



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

FAO-7447-2018 (O&M)

Date of Decision: 24.05.2024

RAJBALA

...Appellant

Versus

RAKESH KUMAR

...Respondent

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

Present : Ms. Jatinder Jit Kaur, Advocate
for the appellant.

Mr. Kapil Arora, Advocate,
Mr. Pravar Veer Misra, Advocate
and Mr. Bhupinder Ghai, Advocate
for the respondent.

HARSH BUNGER, J.

Appellant (Rajbala) has come up in this appeal against the judgment and decree dated 27.11.2018 passed by the learned Principal Judge, Family Court, Hisar, whereby the petition filed by the respondent (Rakesh Kumar) under Section 13 of the Hindu Marriage Act, 1955 (in short '*the 1955 Act*') seeking dissolution of marriage by a decree of divorce, has been allowed and divorce stands granted.

2. Succinctly, the marriage of appellant-Rajbala was solemnized with respondent-Rakesh Kumar on 09.05.1995 at Village Badli, District Jhajjar as per Hindu rites and ceremonies. Out of this wedlock, two sons namely, Neeraj and Paramveer were born.

3. On account of marital discord, the parties started living separately. Subsequently, respondent-Rakesh Kumar filed a petition under

Section 13 of the 1955 Act, seeking divorce from the appellant. The pleaded case of the respondent-husband in the divorce petition was that right from the very inception of the marriage, the conduct of the appellant was very rude and quarrelsome towards him and his family. According to the respondent-Rakesh Kumar, the appellant wanted to live separately from his family and under her pressure, he (Rakesh Kumar) took a loan and purchased House No.1234 in Sector 16-17, Hisar, where the appellant is still residing. Respondent-Rakesh Kumar further averred that the appellant rented out 1st Floor of the said house, without his consent with the intention that the respondent should not come to the said house to live with the appellant. According to respondent-Rakesh Kumar, after marriage, the appellant was appointed as a BAMS Doctor and was earning well but she did not spend a single penny on the education and upbringing of the children. It was stated that the appellant also never cared for the food of the respondent for which he had to keep a domestic servant; however, appellant started objecting regarding engagement of domestic servant with an intention to humiliate and harass the respondent. It was further averred that on account of indifferent attitude of the appellant towards their children, they (children) are not on talking terms with the appellant. It was yet further stated by the respondent that he got the appellant transferred to Pataudi, Gurgaon and then to village Badli during the period April, 2010 to April, 2013 and he started residing with her, with the hope that it would change appellant's attitude towards respondent and their children. It was also stated by respondent-Rakesh Kumar that the appellant got herself transferred back to Hisar without his knowledge and consent and she started living at House No.1234,

Sector 16-17, Hisar. Respondent stated that several efforts were made by the elder son to persuade the appellant to mend her ways/behaviour but to no avail.

It was also pleaded by the respondent that he came thrice at Hisar and went to the house of appellant's parents during July-2017 and August-2017 and requested them to ask the appellant to change her behaviour, however, with no effect. Thereafter, it is stated that a *panchayat* was convened on 20.09.2017 at the house of maternal uncle of the respondent namely, Sh. Bhoop Singh, wherein, brother of the appellant namely, Manoj Kumar and their two more relatives were present, however, no solution could be found out in the *panchayat*. Respondent alleged that in 1st week of September-2017, the appellant insulted/humiliated respondent's mother namely, Phoolpati Devi and turned her out of House No.1234. It was also the pleaded case of the respondent that the appellant had refused for physical relations with the respondent since the last three years, which had caused mental torture to him and that they had been living separately since last more than two years.

4. On the other hand, the appellant contested the afore-said divorce petition, *inter alia*, on the plea that the respondent was an ordinary person but fortunately, he started the work of construction in the name of 'Gawar Construction Co.' which is having worth of Rs.6000 crores and it has all changed the mind of the respondent and he started maltreating the appellant so as to get rid of her, in order to contract second marriage. The allegations made by the respondent were denied by the appellant. Appellant claimed that after the marriage, she was appointed as BAMS Doctor and she

had spent sufficient amount on her children. Appellant denied that she never cared for the food of the respondent or that she ever objected to the keeping of a domestic servant. Appellant further controverted the stand of the respondent that she got transferred to Hisar without the knowledge of the respondent. It was also denied that the elder son of the parties tried to persuade the appellant to mend her ways and start caring for the respondent and the children. The holding of *panchayat* on 20.09.2017 was also denied. Appellant specifically denied that she insulted and humiliated her mother-in-law Smt. Phoolpati and also that she was turned out from the house. Appellant denied that the respondent had been refused physical relations with her for the last three years.

Appellant alleged that her parents had spent Rs.10 lacs on her marriage with the respondent, apart from giving cash and jewellery, which was entrusted to respondent and his family members, however, they were not happy with the said amount and jewellery and they used to give her beatings on account of more demand of dowry. Respondent further alleged that on 01.06.2000, the respondent and his family members raised a demand of Rs.2 lacs, which was brought under compulsion by her from her parents and given to respondent and his family members. Respondent yet further alleged that on 04.03.2001, the respondent and his family members raised a demand of Rs.4 lacs, which was also brought by appellant from her parents under compulsion and given to the respondent and his family members.

It is the pleaded case of the appellant that the respondent had started his construction company ('Gawar Construction Company') which flourished day by day and since then, his attitude has changed and he wants

to get rid of the appellant to contract second marriage and for the said purpose, the family members of the respondent are hand-in-glove with the respondent. Appellant stated that she is a working lady and she was transferred in Gurgaon during April-2010 to July-2013 and the respondent used to give beatings to her at Gurgaon and that now she was living at her matrimonial house at Hisar. Appellant maintained that the respondent and his family members used to come to Hisar on the interval of 2-3 months and forced her to give divorce and also gave beatings to her so that the respondent may contract second marriage. Appellant alleged that on 25.09.2016, the respondent and his family members came to the house of the appellant and asked her to give divorce, however, on her refusal, she was given merciless beatings and neighbours rescued her from their clutches. Appellant further stated that on 23.07.2017, the respondent and his family members again came to her house at Hisar and asked her to take divorce and on her refusal, she was again given merciless beatings and she was rescued from their clutches by her brother, who was present there. The appellant, alleged a similar instance to have occurred on 26.11.2017, when she called her brother. She alleged that the respondent and his family members started threatening that they would get her and her brother killed in an accident. Although, appellant stated that an information in that regard was given to the police station, however, no action was taken. Appellant further alleged that on 19.02.2018, the respondent and his family members again came to her house and threatened that they would set the house on fire and she would be killed.

With the afore-said submissions, the appellant sought dismissal of the divorce petition.

5. On the basis of the pleadings of the parties, the Trial Court framed the following issues:-

- “1. Whether the marriage of the parties is liable to be dissolved on the grounds mentioned in the petition?
OPP
2. Whether the present petition is not maintainable in the present form? OPP
3. Relief.“

6. In order to prove his case, following witnesses (PW’s) were examined by the respondent-Rakesh Kumar:

S. No.	PW	PERSON
1	PW1	Rakesh Kumar (respondent-husband)
2	PW2	Phool Pati (Mother of respondent-husband)
3	PW3	Paramveer (younger son of the respondent-husband)
4	PW 4	Anil kumar(Manager, M/s Gawar Construction Ltd.)

Further, the respondent-Rakesh Kumar has also adduced following documentary evidence:-

S. No.	Exhibit/s	Document
1	P1	Copy of application moved by the petitioner under RTI Act.
2	P2	Copy of acknowledgement receipt of ITR-V
3	P3	Copy of sale deed No.13111 dated 12.12.2012.
4	P4 to P9	Copies of Water and Sewerage Bill and payment receipts.
5	P10 to P30	Copies of Electricity Bills and its payment receipts.
6	P31	Copy of Property Tax
7	P32	Copy of receipt of payment of property tax
8	P33	Copy of bill of Mobile No.9813532000 of respondent.
9	P34 to P43	Copy of Vodafone Bills
10	P44	Copy of Insurance Detail
11	P45	Copy of Insurance Policy of car bearing no.HR20U-4563.

<i>S. No.</i>	<i>Exhibit/s</i>	<i>Document</i>
12	P46	Copy of RC of Car No.HR20U-4563.
13	P47	Copy of Fuel Expenses of Car No.HR20U-4563.
14	P48 to P100	Copy of fuel bills issued by Dev Traders
15	P101	Copy of Domestic Violence Report
16	P102	Copy of salary statement of respondent.
17	P103	Copy of ITR of respondent for the year 2011-12 to 2017-2018.
18	P104	Copy of passport of Neeraj, elder son of petitioner.

7. On the other hand, following witnesses (RW’s) were examined by the appellant:

<i>S. No.</i>	<i>PW</i>	<i>PERSON</i>
1	RW1	Rajbala (appellant-wife)
2	RW2	Santosh (sister in law/Bhabhi of appellant-wife)
3	RW3	Ramesh Devi (Neighbour of appellant-wife)

8. After considering the pleadings of the parties and also the evidence available on the record, the learned Principal Judge, Family Court, Hisar, vide impugned judgment and decree dated 27.11.2018, allowed the divorce petition.

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

(i) As stated by the respondent-husband that from the very beginning the appellant-wife harassed him and his mother and forced the respondent husband to live separately on which he had to purchase a house in sector 16-17 Hisar where she is still residing alone. The first floor of the said house is rented out without the consent of the respondent-husband with the sole intention to harass

him. All the mentioned acts/omissions substantiate the fact of cruelty against respondent-husband.

(ii) The fact is that the appellant-wife is a BAMS doctor and is drawing a salary of 15.31 lacs per year (Ex.P102) but still she has not spent a single penny on the education of children and towards household expenses. The entire expenses are borne by the respondent-husband which is duly proved on record (Ex.P4 to Ex.P31) and the same has been admitted by the appellant-wife in her cross examination. Further, regarding her statement that she had given her salary to her husband on different dates, no evidence has been adduced in the support thereof.

(iii) As stated by the respondent- husband that the appellant-wife used to ignore the children and they have no visitation terms with her, the said fact has been admitted by the appellant-wife in her cross examination wherein she even failed to disclose the last conversation with her younger son. She further admitted that her younger son does not live with her and her elder son paid a visit which is falsified by the evidence on record (Ex.P104).

(iv) It has also come on record that the respondent-husband got the appellant transferred to the nearest station to Gurgaon where he has set up his business but she again got herself transferred to Hisar which shows the appellant's unwillingness to join the company of the respondent-husband.

(v) The appellant has also made false complaints against the respondent-husband alleging threat to her and her brother's life before the Hon'ble Chief Minister, Haryana and Director General of Police, Haryana and upon a thorough investigation of the said complaints, they were found false which makes it evident that the appellant-wife has caused pain and discomfort to respondent- husband by making false complaints.

(vi) *Regarding the allegation of demand of dowry and physical assault, no cogent and convincing evidence has been brought on record. Furthermore, the appellant-wife never approached the police or any authority regarding harassment on account of demand of dowry. The neighbour of the appellant (RW3) who deposed that she took the appellant-wife to the hospital for treatment on account of beatings given to her by the respondent-husband, the same stands falsified in her cross examination. Such false allegations against the respondent-husband, constitute cruelty.*

(vii) *The respondent-husband has specifically alleged that the appellant did not allow him to have sexual relationship since April, 2015 and in fact, did not allow him to enter her house. This amounts to mental cruelty. Also considering the facts, that the couple has separated in 2016 because there was no love, trust, respect between them; appellant-wife turned out the mother of respondent-husband; filing of false complaints by the appellant-wife; ignorant towards their children and no cordial relationship clearly show that the marriage between the couple has wrecked beyond the hope of salvage.*

10. Learned counsel for the appellant submits that the learned Family Court has erred in law and facts in allowing the divorce petition filed by the respondent (husband). It is submitted that the findings returned by the Family Court are based upon conjectures and surmises and the same have been rendered by ignoring the oral and documentary evidence and also the facts available on the record. Learned counsel for the appellant submits that the appellant was very faithful towards her matrimonial duties and always respected her husband and her in-laws, however, the same was not appreciated by the respondent and his family members. It is stated that the

respondent and his family had been continuously harassing the appellant from the initial stage of the matrimonial life, however, the appellant kept quite with the hope that with a passage of time, everything will be alright. It is further submitted that the appellant always cared for the respondent and her children and she always showered her love and affection on them. However, due to accumulation of huge wealth by the respondent, his attitude changed. It is submitted that the children are acting on the dictates of the respondent (husband), as he has good status and he is wealthy.

Learned counsel for the appellant submitted that the allegations of cruelty as made by the respondent had not been proved on record. It is contended that the divorce petition has wrongly been allowed on the ground of cruelty, rather the allegations made in the divorce petition are only normal wear and tear in the matrimonial relationship, which could not be made a ground for divorce. It is argued that the allegations levelled by the respondent-husband are general and not specific, moreover, except the oral statement of respondent (husband), there is nothing on record to substantiate the allegations of cruelty. As regards the complaint made by appellant, it is contended that the appellant had only availed of her legal remedies; however, the same have been wrongly taken against the appellant. Learned counsel for the appellant has further submitted that since appellant is in government job, the transfer is a part of service rule and the same cannot be construed as an act on the part of the appellant to stay away from respondent and other family members; so as to be taken as a ground of cruelty. It is further submitted that the appellant-wife never resisted or denied the physical relationship with respondent-husband and it is he, who has made his mind to get separated and he cannot be permitted to take benefit of his

own wrongs. It is, therefore, contended that the findings returned by the Family Court are un-sustainable in the eyes of law.

11. *Per contra*, learned counsel for the respondent has opposed the contentions/submissions made on behalf of the appellant by submitting that the Family Court, has considered and appreciated the facts, pleadings as well as the evidence available on the record, in its right perspective. It is submitted that the Family Court has duly taken note of all the relevant facts/events touching the entire matrimonial life of the parties and has rightly concluded that cruelty has been meted out to the respondent. It is further submitted that apart from the acts of cruelty proved on record, it has also come on record that the appellant has no love and affection for the respondent and/or his children. It is stated that the appellant had filed a suit for injunction against the respondent for restraining the respondent from entering the House No.1234, Sector 16-17, Hisar; wherein, a restraint order stands passed. It is, therefore, contended that the appellant has no intention to reside with the respondent and the children. It is stated that, as of now, the parties have been residing separately since the year, 2016 i.e. for almost last eight (8) years. It is, accordingly, submitted that the relationship/marriage between the parties is dead and if, the parties are made to stay together in a dead relationship, then the same shall also amount to cruelty. It is, therefore, submitted that there is no illegality or perversity in the impugned judgment, which may call for any interference by this Court.

With the afore-said submissions, learned counsel for the respondent prayed for dismissal of the appeal. A further submission has been made on behalf of the respondent that the respondent would be ready and willing to give a reasonable amount to the appellant, towards permanent

alimony, considering the fact that he is already paying an amount of Rs.5 lacs per month as maintenance to the appellant.

12. We have heard learned counsel for the appellant and perused the paper-book as well as the impugned judgment, with their able assistance.

13. The seminal question that has to be addressed is “*whether under the aforementioned circumstances, the decree of divorce granted by the Family Court, Hisar; requires any interference.*”

14. Before we consider the merits of the case, it is apposite to refer to observations made by Hon'ble Supreme Court in ***Jagdish Singh v. Madhuri Devi, 2008(10) SCC 497***, which read 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.”

15. Keeping in view the aforesaid observations made by Hon'ble Apex Court in case of **Jagdish Singh (supra)**, let us examine the case in hand.

16. In the instant case, concededly the marriage of appellant-Rajbala was solemnized with respondent-Rakesh Kumar on 09.05.1995 and out of this wedlock, two sons namely, Neeraj and Paramveer were born, who are residing with the respondent. It is not disputed before us that the appellant (Raj Bala) is a BAMS doctor and is in government job. It is also not disputed that the appellant has been residing alone in House No.1234 in Sector 16-17, Hisar and that 1st Floor of the said house has been rented out by the appellant.

17. It has come on record that the appellant had filed a suit for permanent prohibitory and mandatory injunction for restraining the respondent (Rakesh) from entering House No. 1234, Sector 16-17, Hisar, which is her matrimonial home; wherein the Principal District Judge, Family Court, Daily Lok Adalat, Hisar passed the following order dated 18.05.2018:-

“Respondent has appeared and has moved an application for seeking permission to engage a counsel to contest the petition.

Heard. In the interest of justice, respondent is permitted to engage counsel to contest the case. However, it is directed that the counsel shall act as mediator/counsellor during the entire proceedings so as to help this court as well as parties to arrive at amicable settlement at any stage.

Service is complete. Respondent has made a statement to the effect that he will not enter the House

no.1234, Sector-16/17, Hisar nor will cause any injuries or harm to the plaintiff except in due course of law. Statement recorded separately. Learned counsel for petitioner also made a statement that he has no objection if the petition be disposed of as per the statement of the respondent.

Keeping in view the statement made by respondent and learned counsel for the petitioner, the petition is hereby allowed and restrained from alienating the House in question and the respondent is further directed that he would not enter into the House no.1234, Sector-16/17, Hisar nor wil cause any injuries or harm to the plaintiff except in due course of law. Parties are bound by this statement.

Consign the file to record.”

18. Apart from the above civil suit, it has also come on record that in the year 2018, the appellant had filed an application under Section 125 Cr.P.C seeking maintenance of Rs. 2 lakh per month from respondent. Another petition under Section 18 of the Hindu Adoption and Maintenance Act was filed by appellant against respondent, wherein she made following averments in para 6 of the petition and also in the prayer clause:-

“6. That the petitioner has been deserted by the respondent on 30.07.2013 without any excuse or cause and despite demand, is not paying the maintenance.”

Prayer Clause:

“It is therefore most respectfully prayed that the petition of the petitioner be accepted with costs and against the respondent and the petition of the petitioner for directing the respondents to pay Rs. 2 lac per month as maintenance to the petitioner from the date of desertion i.e. 30.07.2013 till her date and charge of maintenance are created on the house No. H.No. 1234, sector 16 and 17,

Hisar, be accepted with costs in favour of the petitioner and against the respondent with costs. Any other relief to which the petitioner is found entitled may also be granted to her.”

19. The appellant had also filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short “***the DV Act***”) against the respondent and his father, mother, brother and sister-in-law; wherein the appellant had *inter-alia* claimed an amount of Rs. 2,00,00,000/-, besides seeking a protection order with following prayer:-

“The house in which the aggrieved lady is residing in which the respondents be not entered and not have any quarrel with the aggrieved lady and also pay Rs. 20,000/- per month as repair and maintenance of the said house which is her matrimonial home. Pass protection order”

20. In May, 2018, the appellant had also submitted a complaint before the Chief Minister, Haryana, wherein she, *inter-alia*, averred that she apprehended that her husband, due to his influential position, can get her and her family members embroiled in some false case or can get some accident done or can get her and her brother removed from service and her transfer was one such example. Accordingly, she prayed that she and her brother be protected.

It has come on record that no substance was found in the aforesaid complaint filed by appellant.

All the above referred documents had been placed on record of the divorce petition, by respondent as Exhibit P-1.

21. In the backdrop of the aforementioned facts and circumstances, we now proceed to deal with the rival contentions of the parties.

22. The first contention of the appellant is that the allegations levelled by the respondent in the divorce petition are general in nature and

they are not specific to any time, incident and place. To advance such plea, the learned counsel for the appellant has referred to the cross-examination of PW1 (Rakesh Kumar) and also the cross-examination of PW-2 (mother-in-law of the appellant) and has further relied upon cases ***Ashutosh Gulia vs Smt. Meenu 2019(2) RCR (Civil) 928, Surat Singh vs Harvinder Kaur 2016(4) RCR (Civil) 947 and Dev Raj Sharma vs Usha Kumari 2015(3) RCR (Civil) 187.***

On the other hand, learned counsel representing the respondent has contended that in the peculiar facts and circumstances of this case, the aforesaid contention of the appellant is not tenable. It is stated that the acts of mental cruelty may not be specific to any time, incident and place and may spread over a period of time and in some cases, it may also cover the entire matrimonial life of the parties. It is submitted that the acts of mental cruelty have to be inferred from the conduct of the parties and the aforesaid submissions on behalf of the appellant may be true in cases of physical cruelty, wherein one may ask for specific recitals.

23. We have given our thoughtful consideration to the aforesaid contentions of the parties and have also gone through the judgments relied upon by the learned counsel for the appellant. 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 ***Smt. Mayadevi v. Jagdish Prasad, 2007(2) RCR (Civil) 309***; as under:-

“9. The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or

as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

In *Praveen Mehta v. Inderjit Mehta*, 2002(3) RCR (Civil) 529 ,

it has been held that mental cruelty is a state of mind and feeling with one of the spouses due to behaviour or behavioural pattern by the other. Mental

cruelty cannot be established by direct evidence and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment, and frustration in one spouse caused by the conduct of the other, can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The facts and circumstances are to be assessed emerging from the evidence on record and thereafter, a fair inference has to be drawn whether the petitioner in the divorce petition, has been subjected to mental cruelty due to the conduct of the other.

Further, in ***Rakesh Raman v. Kavita, 2023(2) RCR (Civil) 781;***

Hon'ble Apex Court has observed as under:-

“16. Matrimonial cases before the Courts pose a different challenge, quite unlike any other, as we are dealing with human relationships with its bundle of emotions, with all its faults and frailties. It is not possible in every case to pin point to an act of "cruelty" or blameworthy conduct of the spouse. The nature of relationship, the general behaviour of the parties towards each other, or long separation between the two are relevant factors which a Court must take into consideration...”

24. Although there is no quarrel with the judgments cited by the learned counsel for the appellant, suggesting that the allegations in the divorce petition should be specific to time, incident and place and not general in nature; however, keeping in view the observations made by Hon'ble Apex Court in ***Smt. Mayadevi (supra) and Rakesh Raman (supra)***, we are of the considered view that one may keep a note of certain acts of physical cruelty, but it may not be possible in every case to pin point to an act of "cruelty" or blameworthy conduct of the spouse; moreso in cases of

mental cruelty. One has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Therefore, it would be unreasonable to expect a spouse to meticulously document every instance of cruelty with the forethought that it may be needed as evidence in a future divorce proceeding.

Be that as it may, upon considering the pleadings, documents and well as evidence available on record in this case, we are of the view that there is enough evidence to prove specific instances of cruelty.

25. As regards the second contention made on behalf of the appellant that the complaint submitted by the appellant has been wrongly taken as an act of cruelty, whereas the appellant had only availed of her legal remedies; it is observed that mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty.

In the present case, in May, 2018, the appellant had submitted a complaint before the Chief Minister, Haryana, wherein she alleged that her husband (respondent herein) due to his influential position, can get her and her family members embroiled in some false case or can get some accident done or can get her and her brother removed from service, therefore, she and her brother be protected. The said complaint was forwarded to the office of Director General of Police, Haryana and the same was further got enquired into from the Superintendent of Police, Hisar. In the said complaint, the parties were called and their statements were recorded and upon enquiry, no

substance was found in the allegations of the appellant against the respondent and the complaint was filed.

26. Apart from the fact that no substance was found in the allegations made by the appellant against the respondent, it is also noticed that in the divorce proceedings, the appellant had filed a written statement, wherein she had levelled various allegations of demand of dowry and physical assault against the respondent and his family members. Concededly, the appellant-wife never approached the police or any authority regarding harassment on account of demand of dowry. As regards the allegation of physical assault on appellant by the respondent and his family members, the appellant relied upon the statement of her neighbour, namely Ramesh Devi (RW3), who deposed that she took the appellant to the hospital for treatment on account of beatings given to her by the respondent(husband), however the falsity of the said stand was brought out during her cross-examination, the relevant extract of which reads as under:-

“RW-3 Statement of Ramesh Devi wife of Shri Suraj Bhan, aged 50 years, resident of House no.1316, Sectors 16 and 17, Hisar.

On S.A.

I hereby tender into evidence my duly sworn and attested affidavit Ex.RW-3 which may kindly be read as part of my evidence.

XXXX by Shri Praveer Arya, Advocate for the petitioner.

I have passed 5th standard. I cannot tell what is written in my affidavit Ex.RW-3/A as it is in English. Self-stated that I know the contents of my affidavit. I do not know the house number of respondent. That a plot is situated by the one side of the house of Rajbala but I do not know who is residing on the other side. I am not a

summoned witness and has come to depose on the asking of the respondent. I had resided at the house of Rajbala along with her for one night about six months ago as she was alone. One tenant is living on the first floor of the house in which Rajbala is living. I do not know the name of the tenant but he belongs to Tosham. The name of elder son of Rajbala is Neeraj and the name of younger son is Piyush. I had met them 2½ to 3½ years prior at the house of Rajbala. I do not know the date when the respondent was harassed and maltreated by the petitioner. Volunteered that when I visited the house of the respondent, then petitioner was beating the respondent. I did not visit the police station along with Rajbala to give any complaint in this regard. The petitioner was giving the beatings by fist and blows. Rajbala had received many injuries in that incident. I had noticed the bruise marks on the body of Rajbala due to the injuries. I had taken Rajbala to the doctor for her treatment. I cannot tell the name of the attending doctor or the name of the hospital where I took Rajbala for the treatment. I have seen the photostat copy of passport as Ex.P-104 having the photo of Neeraj, who is the elder son of the parties. It is wrong to suggest that I have filed a false affidavit today in the Court to help the respondent. It is also incorrect to suggest that no incident of beatings or harassment ever took place nor I was ever a witness to such incident. It is wrong to suggest that the nature of Rajbala is quarrelsome towards the petitioner and his family members or that she had no love and affection for them. It is incorrect to suggest that I am deposing falsely.”

A perusal of the above-extracted cross-examination of RW3 (Ramesh Devi) makes it evident that the allegations of assault are not proved.

27. The question arises for consideration as to whether such allegations/accusation by the wife in the written statement would constitute a mental cruelty or not for sustaining the claim for divorce. This issue was dealt with by the Hon'ble Supreme Court in the matter of ***Vijay Kumar Ramchandra Bhate v. Neela Vijay Kumar Bhate, (2003) 6 SCC 334***; wherein it was held that leveling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as the health of the other party. The Court further held that such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. It was held that such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law.

28. Therefore, the unsubstantiated/uncorroborated allegations of demand of dowry or physical assault made by one spouse against the other; would naturally be quite torturous for a person, constituting *mental cruelty*.

29. The third contention of the counsel for the appellant is that the allegations of cruelty as made by the respondent had not been proved on record. It is submitted that the allegations of respondent that the appellant forced the respondent to live separately; that the appellant, despite an earning hand, did not contribute towards household expenses; that the appellant ignored the children and is not on speaking terms with them; have

not been proved on record. We have considered the said submission, but we do not find any merit in the same.

Admittedly, the appellant is a BAMS Doctor and is drawing a salary. It has been proved on record by respondent that the entire expenses were borne by him, which fact is evident from Ex.P4 to Ex.P31 and the same have been admitted by the appellant in her cross examination. It has also come on record in the statement of appellant that she had given her salary to her husband on different dates, however no evidence has been adduced in the support thereof. Therefore, no fault can be found with the finding returned by the Family Court that the appellant has not spent a single penny on the education of children and towards household expenses.

As regards the allegation that the appellant used to ignore the children and they have no visitation terms with her, the said fact has been admitted by the appellant in her cross examination wherein she even failed to disclose the last conversation with her younger son. She further admitted that her younger son does not live with her and her elder son paid a visit which is falsified by the evidence on record (Ex.P104). That apart, in the petition under section 18 of the Hindu Adoption and Maintenance Act filed by the appellant, the following averment has been made in para 3 thereof:

“3.It is pertinent to mention here that the family of the respondent and his family was simple at the time of marriage and later on, the respondent established a Gawar construction Limited Company which flourished day to day and now the same is to the tune of Rs. 5000/- crores and therefore the behaviour and attitude of the respondent went to the peak and the respondent after giving money to both of the children poisoned their minds and made them against the petitioner so

that he may get rid of the petitioner and contract the second marriage.....”

The above extracted stand of the appellant goes to show that the appellant can go to any extent to justify her conduct.

30. The fourth contention of the counsel for the appellant that she had never deprived the respondent from having sexual relationship with her, is baseless and unfounded. It is submitted that the appellant never refused conjugal relations to the respondent. We have considered this submission as well, however in view of the facts and evidence available on record, we are unable to accept the said submission on the part of the appellant. We say for the reasons more than one. Firstly, it is clearly borne out from the petition under Section 18 of Hindu Adoption and Maintenance Act, filed by appellant against respondent; wherein it is appellant's own stand that respondent deserted her since 30.07.2013. Secondly, the respondent had categorically averred in his divorce petition that after 2015, there was no sexual relation between the appellant and the respondent. Thirdly, it is the stand of the respondent that the appellant did not allow him to enter the house. Fourthly, the appellant had obtained a permanent prohibitory and mandatory injunction against respondent for restraining him from entering House No. 1234, Sector 16-17, Hisar.

31. The fifth contention of the counsel for the appellant is that '*irretrievable breakdown of marriage*' is not a ground for divorce under the 1955 Act. We have considered the aforesaid submission and we are of the view that there is no doubt that irretrievable breakdown of marriage by itself is not a ground under Hindu Marriage Act, on which alone a decree of divorce can be passed. However, the irretrievable breakdown of marriage is a circumstance which the Court can take into account when cruelty is proved

and blend them together. In recent judgments, irretrievable breakdown of marriage has been blended with cruelty so as to dissolve the marriage between the parties, where the marriage is completely dead and beyond repair.

32. From the records, it is observed that in the civil suit filed by appellant seeking prohibitory and mandatory injunction against respondent for restraining him from entering House No. 1234, Sector 16-17, Hisar, the appellant has made the following averment in para no. 5:-

“5. That as stated above, the respondent is very richest person and with the aid of money, the respondent can play any foul with the help of goonda elements with the petitioner since the respondent wants to get contracted second marriage and in order to get rid of the petitioner the respondent is in the look to enter in the house and put the house on fire so that the petitioner may die in the house and her body should not be recognized. The respondent can also pour the kerosene upon her while she is sleeping. There is imminent threat to her life and property.”

The above-extracted averments of appellant leave no manner of doubt that there exists no love, trust and/or respect between the parties. Evidently, the parties have been living separately atleast since 2016; if not since 2013 (as asserted by appellant in her petition under Hindu Adoption and Maintenance Act). During this long span of 8 years, the appellant has never gone to live with the husband and neither has she filed any petition under Section 9 of the 1955 Act for restitution of conjugal rights; as such there is no possibility of their re-union.

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)(ia) of the Act.

33. 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 a complete disharmony, mental stress and strain, which shall amount to perpetuating cruelty.

The point of determination is answered accordingly. Resultantly, finding no merit in the appeal, the same is dismissed.

34. Before we part with this order, since we are upholding the decree of divorce passed by the Family Court, Hisar, it would be apposite to also consider granting of permanent alimony to the appellant in terms of Section 25 of the 1955 Act. In order to determine the amount of permanent alimony, we are guided by the observations made by the Hon'ble Supreme Court in *U. Sree v. U. Srinivas, 2013(1)RCR (Civil) 883*; Hon'ble Supreme Court of India observed thus:-

“31. The next issue that emerges for consideration pertains to the grant of permanent alimony.

XXX XXX XXX

33. We have reproduced the aforesaid orders to highlight that the husband had agreed to buy a flat at Hyderabad. However, when the matter was listed thereafter, there was disagreement with regard to the locality of the flat arranged by the husband and, therefore, the matter was heard on merits. We have already opined that the husband has made out a case for divorce by proving mental cruelty. As a decree is passed, the wife is entitled

*to permanent alimony for her sustenance. Be it stated, while granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. In **Vinny Parmvir Parmar v. Parmvir Parmar, 2011(3) RCR (Civil) 900 : 2011(4) Recent Apex Judgments (R.A.J.) 357 : (2011)13 SCC 112**, while dealing with the concept of permanent alimony, this Court has observed that while granting permanent alimony, the Court is required to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party.*

34. Keeping in mind the aforesaid broad principles, we may proceed to address the issue. The respondent himself has asserted that he has earned name and fame in the world of music and has been performing concerts in various parts of India and abroad. He had agreed to buy a flat in Hyderabad though it did not materialise because of the demand of the wife to have a flat in a different locality where the price of the flat is extremely high. Be that as it may, it is the duty of the Court to see that the wife lives with dignity and comfort and not in penury. The living need not be luxurious but simultaneously she should not be left to live in discomfort. The Court has to act with pragmatic sensibility to such an issue so that the wife does not meet any kind of man-made misfortune. Regard being had to the status of the husband, the social strata to which the parties belong and further taking note of the orders of this Court on earlier occasions, we think it appropriate to fix the permanent alimony at Rs 50 lacs

which shall be deposited before the learned Family Judge within a period of four months out of which L20 lacs shall be kept in a fixed deposit in the name of the son in a nationalised bank which would be utilised for his benefit. The deposit shall be made in such a manner so that the respondent wife would be in a position to draw maximum quarterly interest. We may want to clarify that any amount deposited earlier shall stand excluded...

35. Keeping in view the above-referred judgment in the case of *U. Sree (supra)* with a view to determine amount of permanent alimony, we deem it appropriate to refer to two orders. Firstly, on 11.12.2018, the Principal District Judge, Family Court, Hisar passed the following order:-

“Heard on the point of maintenance. Respondent Rakesh has made a statement, recorded separately on 07.12.2018, that he will pay Rs.1,25,000/- per month towards maintenance to his wife from the date of filing of petition, on or before 10th of every month and he will also bear the expenses of the electricity, petrol, water supply etc. as well also transfer the House No.1234, Sector 16-17, Hisar in the name of petitioner. Respondent also admitted that he will also get one time repair of the house. Keeping in view the statement of respondent, the petitioner also made a statement, recorded separately that she has no objection if the application be disposed of as per the statement of respondent.

Thus, keeping in the statements made by both the parties, the petition is hereby allowed. The respondent is under direction of this Court to make the payment to the tune of Rs.1,25,000/- per month to the petitioner, on or before 10th of every month, from the date of filing of petition. In case of default in payment qua arrears or future maintenance allowance, he shall be liable to pay an additional sum of Rs.1,000/- to each of the petitioner,

for every months default. However, it is made clear that the amount paid by the respondent to the petitioner under Section 24 of H.M.A. shall be adjusted against the amount awarded to the petitioner in the present petition. The respondent is further directed to bear the expenses of the electricity, petrol and water supply etc. of the petitioner and he will transfer the House No.1234, Sector 16-17, Hisar in the name of petitioner. Respondent is also under direction to get time repair of the house of petitioner. Both the parties are bound by their statements.”

Secondly, there is an order dated 09.04.2019 passed by this Court in the present case whereby, maintenance *pendent lite* of Rs.5 lacs per month was determined. The order dated 09.04.2019 reads as under :-

“CMM-501-2018

This application is filed under Section 24 of the Hindu Marriage Act, 1955 (for short ‘the Act, 1955’) for seeking maintenance pendent lite and litigation expenses.

The applicant-appellant has asked for maintenance @ Rs.5 lacs per month besides litigation expenses of Rs.1 lac. It is averred in the application that the respondent is running a construction company known as M/s Gawar Construction Company Limited whose turn-over is approximately Rs.6,000 Crores. Counsel for the respondent has chosen not to file any reply to the application and has submitted that he is ready and willing to pay Rs.5 lacs per month towards the maintenance pendente lite and would also pay Rs.1 lac towards litigation expenses. The application is thus hereby allowed and the respondent is directed to make the payment of Rs.5 lacs towards maintenance pendente lite from the date of filing of the application and interim litigation expenses of Rs.1 lac.

At this stage, learned senior counsel appearing on behalf of the respondent has submitted that already Rs.12 lacs have been deposited in the account of the appellant by way of RTGS and a demand draft of Rs.8 lacs is also handed over in court to her towards maintenance pendente lite calculated from the date of filing of the application i.e. from the month of December till April, which comes to 4 months amounting to Rs.20 lacs. The amount of Rs.25,000/- has been paid towards interim litigation expenses. The remaining amount of Rs.75,000/- of the litigation expenses has also been paid in cash.

Main case

Learned counsel for the appellant prays for an adjournment to prepare his case for arguments after inspecting the records which has also been summoned.

Adjourned to 2404.2019.”

36. It is not disputed by the appellant that the respondent has been regularly paying the afore-said maintenance amount of Rs.5 lacs p.m. It is also not disputed by the respondent side that the respondent has a good financial status, as according to his own stand, his company (M/s Gawar Construction Co. Ltd.) is having a turnover of approximately Rs.2500 crores.

37. Taking a cue from the afore-said facts, it can reasonably be gathered that the appellant should be provided sufficient amount towards permanent alimony so as to maintain the same standard of living, had she continued to stay with the respondent. Accordingly, in our considered view, the respondent should be made bound to comply with his statement made before the Principal District Judge, Family Court, Hisar, that he would transfer House No. 1234, Sector 16-17, Hisar in the name of appellant. We

further deem it appropriate to grant an amount of Rs. 8 crores as permanent alimony to the appellant.

Let the House No. 1234, Sector 16-17, Hisar be transferred by respondent in the name of appellant within a period of three months from today. It is further directed that the above determined amount of Rs. 8 crores as permanent alimony shall be paid by the respondent to the appellant within a period of 4 months from today, failing which the said amount shall attract simple interest @ 6 % per annum.

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

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

May 24, 2024
gurpreet

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