. Irretrievable breakdown of a marriage may not be a ground for dissolution of marriage, under the Hindu Marriage Act, but cruelty is. A marriage can be dissolved by a decree of divorce, *inter alia*, on the ground when the other party "has, after the solemnization of the marriage treated the petitioner with cruelty". In our considered opinion, a marital relationship which has only become more bitter and acrimonious over the years, does nothing but inflicts cruelty on both the sides. To keep the facade of this broken marriage alive would be doing injustice to both the parties. A marriage which has broken down irretrievably, in our opinion spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is therefore a ground for dissolution of marriage under Section 13(1)(1a) of the Hindu Marriage Act.

24. The Hon'ble Supreme Court in the case of ***Rakesh Raman vs. Kavita*** reported in ***2023 SCC OnLine SC 497*** at para 18, 19, 20 held as under:-

"18. Cruelty has not been defined under the Act. All the same, the context where it has been used, which is as a ground for dissolution of a marriage would show that it has to be seen as a 'human conduct' and 'behaviour' in a matrimonial relationship. While dealing in the case of Samar Ghosh (Supra) this Court opined that cruelty can be physical as well as mental:-

"46.... If it is physical, it is a



question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

19. Cruelty can be even unintentional:-

..... The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment."

20. This Court though did ultimately give certain illustrations of mental cruelty. Some of these are as follows:-

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

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

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

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial



bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

(emphasis supplied)

25. In the present case, there is a divorce proceeding and counter claim by the respondent. The husband-appellant negated the claim of his wife-respondent through the evidence. The appellant has proved that he has reason not to live with the respondent-wife as she made unsubstantiated allegation against the appellant's colleague and she has no respect towards her in-laws. It is undisputed fact that through the effort of court both parties in the year 2011 reside together but they did not reside together after sometime. Since after 2011, both parties are not residing together. The respondent has not proved as to why she has made unsubstantiated allegation against the appellant-husband and she failed to prove the allegation of affair against her husband and since the time of judicial separation i.e. in the year 2018, the present appeal has been filed against the order of judicial separation. Effort was taken by the Court to settle the dispute but same did not take place as for all practical purposes both parties are not residing together and the relation of emotion



and trust has fedded from their life which paves respect towards each other and the appellant-husband has successfully proved the point that on account of unsubstantiated allegation against him, he is unable to reside with the respondent-wife. The conduct of the respondent has become intolerable as she has no respect towards in-laws. Despite being the best effort taken by the husband-appellant by virtue of the order of the court he has taken his wife to his house but she did not reside and the conduct of wife on several occasions was not conducive to keep in the family of the appellant, which is proved by the husband-appellant through the evidence. Pragmatically and prudently, 12 years have already been elapsed between the parties to reside together. In this way, for all purposes, nuptial tie has no meaning at all. Under statutory provision of the Hindu Marriage Act under Section 10(1)(b) of the Act what constitute cruelty must depend upon the term of this statute, which provides:

“10. (1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition to the District Court praying for a decree for judicial separation on the ground that the other party—

(b) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party;”

26. In the case of ***V. Bhagat vs D. Bhagat*** reported in ***1994 AIR 710*** the concept of cruelty has been examined



through referring the case of *Shobha Rani v. Madhukar Reddi* reported in *(1988) 1 SCC 105*. The word “Cruelty” has not been defined in the Hindu Marriage Act, it has been used in Section 13(1)(i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

27. The appellant has proved that on several occasions the conduct of the respondent-wife was not natural which was not conducive. Her behaviour and conduct was not normal to keep normalcy in family on account of the conduct of his wife, he was not in a position to maintain his relation with the family members or even colleagues and the trust which is required to be reposed by the wife-respondent has lost its dream and



appellant suffered mental agony and torture in day to day life, which became a routine to lead the torturous conduct of the respondent-wife. So the appellant has taken not to lead matrimonial life with the respondent-wife. Though she has made a bald claim in her written statement as well as counter claim that she is ready to resume the matrimonial life but she has made allegation of extra marital affair against her husband to which she failed to prove as she has not taken any legal step to make specific case against the said extra marital affair of her husband nor was she arrayed as a party. In this way, in her written statement and counter claim, she has not proved her case against the husband. The contention of learned counsel for the respondent is neither tenable nor sustainable in the light of facts and circumstances of the case and even she has not challenged judgment and decree passed by the Family Court. On contrary, the contention of learned counsel for the appellant is tenable and sustainable that for all purposes, the parties are not residing together since 12 years and husband has successfully proved that he suffered mental cruelty of unsubstantiated allegation of extra marital affair along with the conduct of his wife on several occasions which are not conducive to lead normal life.

28. In the light of discussions made above, issue no.



(i) has been decided in favour of the appellant-husband. The appellant-husband failed to prove issue no. (ii) as no cogent evidence has been brought on record by him. So far as issue no. (iii) which is related to the respondent-wife is concerned, she has not challenged the impugned judgment and same has attained finality against her. She has made unsubstantiated allegation against the appellant-husband and conduct of wife on several occasions are not conducive to lead normal life. Accordingly, issue no. (iii) is decided against the respondent-wife.

29. On all counts, keeping in view the discussions made in the foregoing paragraphs, we find that impugned judgment and decree of divorce is not justified and legal and same is liable to be set aside. Accordingly, the impugned judgment dated 19.01.2018 and decree dated 25.01.2018 passed by the Principal Judge, Family Court, Darbhanga in Matrimonial Case No. 10 of 2009 is hereby set aside and decree of divorce is granted to the appellant-husband. Their marriage stand dissolved. The present M.A. No. 653 of 2018 stands allowed.

30. On 22.01.2024 both parties appeared in Court and appellant/husband gave a proposal for permanent alimony for a



sum of Rs. 50,00,000/- (Rs. fifty lacs) and maintaining his son independently in meeting towards his educational expenses and other personal expenses. However, such a proposal was not acceptable to the respondent-wife.

31. However, at present the appellant/husband is General Manager, NABARD and through filing 2nd supplementary affidavit he has admitted that his net pay is Rs. 1,41,358/- and order dated 21.04.2022 of this Court reflects that appellant has been paying Rs. 30,000/- to the respondent in addition to the other expenses of the child born out of the wedlock. Keeping in view all the facts and circumstances, the amount of permanent alimony to be paid by the appellant to the respondent is quantified at Rs. 60,00,000/- (Rs. sixty lacs). The said amount shall be deposited in the name of the respondent-wife within a period of six weeks from today with the Registry of this Court. After payment of permanent alimony by the appellant-husband, the respondent-wife will forfeit her claim of Rs. 30,000/- per month towards maintenance allowance except the dues amount which were not paid up till now. The decree of divorce shall be made effective only from the date of such a deposit. On the event of such deposit, the Registry after verifying the credentials of the respondent-wife shall disburse



the amount to the respondent-wife without further reference to this Court.

32. Registry is directed to prepare decree of divorce accordingly.

33. Furthermore, the appellant has accepted that besides the maintenance allowance of Rs. 30,000/-, he is paying the expenses of child born out of the wedlock but same has not been quantified. Moreover, the son was born on 24.04.2002 and now, he has become major. He is entitled to take his share in ancestral property of the appellant as per law.

34. Pending I.A.'s, if any, also stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
CAV DATE	30.08.2024
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