

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

FAO-M-33-2019 (O&M)
Date of Decision: 30.04.2024

SMT. ANJANA

...Appellant

Versus

LAXMAN DASS

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Adarsh Jain, Advocate
for the appellant.

Mr. Devender Kumar, Advocate
for the respondent.

HARSH BUNGER, J.

Appellant-Smt. Anjana has filed the instant appeal against the judgment and decree dated 21.12.2018 passed by the learned Additional District Judge, Palwal whereby the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (here-in-after referred to as 'the Act, 1955') was allowed.

2. The brief facts of the case are that the marriage of the appellant (Anjana) was solemnized with the respondent (Laxman Dass) on 08.04.1999 according to Hindu rites and ceremonies at Village Ahemadpur, Tehsil Manth, District Mathura (UP). After the marriage, the parties lived and cohabited together as husband and wife and out of the said wedlock, two daughters were born.

3. In the divorce petition, the pleaded case of respondent-husband was that since the very inception of the marriage, appellant-wife started misbehaving with the respondent-husband and his parents. She used to taunt the respondent-husband and had never performed her household duties. It was alleged that the appellant-wife was having illicit relations with some other person prior to her marriage with the respondent and when it came to his notice, she threatened the respondent-husband that if he disclosed her extra marital relation to anyone, she would involve him and his family members in false cases of demand of dowry or other heinous crime.

4. It was stated in the divorce petition that on 05.07.2014, the appellant-wife left her matrimonial home without the consent of the respondent-husband and her in-laws and took away all gold and silver ornaments and cash Rs.10,000/- from the house of the respondent-husband. When the respondent-husband asked his in-laws to send the appellant-wife back to her matrimonial home, she refused to join the company of the respondent-husband. It was further stated that there were no further chances of re-union in near future. Hence, divorce petition was filed by the respondent-husband on the grounds of cruelty and desertion.

5. On notice of the divorce petition, the appellant-wife appeared and contested the divorce petition by filing her written statement wherein, it was, *inter alia*, stated that the marriage between the parties was solemnized on 26.04.1999 at Dharam Lok Nagar, Mathura UP and not on 08.04.1999, as claimed by respondent-husband. The appellant-wife alleged that she left her matrimonial home because she along with her children were given beatings on 16.10.2016 and for this reason, she had been residing at her parental house. It was further alleged by the appellant-wife in her written statement

that her husband and in-laws used to taunt her for bringing less dowry and they had also demanded Rs. 2 lacs from her. The appellant-wife maintained that she was suffering from Disk problem and her younger daughter namely, Jyoti is suffering from kidney as well as liver problem. Other allegations of the divorce petition were denied by the appellant-wife.

6. From the pleadings of the parties, following issues were framed :-

“1. Whether the respondent has committed the acts of cruelty? OPP

2. Whether the respondent has deserted the petitioner-husband w.e.f. 05.07.2014 ? OPP

3. Relief.”

7. In evidence, respondent-husband examined himself as PW1, Mohan as PW2, Amar Chand as PW3 and Sh. Uday Bhan as PW4.

8. The appellant-wife examined herself as RW1 and Sudarshan as RW2. As noticed above, the Additional District Judge, Palwal, vide impugned judgment and decree dated 21.12.2018 allowed the petition under Section 13 of the 1955 Act and granted a decree of divorce on the ground of cruelty and dissolved the marriage of the parties.

9. A perusal of the impugned judgment would show that the following acts of cruelty were considered by the learned Court below, as proved:-

(i) From the cross-examination of Anjana (appellant), it has been made out that she is working at Mathura since 2006. She has some connection with spiritual organization “Brahamkumari” and her elder sister is also connected with it. Learned Family Court has observed that as a matter of common knowledge, celibacy is fundamental principle of this spiritual organization.

(ii) *It transpires that there is 75 years old mother of respondent-husband and admittedly, one sister of respondent-husband is of un-sound mind and the respondent-husband is taking care of both of them. There has been an attempt on the part of the husband to keep the wife and his daughter along with his mother and sister. However, appellant-wife found the accommodation too small to live along with old mother and disabled sister of the husband.*

(iii) *It has come on record that with the intervention of the Court, the parties were made to live together at Hodal as desired by the appellant but the arrangement failed.*

(iv) *It was held that the allegations which have been made by the appellant with regard to demand of dowry and acts of cruelty are all counter-blast to the divorce petition filed by the respondent-husband and the appellant herself is guilty of committing acts of cruelty by expecting the husband to leave his old aged mother and un-sound sister un-attended and destitute.*

(v) *It was further held that the appellant seems to have settled at Mathura as she has got reasonable job there to maintain herself and daughters. She also seems to be not interested into any conjugal bliss because she has joined spiritual organization with the foundation to maintain celibacy.*

10. Learned counsel for the appellant submits that the learned Court below has erred in law and fact in allowing the divorce petition filed by the respondent-husband. It is submitted that the trial Court has failed to consider and appreciate the material evidence in its right perspective. Learned counsel for the appellant further submits that the trial Court has wrongly held the appellant-wife guilty of cruelty despite the fact that there was no substantial evidence on record in that regard. It is yet further submitted that the findings

returned by the trial Court to the effect that the appellant is working at Mathura, is wrong as the appellant was appointed as '*Anganwari Worker*' in the year 2006 in Haryana and her duty was in Village Andhop and subsequently, she was transferred to Hodal, where she is residing with her children. It is also submitted that the Court below has not returned any finding as regards the manner in which the joining of spiritual organization (*Braham Kumari*) by the appellant, resulted in cruelty. It is next submitted that the demand of the appellant for an accommodation to look after the ailing daughter has been wrongly held to be an act of cruelty as she refused to reside with the mother and the sister of the husband in one room, measuring 12'x12'. It is, therefore, contended that the impugned judgment is an outcome of misreading of evidence and therefore, unsustainable in the eyes of law.

11. We have heard learned counsel for the appellant and have perused the paper-book with his able assistance.

12. In *Jagdish Singh v. Madhuri Devi, 2008(10) SCC 497*, the Hon'ble Supreme Court, while examining the scope of interference by the first Appellate Court, observed as under:-

"24. It is no doubt true that the High Court was exercising power as first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a re-hearing of the main matter and the appellate court can re-appraise, re-appreciate and review the entire evidence "oral as well as documentary" and can come to its own conclusion.

25. At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that

the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as that of the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in appraisal of evidence is erroneous, contrary to well-established principles of law or unreasonable...

13. Further, the concept of cruelty within the meaning of Section 13(1)(i-a) of the Hindu Marriage Act has been explained by the Hon'ble Supreme Court in case of **“Joydeep Majumdar v. Bharti Jaiswal Majumdar, 2021(2) R.C.R. (Civil) 289**, by observing as under:-

“10. For considering dissolution of marriage at the instance of a spouse who allege mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. The degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party...”

14. In **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511**, Hon'ble Supreme Court gave illustrative cases where inference of mental cruelty could be drawn even while emphasizing that no uniform standard can be laid down and each case will have to be decided on its own facts. The relevant

extract of the observations made by the Hon'ble Supreme Court in the case ***Samar Ghosh*** (*supra*) read as under :-

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

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

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) xxx xxx xxx

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to

mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) and (ix) xxx xxx xxx

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) xxx xxx xxx

(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...”

15. In **K. Srinivas Rao v. D.A. Deepa, 2013(2) R.C.R. (Civil) 232,**

Hon'ble Apex Court held as under:-

“14. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, we could add a few more. Making unfounded indecent defamatory

allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse...”

16. Keeping in view the aforesaid legal principles and upon appraisal of the evidence on record touching the entire matrimonial life of the parties, it is observed that the appellant-wife alongwith her two daughters has been residing separately from respondent-husband at Mathura since 2016 and she occasionally resides at Hodal. Appellant-wife admitted the fact that she had a mother-in-law, aged about 75 years and a sister-in-law, who is of unsound mind. It has come in the evidence of Appellant-wife that she denied to live in village Andhop with her husband and that he asked her husband to live at Hodal. Appellant-wife admitted that her husband was serving his old mother and his unsound mind sister. Appellant-wife further admitted that she had denied to accompany her husband due to lack of house.

Similarly, appellant's own sister, namely, Sudarshan @ Sanju, who was examined as RW-2; admitted that respondent-husband was living in village Andhop alone and that he had an old mother and an unsound mind sister. She further admitted that Appellant was residing at Mathura and temporarily residing at Hodal where she had hired a room. She also admitted that Appellant had denied to keep the mother and unsound mind sister of the respondent-husband as there was no arrangement of space.

17. From the evidence on record, it can be easily discerned that the appellant did not want to reside with the old mother and un-married sister of un-sound mind, of the respondent-husband. Rather, it has come on record that the appellant had asked respondent to live with her at Hodal. It is clearly borne out from the record that the respondent was serving his old mother and un-sound mind sister and the appellant was expecting the husband to leave them un-attended.

18. In **Narendra v. K. Meena, 2016(4) RCR (Civil) 706**; Hon'ble Supreme Court observed as under:-

“11. The Respondent wife wanted the Appellant to get separated from his family. The evidence shows that the family was virtually maintained from the income of the Appellant husband. It is not a common practise or desirable culture for a Hindu son in India to get separated from the parents upon getting married at the instance of the wife, especially when the son is the only earning member in the family. A son, brought up and given education by his parents, has a moral and legal obligation to take care and maintain the parents, when they become old and when they have either no income or have a meagre income. In India, generally people do not subscribe to the western thought, where, upon getting married or attaining majority, the son gets separated from the family. In normal circumstances, a wife is expected to be with the family of the husband after the marriage. She becomes integral to and forms part of the family of the husband and normally without any justifiable strong reason, she would never insist that her husband should get separated from the family and live only with her. In the instant case, upon appreciation of the evidence, the trial Court came to

the conclusion that merely for monetary considerations, the Respondent wife wanted to get her husband separated from his family. The averment of the Respondent was to the effect that the income of the Appellant was also spent for maintaining his family. The said grievance of the Respondent is absolutely unjustified. A son maintaining his parents is absolutely normal in Indian culture and ethos. There is no other reason for which the Respondent wanted the Appellant to be separated from the family - the sole reason was to enjoy the income of the Appellant. Unfortunately, the High Court considered this to be a justifiable reason. In the opinion of the High Court, the wife had a legitimate expectation to see that the income of her husband is used for her and not for the family members of the Respondent husband. We do not see any reason to justify the said view of the High Court. As stated herein above, in a Hindu society, it is a pious obligation of the son to maintain the parents. If a wife makes an attempt to deviate from the normal practise and normal custom of the society, she must have some justifiable reason for that and in this case, we do not find any justifiable reason, except monetary consideration of the Respondent wife. In our opinion, normally, no husband would tolerate this and no son would like to be separated from his old parents and other family members, who are also dependent upon his income. The persistent effort of the Respondent wife to constrain the Appellant to be separated from the family would be torturous for the husband and in our opinion, the trial Court was right when it came to the conclusion that this constitutes an act of 'cruelty'..."

19. When the afore-mentioned circumstance namely, expectation/obdurateness of the appellant that the husband should live with her after leaving his old aged mother and un-sound mind sister; is considered in the light of the observations made by the Hon'ble Supreme Court in the case of *Narendra (supra)*, the same would indeed constitute an "act of cruelty".

20. It needs no reiteration that when one enters into matrimony, one surrenders a part of one's absolute freedom for the good of both and for the harmonious life of two alongwith their children (if any). Therefore, one should adjust his/her life pattern in the light of his/her marital obligations.

21. In the present case, it is a fact that the spouses have separated since 2016 and they have not been able to re-unite and lead a normal matrimonial life all these years. It has come on record that the appellant was not ready to reside with her old mother-in-law and unsound mind sister-in-law. She is working as Anganwari worker away from her matrimonial home. There is every reason, therefore, to assume that their matrimonial relationship is emotionally dead. The appellant-wife wants to live separately for her own reasons, otherwise she could have tried to adjust with the respondent-husband. It is not forthcoming as to whether the appellant had ever sought restitution of conjugal rights by filing a petition under Section 9 of the 1955 Act. There is nothing on record to suggest that any effort was made by appellant-wife to make adjustments; rather the evidence on record suggests otherwise.

22. That apart, the appellant-wife has clearly admitted in her cross-examination that she has joined Braham Kumari (a spiritual organization) and she attends their kirtan. Appellant-wife also admitted that

her sister namely Sudarshan Kumari is also a “Braham Kumari”. Similarly, appellant’s sister namely Sudarshan @ Sanju (RW-2), also admitted that she is a member of “Braham Kumari” and she is unmarried and that appellant has also joined “Braham Kumari”. The Family Court below has considered the afore-said factum of appellant having joined ‘Braham Kumari’ i.e. a spiritual organization with the foundation to maintain celibacy; as a circumstance to hold that the appellant does not seem to be interested in any conjugal bliss. It is well settled and as observed in the case of ***Samar Ghosh*** (*supra*), unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason, may amount to mental cruelty.

23. From the above discussion, it is evident that the marriage between the parties has failed and the matrimonial alliance is beyond repair. If the decree of divorce is set aside that would amount to compelling them to further live together in complete disharmony, mental stress and strain, which in turn will amount to perpetuating cruelty.

24. Learned Family Court, while considering all these aspects, therefore, has rightly passed a decree of dissolution of marriage between the parties and we see no reason as to why, the findings as given by the learned trial Court should not be upheld. The point of determination is answered accordingly. Resultantly, finding no merit in the appeal, the same is dismissed.

25. Before we part with this order, it is apposite to state here that while granting the decree of divorce, the learned Family Court has not granted anything to the appellant towards Permanent Alimony. Here it is

useful to refer to Section 25 of the 1955 Act, which reads thus:

"Section 25. Permanent alimony and maintenance :- (1)
Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the appellant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant (the conduct of the parties and other circumstances of the case), it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent."

(2) and (3)"

In the light of the language used in Section 25 of the 1955 Act, it is clear that claim under Section 25 of the Act has to be made on an application furnishing all details regarding his or her own income or other property. Further an opportunity has to be given to the other side to put forth his/her defence.

26. Admittedly, the appellant-wife has not filed any application claiming permanent alimony as per Section 25 of the 1955 Act either before the Family Court or before this Court.

27. Be that as it may, Section 25 of the 1955 Act itself envisages that the wife can initiate proceedings for grant of permanent alimony even after the decree of divorce. Therefore, the Court does not become *functus officio* with the passing of the decree and continues to have jurisdiction to award alimony even thereafter.

28. Keeping in view the totality of circumstances and to do justice to the parties, we are of the considered view that while keeping it open to the appellant-wife to institute her claim for grant of permanent alimony before the court of competent jurisdiction, we deem it appropriate to grant some amount towards interim permanent alimony subject to any final decision to be taken by the concerned court on an application to be filed under section 25 of the 1955 Act by the appellant-wife. In making the assessment, we have considered the following factors:

- (a) *Appellant-wife is a B.A pass out and she had been working as an Anganwadi worker and getting about Rs. 7500/- per month (as per her own admission in her cross-examination);*
- (b) *Respondent-husband is 10th pass;*
- (c) *Respondent-husband admitted in his cross-examination that he has two daughters namely Divya and Jyoti @ Gulia, who are studying;*
- (d) *Respondent-husband has further admitted in his cross-examination that his younger daughter Jyoti @ Gulia is suffering from Kidney disease;*
- (e) *In the proceedings under section 125 Cr.P.C, Family court, Mathura has noticed that Respondent-Husband is running a store and also has two acres of agricultural land;*
- (f) *Family Court, Mathura vide its order dated 17.10.2017 passed under Section 125 Cr.P.C, has ex-parte awarded maintenance of Rs. 8,000/- per month to appellant-wife payable by respondent-husband and another amount of Rs. 4,000/- each to both daughters;*
- (g) *It has come on record that respondent-husband has an old mother and an unmarried sister, who is stated to be of unsound mind.*

Keeping in view the aforesaid circumstances, we deem it appropriate to grant an amount of Rs. 5,00,000/- (*Rupees five lakhs only*) towards interim permanent alimony to be paid by respondent-husband to the appellant-wife. Let the said amount be paid by respondent-husband to the Appellant-wife within a period of three months from today; failing which the said amount shall attract simple interest @ 6% per annum.

29. The present appeal is accordingly dismissed with the afore-said observations.

30. All pending applications (if any) shall also stand closed.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

April 30th, 2024
gurpreet

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