

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-4355-2019(O&M)
Reserved on 21.08.2024
Pronounced on: August 29, 2024

Pooja TyagiAppellant

vs.

Amit TyagiRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Appellant in person along with
Ms. Savita Bhandari, Advocate

Respondent in person along with
Mr. Puneet Bali, Sr. Advocate assisted by
Ms. Shruti Garg and Mr. Shivam Sharma, Advocates

SUDEEPTI SHARMA J.

1. The appellant-wife in the present appeal has challenged the judgment and decree dated 30.05.2019 in DMC/4599/2014 passed by learned Addl. Principal Judge, Family Court, Sonipat, whereby the petition filed by the respondent-husband under Section 13 of Hindu Marriage Act, 1955 (for short 'HMA') for grant of decree of divorce, is decided in his favour and the marriage between the parties is dissolved by a decree of divorce on the ground of mental cruelty by the appellant-wife.

BRIEF FACTS OF THE CASE

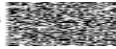
2. The brief facts of the case as mentioned in the divorce petition are that the marriage between the parties took place on 22.11.2009, as per Hindu rites and ceremonies at Ganaur, District Sonapat. Out of the said wedlock, one male

the mother of the husband and used to abuse her in-laws. She used to maltreat the respondent-husband and his family members. The efforts were made by the respondent-husband but failed.

3. The appellant-wife in the written statement denied the allegations made in the petition.

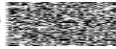
4. After hearing both the parties, the learned Family Court allowed the petition filed by the respondent-husband and granted the decree of divorce on the ground of cruelty, vide judgment and decree dated 30.05.2019. The learned Court below has observed as under:-

“51. Keeping in view the aforesaid enunciation of law pertaining to mental cruelty, it is to be scrutinized whether in the case in hand, there has been real mental cruelty or not. In this case while highlighting the acts of cruelty, the petitioner has stated that after his marriage with the respondent he found her arrogant. She never tried to adjust in his family. She used to abuse him and his family members. She never cared for him and whenever he used to come late from his office at Delhi due to traffic jam etc., she used to quarrel with him. At the time of marriage it was told to her that after marriage his widow mother would live with him as there was no one in the family to look after her except him, however, she never adjusted with his mother. She pressurized him to live separate from his mother. He tried to make her understand but in vain. She went back to her parents and refused to return till he would arrange a separate house for her. He brought her back with the intervention of the mediators, however, she started living on the first floor of the house as per her condition



52. The respondent has negated this plea of the petitioner, however, in support of his stand besides examining himself, the petitioner has examined PW7 Amit, Clerk from Kheriwala Gas Agency, Sonapat, who has stated that LPG connection No. 38013 was issued on 19.1.2010 in the name of Amit Tyagi for the first floor of house No. 32, Old Housing Colony, Sonapat while LPG connection No. 163281 was issued in the name of Mithlesh Tyagi, ie. the father of the petitioner. He proved document Ex. R31 in this regard. A perusal of the document reveals that the LPG connection in the name of the father of the petitioner was issued on 30.03.2009. Admittedly, the marriage of Amit with Pooja was performed on 22.11.2009 i.e. after the first connection was taken and the second connection has been taken just within two months after the marriage of the parties to the proceedings, which strengthens the stand of the petitioner that just after 20-25 days of the marriage the respondent insisted him to live separate from his family members, hence, finding no alternative he settled her on the first floor of his house.

53. It has been argued by learned counsel for the respondent that merely asking the husband to live separate does not amount to cruelty and Law is well settled on this point, however, the contention raised by the learned counsel for the respondent is not tenable for a simple reason that the concept of cruelty differs from person to person and each case has to be considered separately. Mental cruelty can not be established by direct evidence and it is a matter of inference, which is to be drawn from the facts and circumstances of each case. In this case, the petitioner has specifically stated that he had no other



member in the family to look after his widow mother and unmarried sister. Merely because a son has been married, it does not mean that he has no responsibility towards his mother especially when his father has already left for heaven. The parents spend their whole life in the upbringing of their children and if a girl after marriage insisted her husband to separate from his parents especially when he has no other brother to look after them, in the considered opinion of this court that amounts to mental cruelty to the husband. Reliance in this regard can be placed upon case titled as Narendra Vs. K. Meena's case (Supra) where in it has been held that it is not a common practice 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 this case also as the respondent refused to settle with the family members of the petitioner just after few days of marriage, it amounts to mental cruelty to the husband. Hence, the contention raised by the learned

counsel for the respondent is not tenable and same stands misconceived.

54. *In this case the petitioner has drawn the attention of this court on a number of incidents when the respondent caused cruelty upon him. One of such incident took place in the first week of January, 2011. He has stated that on that day at about 8.30 AM on hearing the cries of her grand son, the mother of the petitioner went upstairs and took the child in her lap. She sat on the double-bed. At that time the respondent was in the bathroom, however, she came out and snatched the child from his mother. She abused his mother and pushed her from the double- bed. She warned her not to come in the room again. On hearing the cries of his mother, he and his maternal uncle Vinod Tyagi, reached there. He felt humiliated on seeing the condition of his mother, who was weeping loudly. He asked the respondent to feel sorry but she refused for that. The respondent has not specifically denied about the incident. Rather, she when appeared in the witness box, she has stated in her affidavit Ex. DWI0/A that the mother of the petitioner wanted her son to break the lie of marriage with the respondent, hence, the entire drama was played by the petitioner and his family members to derogate her. Meaning thereby, some thing had definitely happened on that day.*

55. *The petitioner has further stated that he when asked the respondent to feel sorry to his mother, she refused for that. Her parents were also informed about the incident and a panchayat was convened, however, the respondent told in the Panchayat that she would not live in that house at any cost with her mother-in-law. He*



agreed to arrange a rented accommodation for her within a month to save his married life. However, in the last week of January, 2011 the respondent came to his office without informing him and abused him. She asked him why he had not arranged the rented accommodation for her despite assurance given by him. She caught him by his collar and abused his mother. This act of the respondent made him feel insulted in the presence of his clients and other persons including Mr. Vikas, Mr. Sanjay Aggarwal and Mr. Sanjeev Dahiya. In support of his stand, besides his statement the petitioner has examined PW2 Sanjeev Dahiya, who had witnessed the incident. He has specifically stated that the petitioner tried to make the respondent understand at that time and told her that he was trying his level best to arrange a rented accommodation for her but he did not listen. PW3 Sanjay Aggarwal, the another eye witness of the incident has also corroborated the statement of the petitioner Amit and PW2 Sanjeev Dahiya in letters and spirit. It is apt to note here that it does not require Solomon's wisdom to understand the embarrassment and harassment that might have been felt by the husband. The level of disappointment on his part can be well visualized like a moon in a cloudless sky.

56. *It has been urged by the learned counsel for the respondent that no independent witness has been examined by the petitioner to strengthen his stand and PW2 Sanjeev Dahiya and PW3 Sanjay Aggarwal were his business associates who deposed in the tune of the petitioner being his friends. However, the contention raised by the learned counsel for the respondent is not tenable for a simple reason that in matrimonial disputes, it would be inappropriate to*



*expect considers to come and depose. The family members and sometimes the relatives, friends and neighbours are the most natural witnesses. Reliance in this regard can be placed upon case titled as **Vishwanath Vs. Sau Sarla Vishwanath Agrawal 2012(3) RCR (Civil) Page 702 (SC)**. Moreover, in this case the respondent though in her written statement as well as in her evidence has stated that no such incident took place in the office of the petitioner, however, she has nowhere pleaded or deposed that she did not visit the office of the petitioner on that day. Abusing her husband in his office and that too by catching hold of his collar, is really a cruelty upon the husband as that lowers down his reputation among his clients and other persons.*

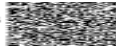
57. *In this case the petitioner has further stated that after that incident when he came back to his home, his mother told him that the respondent had already left the home with her father. He tried to contact her on telephone but she did not respond. After ten days, he came to know that she had joined a job at Chennai. This fact was not disclosed to him and that affected his mental health as his son was just five months old at that time and he did not want his wife to join the job at the cost of his son. He further stated that the respondent used to come from Chennai on every alternative month, but she never tried to contact him. She used to stay at her parental home. The respondent when appeared in the witness box, she admitted in her cross-examination that she joined job at Chennai on 07.02.2011 at the time her son was not even five months old. She further admitted that she had given her permanent address as well as for correspondence as that of her parental home before joining service. She further*

admitted that after receiving call letter in the year 2011 also she filled form and various documents showing her address as that of her parental home. The respondent has not explained why in the year 2011 she gave her address as that of her parental home and not of her matrimonial home. All these facts strengthen the stand of the petitioner that after the respondent came to her parental home in the last week of January, 2011 when the aforesaid incident took place in the office of the petitioner, she joined job at Chennai without informing him at the time his son was not even five months old, hence, the petitioner seems to be more reliable to this court.

58. Further more, in her cross-examination the respondent has admitted that she joined job at Chennai with the consent of her husband. In later lines of her cross-examination she has stated that at the time of joining her service in the month of February, 2011 she went Chennai with her mother on the asking of her husband as her mother-in-law could not accompany her due to her unmarried sister-in-law, while in her evidence in chief she has stated that after she joined as Auditor in the office of C.D.A, Chennai, the petitioner forced her to leave the job and assured her that he would keep her with love and affection in future and on his assurance and to settle her matrimonial life she left the job. She has also stated that she refused for the offer of C.A.G at Rajkot (Gujarat) after qualifying the examination of Staff Selection Commission as the petitioner and his mother did not allow her to join there. This court fails to understand what stand the respondent wants to take, whether her stand is that her husband co-operated her in making her career by allowing her to take

her mother or her husband created hurdles in her career by not allowing her to join the job at Gujarat and forcing her to leave job at Chennai. Moreover, the petitioner has placed on record document Ex.PX received under RTI Act, 2005, to show that services of the petitioner were terminated after she faced disciplinary proceedings. A perusal of the same reveals that the services of Pooja Tyagi would terminate on the expiry of one month from the date of that notice. No effort has been made by the respondent to bring evidence on record to show that she did not face any disciplinary proceedings as told by the petitioner. Thus, document Ex. PX falsifies the stand of the respondent that she left job due to the pressure of the petitioner and for the sake of her matrimonial life.

59. *The respondent has denied the factum that after joining job at chennai she did not use to come to her matrimonial home and used to go to her parental home. The petitioner has placed on record Ex. PY, the information received under RTI Act, 2005 which reveals that Dr. Sanjay Jain, MBBS, Sita Hospital, Ganaur has certified that the respondent needed medical rest for the period 9th July to 14th of July and then from 7th of September to 15th of September, 2011. In her cross-examination, the respondent has admitted that she had taken maternity leave and medical leave from her job, however, she did not remember whether she had received medical certificates for taking leave from Dr. Sanjay Jain, Sita Hospital, Ganaur. In later lines she has stated that she used to visit Dr. Sanjay Jain even prior to her marriage and she used to believe in his treatment. Thus, the aforesaid document received by the petitioner under RTI Act, 2005*



and the respondent has not denied that the same did not belong to her, strengthen the case of the petitioner that the respondent joined the job without his knowledge and Jurassed him by not coming to him, whenever she used to come on leave or otherwise from her job place.

60. Furthermore, the petitioner has stated that on his persistent request the respondent came in the first week of September, 2011 to celebrate the first birthday of their son in Bulbul Restaurant on 14.09.2011. He further stated that in the presence of his friend Sanjeev Dahiya, his wife and others when his mother gave a piece of cake to her grand son, the respondent got angry and abused his mother and when he tried to stop her, she threw her sandal on his mother in the presence of all the guests, friends and waiters and this act and conduct of the respondent caused embarrassment to him. He started loosing self confidence. PW2 Sanjeev Dahiya, has supported his this version in letters and spirit. The respondent in her cross-examination has admitted the presence of Sanjeev Dahiya at the relevant time. However, her counsel has again argued that the said witness was an associate of the petitioner, hence, he has corroborated him in a parrot like manner. However, as per aforesaid discussion, in matrimonial disputes no outsider can be expected to come and depose except the family members or relatives and friends. Moreover, the respondent herself could bring evidence in the shape of statement of some friend or waiter from the hotel, in support of her stand that no such incident took place, however, no such effort has been made by her and now she can not take benefit of the contention raised by her counsel.

61. Another grievance of the husband is that in February, 2012 the respondent called police to humiliate him and to create hurdles in the marriage of his sister, which was to be performed in March, 2012. She abused him and his family members in the presence of neighbourers, who had gathered on the spot and this act and conduct of the respondent caused huge embarrassment to him. He further stated that she did not want him to spend any money on his family members and all this was done by her just to fulfill her demands. The respondent in her cross-examination, has admitted that she had called police in February, 2012 when the respondent and his family members gave her merciless beatings and she was left with no option to save her life. However, no corroborative evidence in the shape of MLR has been placed on file to strengthen her this stand by the respondent. She has stated that she did not get herself medicolegally examined on that day. Had she been mercilessly beaten by the petitioner and his family members, which forced her to call police, as alleged by her she must have approached the doctor to get medical aid. However, by not doing so, the respondent again forced the court to believe that by calling police just one month prior to the marriage by not doing so the respondent liced just one month prior to the marriage of the sister of the petitioner, the respondent wanted to pressurize him to work as per her wish. No person likes to be publically humiliated, hence, this court has no hesitation in holding that this act of the respondent also caused cruelty upon the petitioner.

62. The petitioner has further alleged that the respondent always threatened him to get implicated him and his family members in

dowry case though no dowry was taken in the marriage. His mother started remaining i ill due to the tension given by the respondent. Though, the respondent has negated this plea of the petitioner, however, in her evidence in chief, she has stated that the respondent demanded a car & huge amount from her and when she failed to fulfill his demands, he and his family members gave her severe beatings. However, in her cross-examination, she has stated that the petitioner used to go to his office by car. She has further stated that he had a number of cars. Had it been so then what necessitated the petitioner to demand a car from the respondent. No specific date, month and time has been given when the demand was made. The respondent has specifically stated that she used to accompany her husband in whatever function he wanted to accompany her. She also visited Rajasthan with him. Meaning thereby, the petitioner was taking her with him in the functions as well as at other places, he used to visit. Had his intention been to harass her for demand of dowry, he would not have allowed her to accompany him to the functions or other places. Moreover, in this case stand of the respondent is not consistent which forced the court to think that she is not deposing truth. In her evidence-in-chief she has stated that the petitioner and his family members tried to terminate her pregnancy, however, in later lines she has stated that her mother had come in the hospital to take care of her and her son as the mother of the petitioner had refused to take care of them. This court fails to understand why she called her mother only after refusal by the mother of the petitioner when the respondent had apprehension of life of her child at the hands of the

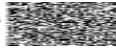


mother of the petitioner. She has not explained how the mother of the petitioner tried to terminate her pregnancy. No medical evidence is there to corroborate her this stand.

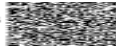
*63. The petitioner has further stated that the respondent again left him in July 2012 and came back in March, 2013 with the intervention of the respectable persons, however, she did not mend her ways. In the last week of May 2013 his Friend Amit Tyagi and Sanjeev Dahiya came to his house. He when asked the respondent to prepare tea for them she refused for that. He himself prepared the tea and asked the respondent to serve some snacks to them, however, the respondent started shouting and threatened to throw the cup of tea on his face. She then went on the road and started shouting loudly just to humiliate him in the presence of neighbourers and friends and again left her matrimonial home. She then came back in the first week of July 2013. PW2 Sanjeev Dahiya has admitted that the incident had taken place when he was present at the house of the petitioner. He has stated that the petitioner tried to make the respondent understand, however, she did not listen and continued to abuse the petitioner in his presence and in the presence of Amit Tyagi and neighbourers. No specific denial of the incident is there in the written statement by the respondent. No effort has been made by the respondent to examine any neighbourer to rebut the stand of the petitioner and PW2 Sanjeev Dahiya that no such scene was created by her on that day. In case titled as **Rajesh Dodiwal Vs. Smt. Sangeeta's case (Supra)** it has been held that abusing and humiliating her husband in the presence of his friends and neighbourers, amounts to mental cruelty. No person*

likes to be publicly humiliated or likes to be subjected to cruel treatment. In this case also the petitioner has been cursed, assaulted and abused in front of his friends and neighbours, hence, this court is of the considered view that the respondent has caused cruelty upon him.

64. The petitioner has stated that after this incident the respondent again left him, however, he brought her back in July 2013. It has been alleged by the counsel for the respondent that as the petitioner again brought her back, he had condoned all the aforesaid acts of the respondent and now he is not entitled to any relief from this court. However, the contention raised by the learned counsel for the respondent is not tenable for a simple reason that it rather shows that the petitioner tried his level best to settle his married life with the respondent. He has stated that the respondent came back in July, 2013 but she did not mend her ways. On 30.07.2013 he went to drop his son to school, however, the respondent became furious as he had personally gone to drop his son to the school. At about 9.15 AM, when he came back from the school he was shocked to see that his mother was lying on the ground and was crying. He found bruises on her person due to assault committed by the respondent. She called her parents on telephone. After some time her parents and her cousin-in-law reached there and abused the petitioner and his mother. They then gave beatings to the petitioner. Many people from the neighbourhood including Dilbagh Singh and milkman came there. They rescued him from the clutches of the family members of the respondent. The parents of the respondent alongwith the respondent then left the spot



and reported the matter to police by levelling false allegations. He also gave statement to police and got himself and his mother medicolegally examined. Due to the pressure of the respectable persons, the petitioner as well as the respondent made statements to the police that they did not want to pursue their complaints. After this incident, the respondent came to his house on the next day. She collected her belongings, ornaments etc and left the home. Thereafter, she never joined his company and continued to threaten him. Now, it is not possible for him to live with her. This stand of the petitioner is corroborated by his friend Sanjeev Dahiya, who has stated that on that day on receipt of information about the incident from the petitioner, he came to his house. After some time the parents and cousin-in-law of the respondent also reached there. They abused the petitioner and his mother and gave beatings to the petitioner. The respondent in her cross-examination has admitted that an altercation had taken place between her and her husband and his family members on 30.7.2013 at about 8.45 AM She has also admitted that Amit had gone to school to drop the child on that day. However, she has not stated the reason of altercation between her and her husband and his family members. She has admitted that she had called her father on that day. The petitioner has specifically stated that the respondent was rude towards his relationship with his son and she became furious as he had personally gone to drop his son to the school. At the cost of repetition no reason of altercation has been given by the respondent. She has stated that she was kicked out of the matrimonial home after giving beatings on that day to fulfill their demand of dowry, however,



she has not explained specifically what was demanded from her. A perusal of her MLR Ex. RW11/A no where reveals that she gave history of assault for dowry. No complaint was ever moved by the respondent to police against her husband and his family members regarding her harassment for demand of dowry. A perusal of her MLR Ex. RW11/A further reveals that no external mark of injury was found by the doctor at the time of her medico-legal examination and there was just complain of pain in her body parts. DW8 Dr. Akhil Sazena in his cross-examination has stated that the MLR of the patient was prepared on 30.07.2013 at 10.15 AM and she took admission in his hospital at 1.40 PM. He further stated that on the asking of patient Pooja she was kept in Intensive Care Unit. Meaning thereby, the doctor did not find it necessary to keep her in ICU. There was no injury on her person except some bleeding from nose, however, no such bleeding was found by the doctor, who conducted MLR. Had it been so, then the same must have been mentioned by the doctor in the MLR of Pooja. On the other hand a perusal of MLR of petitioner Amit Ex. PW4/A reveals that he suffered multiple Bruises on back, on his both shoulders, on lower part of neck and on right wrist. The patient was complaining pain on left mandibular region. While a perusal of MLR of Mithlesh, the mother of petitioner Ex. PW5/A reveals pain and redness over left elbow and bruise over left hip. All these facts clearly show that it is the petitioner and his mother, who suffered injuries in the incident and Pooja got herself admitted in ICU just to make her case more serious without any advise of doctor.

65. In nutshell in this case, the stand of the petitioner seems to be more reliable to this court and he has successfully shown that the respondent treated him with cruelty after marriage and made his life a hell. The authorities relied upon by learned counsel for the respondent are of no help to the respondent as have been given in different set of facts.

66 In view of above discussion, in this case the petitioner has duly shown that the respondent used to humiliate him and treated him with cruelty which caused a great mental agony to the petitioner, hence, the petitioner is entitled to a decree of divorce on the ground of cruelty and this issue is decided accordingly in favour of the petitioner.”

5. A perusal of the above shows that the learned Principal Judge, Family Court, Sonipat, has taken into consideration each and every aspect of relationship between the parties and the relevant evidence i.e documentary as well as oral evidence on record in a detailed manner. Therefore, we do not find that the judgment passed by the Principal Judge, Family Court, Sonipat, is bad in the eyes of the law.

SUBMISSIONS OF THE COUNSEL FOR THE APPELLANT-WIFE

6. Learned counsel for the appellant-wife contends that the learned Court below has misled and misconstrued the evidence led by the respondent-husband and has wrongly come to a conclusion that the allegations of cruelty are established. She further contends that the learned Court below has wrongly concluded that the appellant-wife is guilty of cruelty and on this basis only, the decree of divorce has wrongly been granted to the respondent-husband.

7. She further submits that divorce was wrongly granted and the decree

of divorce dated dated 10.01.2013 deserve to be set aside and the present appeal be allowed.

SUBMISSIONS OF THE COUNSEL FOR THE RESPONDENT-HUSBAND

8. *Per contra*, learned senior counsel for the respondent-husband has argued on the lines of the allegations made in the petition and contends that the divorce had rightly been granted. He further submits that the marriage between the parties has been irretrievably broken down and at this stage, they cannot live together as husband and wife. He prayed for dismissal of the appeal.

9. We have heard learned counsel for the parties and perused the whole record.

10. Section 23(2) of the Hindu Marriage Act, 1955 reads as under:-

“23. Decree in proceedings:-

* * * * *

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.

The intention of the legislature in incorporating the above-mentioned provision [Section 23(2)] is that even if one of the parties has filed the petition under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage on the grounds mentioned therein, it shall be the duty of the courts, in every case where it is possible so to do consistently with the nature and circumstances of the

case to make every endeavour to bring about reconciliation between the parties. That is why for the grant of divorce under Section 13 of the Hindu Marriage Act, 1955, wherein certain grounds for grant of decree of divorce are given, no strict method for proving the same is required and even if any of the ground is proved to be correct, still Section 23(2) of the Hindu Marriage Act, 1955 casts mandatory duty upon the Court before proceeding to grant any relief under the Hindu Marriage Act, 1955 to make every endeavour to bring about the relationship between the parties.

11. Further, before deciding whether to grant or deny decree of divorce for dissolution of marriage, it is important to have a meeting with both parties to assess the current status of their relationship.

CONCLUSION

12. Section 23(2) of Hindu Marriage Act, 1955 reads that before proceeding to grant any relief under the Hindu Marriage Act, 1955 it shall be the duty of the Court in the first instance, in every case, where it is possible so to do consistently with the nature and circumstance of the case, to make every endeavour to bring about the reconciliation between the parties.

13. In compliance of Section 23(2) of Hindu Marriage Act, 1955, this Court directed the parties to appear vide order dated 06.08.2024. Every effort was made to settle down the dispute between the parties with respect to their living together or gracefully parting their ways, but the conduct and behaviour of both the parties was such that we did not find any positive result and observe that the relationship between the parties has become so bitter that it is impossible for them to stay together under one roof.

14. We have interacted with the parties and found that they are living separately for more than 11 years and no effort was made by any of the parties to

resolve the dispute between them. Therefore, at this stage, we do not think it appropriate to discuss the evidence led by them, and to determine the allegations or fault by both of them. As per the record, there are allegations and counter-allegations against each other. The relationship between the parties have become so bitter that we find that there is no possibility of their staying together under one roof. Even the efforts made by this Court as well as the Mediation Centre of this Court failed in the present case.

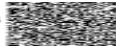
15. The matrimonial cases cannot be decided on the basis of allegations made against each other, evidence led by both the parties. In fact, the decision depends upon the amount of bitterness between each other and the love and affection left between the parties after so many litigation. Even if the Courts appreciate the evidence on record in matrimonial matters and reject the prayer for dissolution of marriage, still they cannot be forced to live together. It is only their personal efforts which can decide the dispute between them.

SETTLED LAW

16. While discussing the judgments passed by Hon'ble the Supreme Court in Naveen Kohli v. Neelu Kohli, 2006 AIR Supreme Court 1675, held as under:-

“24. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.

28. This Court in the case of Savitri Pandey v. Prem Chandra Pandey, 2002(1) RCR (Civil) 719 : (2002)2 SCC 73, stated that mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be



distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other

31. In **Chetan Dass v. Kamla Devi, 2001(2) RCR (Civil) 641 : (2001)4 SCC 250**, this Court observed that the matrimonial matters have to be basically decided on its facts. In the words of the Court : "Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case.

32. In **Sandhya Rani v. Kalyanram Narayanan, (1994) Supp. 2 SCC 588**, this Court reiterated and took the view that since the parties are living separately for the last more than three years, we have no doubt in our mind that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. Therefore, the Court granted the decree of divorce. 33. In the case of **Chandrakala Menon v. Vipin Menon, (1993)2 SCC 6**, the parties had been living separately for so many years. This Court came to the conclusion that there is no scope of settlement between them because, according to the observation of this Court, the marriage has irretrievably broken down and there is no chance of their coming together. This Court granted decree of divorce.

41. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However,

insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

42. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.

*43. In **Durga P. Tripathy v. Arundhati Tripathy, 2005(3) RCR (Civil) 819 : (2005)7 SCC 353**, this Court further observed that Marriages are made in heaven. Both parties have crossed the point of no return. A workable solution is certainly not possible. Parties cannot at this stage reconcile themselves and live together forgetting their past as a bad dream. We, therefore, have no other option except to allow the appeal and set aside the judgment of the High Court and affirming the order of the Family Court granting decree for divorce.*

50. On May 22, 1969, the General Assembly of the Church of Scotland accepted the Report of their Moral and Social Welfare Board, which suggested the substitution of breakdown in place of matrimonial

offences. It would be of interest to quote what they said in their basis proposals: "Matrimonial offences are often the outcome rather than the cause of the deteriorating marriage. An accusatorial principle of divorce tends to encourage matrimonial offences, increase bitterness and widen the rift that is already there. Separation for a continuous period of at least two years consequent upon a decision of at least one of the parties not to live with the other should act as the sole evidence of marriage breakdown." Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

52. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised 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 do not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

53. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

54. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist..

17. A constitution Bench of Hon'ble the Supreme Court in **Shilpa Sailesh v. Varun Sreenivasan, 2024(1), Apex Court Judgment (SC) 9,** observed

33. *Having said so, we wish to clearly state that grant of divorce on the ground of irretrievable breakdown of marriage by this Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both parties. It is obvious that this Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. That the marriage has irretrievably broken down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations. We would not like to codify the factors so as to curtail exercise of jurisdiction under Article 142(1) of the Constitution of India, which is situation specific. Some of the factors mentioned can be taken as illustrative, and worthy of consideration.*

18. In **Rakesh Raman v. Kavita, 2023 AIR Supreme Court 2144**, the Hon'ble Apex Court held as under:-

18. *We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the*

last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1)(ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.

19. This Court in **FAO No.M-287-2018**, decided on 21.08.2024, titled as ***Sanjeev Kumar Vs. Suman*** observed as under :-

“20. There is no dispute regarding the fact of institution of different cases against the appellant-husband as well as his family members. Though under Section 13 of Hindu Marriage Act, 1955, different grounds for dissolution of marriage are mentioned and the decree of divorce can be granted, if any of the parties are able to prove the same against the other by leading cogent and convincing evidence etc. But the factual and practical aspect of such kind of cases is that the Courts cannot force the parties to live together, despite the dismissal of Section 13 of Hindu Marriage Act, 1955 petition for decree of divorce filed by any of the parties and despite the fact of their not being able to prove the ground on which they were asking for dissolution of marriage. In litigation under the Hindu Marriage Act, 1955, practically speaking, there cannot be any win or loose situation. The only win-win situation is that the parties amicably

settle down their status mutually. Even if the divorce petition under Section 13 of Hindu Marriage Act, 1955 for grant of decree of divorce is dismissed or for that matter petition under Section 9 of Hindu Marriage Act, 1955 for restitution of conjugal rights is allowed, practically speaking there cannot be any execution in such kind of matters. Since the parties to the litigation are not the properties for which execution can be filed to retrieve it to the other party. Emotions are attached to the parties for which they cannot be forced to live together. Once the conduct and the effort to live together during the period of their separation and gravity of allegations made against each other is observed, that would actually be the weights and measures to decide the matrimonial cases under the Hindu Marriage Act, 1955.

* * * *

28. *In matrimonial cases seeking a decree of divorce on any other grounds, it is often difficult to practically prove the allegations made by the parties inter se. Courts should not decide such cases solely on the basis of proof of allegations or the evidence presented, as is done in criminal cases. After all even if the allegations are proved to be correct beyond reasonable doubt, these are not the criminal cases where the offence is punishable.*

29. *In matrimonial matters, the only possible outcomes are either the granting of a decree of divorce or the dismissal of the petition for such a decree. In either case, no execution or punishment can be imposed, as no court can compel the parties to live together under one roof or to cohabit.”*

20. Recently, this Court in FAO No. 3803-2023, titled as Rohit Watts vs. Sonia Virk, decided on 28.08.2024 has observed as under:-

“37. Under Section 13 of the Hindu Marriage Act, 1955, certain grounds are specified for granting a decree of divorce. However, regardless of whether these grounds are proven, once parties are involved in matrimonial disputes, there are often allegations and counter-allegations. These cases cannot be treated in the same way as other civil or criminal matters.

38. Following are the factors which are to be considered by the Courts while granting the decree of divorce :-

- i) The period of separation between the parties;
- ii) The number of litigation between the parties;
- iii) The efforts made by the parties individually to settle down the dispute between them;
- iv) Over all conduct and behaviour/psychology of the parties with regard to the grant of decree of divorce or to deny the same.”

FINDINGS

21. Thus, in the present case, divorce had been granted to the parties, since the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. The Court below has rightly granted the decree of divorce to the parties, vide impugned judgment and decree dated 30.05.2019.

22. In view of the above, we do not find any infirmity in the impugned judgment and the present appeal being devoid of any merit is hereby dismissed. Accordingly, the judgment and decree dated 30.05.2019 in DMC/4599/2014 passed by learned Addl. Principal Judge, Family court at Sonipat, dissolving the

marriage between the parties by decree of divorce under Section 13 of Hindu Marriage Act is hereby upheld.

PERMANENT ALIMONY

23. Section 25 of the Hindu Marriage Act, 1955 reads as under:-

“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 applicant 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) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under subsection (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.”

24. While granting permanent alimony, this Court in **FAO No. 3803-2023**, titled as **Rohit Watts vs. Sonia Virk**, decided on 28.08.2024 has observed as under:-

45. The law regarding permanent alimony and maintenance is now very clear and can be granted to both the husband and the wife. However, in recent times, we have observed that in

matrimonial matters, whether the appeal is filed by the husband or the wife, wives are often trying to exploit the situation by extorting money from the husband in exchange for the relief sought by him. In many cases, it is evident from the pleadings and proven through documentary records that wives have lodged FIRs against the husband and his family members, leading to their conviction. Taking it be cruelty, if the husband files a petition under Section 13 of the Hindu Marriage Act, 1955 for the grant of decree of divorce, it is normally a wife who files the applications for maintenance under different statutes, i.e. under Sections 24 and 25 of the Hindu Marriage Act, 1955, Section 18 of Hindu Adoption and Maintenance Act, 1956, Section 125 of the Code of Criminal Procedure, 1973, Sections 20 and 22 of Protection of Women from Domestic Violence Act, 2005. Despite the fact that they lodged FIR against husband and his family members and they were to face trial and to spend the period of conviction in jails, the wife wants the reward for the same by filing such kind of applications. And it is very unfortunate that she is also granted the same. Now it is high time and the need of the society that such type of exploitation and extortion should be stopped. Therefore, justice demands that while dealing with the matrimonial matters and while granting permanent alimony, every aspect of the case should be taken into consideration which includes behaviour, conduct and the level of allegations made by each party.

47. *Normally, it is the duty of both the parents to look after their children and fulfil their needs and requirements. A matrimonial dispute between the parties should not affect or deprive the children of their right to the love and affection of both parents. For the welfare and over all personality development of a child, the love, care and affection of both parents are essential. Because of the change of the marital status of the parents the child cannot be forced to choose one parent. The child should have the freedom to stay, visit, or meet both parents as per his/her wish and desire. Therefore, in the present matter, the daughter born out of the wedlock is free to meet both the parents and to stay with both the parents as per her wish and desire.”*

NOW COMING TO THE GRANT OF PERMANENT ALIMONY IN THE PRESENT CASE

25. The parties were present in the Court on 21.08.2024 along with their son and the respondent-husband made the following offer on Oath on 21.08.2024

“Stated on oath that I am ready and willing to pay a lump-sum Rs. 30.00 lacs to my wife-the present appellant as permanent alimony.

Furthermore, I undertake that I shall bear all the expenses towards the marriage of my son and also undertake to pay Rs. 7500/- per mensem to the accounts of my son towards education expenses. Moreover, all the obligations towards my son shall be discharged by me throughout my life. I also undertake that I shall not disinherit my son from my property.

I also undertake to transfer five marlas of land situated at village Malikpur, District Sonipat, in the name of my wife-the present appellant. Moreover, I also undertake that all the cases instituted by me against my wife and her family before any Court of Law shall be withdrawn by me and all the allegations made by me against the appellant be expurgated.

Therefore, the present appeal may be permitted to be withdrawn by my wife and the judgment and decree passed by the learned Court below be affirmed and maintained and modified decree sheet be prepared accordingly ”

26. This offer was not acceptable to the appellant-wife.

27. We are of the view that the conduct of the appellant-wife was such that she does not want to stay with the respondent-husband rather her son namely Vihan born out of the wedlock of the parties, is also in the custody of the appellant-wife. We had a conversation with the son namely Vihan as well but we observed that the child Vihan aged 14 years was totally brain-washed against his father i.e respondent. He was not even ready to say hello to his father but during the course of the conversation when we did some counselling of Vihan and made him understand, after that he went and hugged his father i.e respondent. We observed that the child namely Vihan was very happy after meeting his father.

28. The appellant-wife in the present case is a non practicing Advocate. Though as observed by this Court in the above referred two paragraphs, she does not deserve any permanent alimony, however, in view of the statement made by the respondent-husband on 21.08.2024, we grant her permanent alimony and direct the respondent-husband to pay permanent alimony to the tune of Rs.30 lakhs as one time settlement to the appellant-wife by depositing the said amount in her account. Further he is directed to pay Rs.8000/- per month in the account of his son towards his education and other expenses, till he is unable to maintain himself out of his earnings and shall bear all the expenses towards his marriage and he shall not disinherit him from his estate at any point of time. He shall also perform all the moral obligations towards his son. The respondent-husband is directed to comply with the order within a period of three months from the date of pronouncement of this judgment and shall remain bound by his statement.

29. It is further clarified that Vihan is free to meet and stay with either of his parents, according to his own wishes and desires. Since, he is a minor (14 year old), the appellant shall not prevent him from meeting or communicating with his father, either by phone or in person. The respondent-husband is free to contact and visit his son at any time.

30. All the pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

August 29, 2024
G Arora

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