



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: September 1, 2023**

Pronounced on: February 22, 2024

+ **MAT.APP.(F.C.) 120/2018 & CM APPL.9462/2020**

PARIJAT SAURABH Appellant

Through: **Mr.Sudhir Kumar Sharma &
Mr.Pranjal Rai, Advocates**

Versus

KAVITA SRIVASTAVA Respondent

Through: **Mr.V.K. Srivastava, Advocate**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present appeal is preferred by the appellant-husband under Section 19 of the Family Courts Act, 1984 against the judgment dated 09.01.2018 passed by the learned Family Court, Delhi in HMA No.61514/2016 whereby his petition under Section 13(1) (ia) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'HMA') was dismissed.

2. The brief facts as narrated by the appellant in the present appeal are that the parties met each other through the sister of the respondent who was his classmate. The respondent was attracted towards appellant and proposed him to get married with her, however, since elder sisters of appellant were



unmarried, the appellant held back and did not allow the relationship to develop, however, the respondent was ready to abandon her family and even threatened appellant of suicide. According to appellant, the respondent, between the years 1985 to 1990, regularly wrote letters to him and even visited him at Delhi along with her father. The appellant has claimed that he had completely denied the state of affairs and told the respondent that he was not interested in the marriage, however, due to his long standing relationship with respondent's family as a consequence of his friendship with the respondent's sister, the parties got married on 19.09.1990 in Arya Samaj Mandir, Patna, Bihar.

3. The respondent averred that his family was not interested in this marriage, however, a public wedding ceremony on 28.09.1990 at the Constitutional Club, Rafi Marg, New Delhi was arranged by them. A child was born out of this wedlock on 06.09.1991.

4. According to appellant, respondent, who is a well-educated woman with professional experience, demonstrated resilience by vocalizing her wants and desires and advocating for their fulfilment. On 15.05.1991, respondent/wife and one distinguished and respected citizen of Bihar, a Senior Legislator and former Minister, got into a quarrel during the appellant/husband's birthday celebration. As a result, respondent/wife started hurling insults and threw crockery. Also, during Teej celebrations in August, 1991, the respondent flung her wedding ring and *mangalsutra* at the appellant/husband. In another incident, she threw a remote at the television, shattering the screen.

5. In the year 2000, the respondent's uncle and aunt visited from UK



who offered to give them a job and a place to stay if the parties agreed to migrate to UK. The appellant flatly refused to this proposal, however, respondent was extremely keen and in order to pressurise the appellant to change his decision, she left the matrimonial home in April, 2000 with their minor son. The appellant further alleged that the respondent returned to matrimonial home only after he assured that he would seek posting or transfer in UK to ascertain whether they can settle or not.

6. The appellant claims to have applied for a posting in London in August/September, 2002 and was given four-year work permit from the Office of the British High Commission. The respondent also applied for two-year study leave and the parties shifted to UK in September, 2002. The appellant alleged that the respondent was keen to permanently settle, therefore, she started exploring avenues for obtaining permanent residency/immigration in UK by improving her English, legal advice from an NGO and taking up school job so as to qualify for permanent residency.

7. Realizing that her income might prevent her from being eligible for immigration or permanent citizenship, she sought legal help from SANGAM, an NGO, on January 2, 2003, with questions pertaining to: -

- a. Legal assistance, divorce procedures, and, if necessary, a court order prohibiting harassment.
- b. How long would it take her to find work? How soon may she claim maintenance from her husband in the interim?
- c. Immigration - contingent on the holder of a work permit for four years.

8. After moving to London, the respondent looked for and got a full-



time job, which infuriated the appellant since she neglected to get the necessary prior approval from the Government of India and failed to take their little son's epilepsy needs into consideration. However, respondent was adamant and appellant eventually gave into her wishes.

9. With the exception of the unsupported claims made by the respondent, the couple lived a peaceful life until 27.07.2004, when the domestic abuse event was documented after their marriage.

10. On 27.07.2004, the mother of the appellant-husband came to visit the family. On that day, the appellant/husband and respondent/wife entertained some guests at their home, and after the guests left, they had to chastise their young son for acting inappropriately in front of the guests. Due to the aforementioned issue, an argument between the respondent-wife and appellant-husband occurred, prompting the police to be called and appellant was arrested but released by police officials after some time.

11. The respondent thereafter, deserted the appellant and their son and left for CARDIFF. Thereafter, she filed an assault case against the appellant in Barnet County Court, U.K. and also obtained a Restraint and Residency Order against the appellant precluding contact with the respondent and their minor child or seeking of any information regarding their whereabouts.

12. However, the learned Metropolitan Magistrate, Hendon Magistrate Court, U.K. dismissed all the charges against the appellant on 15.09.2004. Thereafter, the appellant filed a petition seeking custody of his minor son in August, 2004 and also an application seeking visitation right of his son on his birthday on 06.09.2004. His application for visitation rights was



dismissed on the basis of a letter written by the minor son, which according to the appellant was not written in the presence of any CAFCASS officer of any other Judge.

13. The respondent's study leave expired on 05.04.2004 and in August, 2005, she gave a statement before the Barnet County Court that she would leave UK as soon as the case is disposed of. The Barnet County Court disposed of the custody petition on 22.09.2005 and also the application filed by the appellant seeking psychiatric evaluation of their child on the undertaking of the respondent that she would litigate the case in India.

14. The appellant claimed to have lost his father on 12.12.2006 and sent money through his friend to the respondent to buy ticket for herself and her son to attend the funeral. However, she did not come. Thereafter, the appellant permanently left UK and being the only son, he returned to India to take care of his aging mother, in the absence of his father. However, the respondent continued to live in UK as illegal immigrant till November, 2007 and thereafter, she and their son were deported to India by the UK authorities.

15. The respondent filed an application under Section 24A of the Hindu Marriage Act, 1955 before the learned Tis Hazari Court, Delhi, however, the said application was dismissed with direction to both the parties to maintain their son equally till he attains the age of eighteen years. According to appellant even though their son attained majority on 06.09.2011, however, he continued to give Rs.5,000 per month as pocket money to his son. The respondent-wife thereafter, filed petition seeking maintenance under Section 125 Cr.P.C. in favour of major son of the parties wherein a settlement was



arrived at and respondent was paid Rs.14.30 lakhs towards the maintenance of the major son of the parties.

16. In the year 2018, the appellant filed a petition under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 wherein he asserted cruelty at the hands of the respondent-wife.

17. During the course of hearing in the present appeal, in support of appellant's claims, learned counsel placed reliance upon decisions in *Vishwanath Agarwal Vs. Sarla Vishwanath Agarwal* (2012) 7 SCC 288; *Samar Ghosh Vs. Jaya Ghosh* (2007) 4 SCC 511; *N.G. Dastane Vs. S. Dastane* (1975) 2 SCC 326 and *A. Jayachandra Vs. Aneel Kaur* (2005) 2 SCC 2022.

18. In the said petition, the respondent-wife by filing her written statement, took the preliminary objection that she was abused, infiltrated and harassed by the appellant, her mother and his sister, for bringing insufficient dowry.

19. Respondent alleged that at the time of marriage of the parties, both were minor and even then, appellant's father, who was an active politician and Member of Parliament, committed a crime by arranging marriage of the parties. The respondent alleged that it was the appellant who was keen to marry her and had forced her to marry him in Arya Samaj Mandir, without informing anyone.

20. The respondent denied that she ever visited parents of the appellant in Delhi, however, stated that the appellant who was working in State Bank of Bikaner and Jaipur, had got his job transferred from New Delhi to Jaipur,



Rajasthan so that he could force the respondent to marry him. The respondent also denied that she ever threatened the appellant of committing suicide if he did not marry her, instead alleged that the appellant always emotionally blackmailed her. The respondent alleged that the story put forth by the appellant was false, fabricated and misrepresented.

21. The respondent further alleged that after her marriage with the appellant, the respondent went home and within a few hours, the father of the appellant threatened that he would publish the photographs of the marriage so that her sister would never get married. By organizing a wedding reception, the appellant and his parents had actually prepared a drama in front of public for acceptance of their marriage. The respondent denied having made any contact with the resources of appellant's father in order to procure a job in Delhi. The respondent claimed to have got a job in the year 1991 and she was working as Assistant Director in Nehru Yuva Kendra Sangathan, Delhi which is an autonomous body of Ministry of Youth Affairs and Sports and she obtained this job because of her qualifications and after qualifying the requisite exam and not because of political contacts of appellant's father.

22. The respondent averred that her first posting was in Rajasthan. The respondent-wife pointed out contradictions in the petition filed by the appellant before the learned trial Court by stating that on one hand the appellant had alleged that their marriage was solemnized on 28.09.1990 at Delhi and, therefore, the respondent was enjoying high life in Delhi being daughter-in-law of sitting Member of Parliament, on the other hand, he had claimed that once the session of Parliament came to an end, the respondent



reluctantly came to Patna with her parents. The respondent claimed that the allegation of the appellant that respondent was enjoying high life of Delhi was wrong and malicious and was meant to defame her.

23. The respondent also alleged that appellant's mother was extremely arrogant and headstrong being the wife of a Member of Parliament and she used to control the house and fight with the respondent on one pretext or the other. On one occasion, she threw plate full of fruits and asked the respondent to clean it. The respondent denied that she never threw her marriage ring and *mangalsutra* on the face of the appellant but it was her mother-in-law who took the marriage ring and *mangalsutra* from her in the name of keeping them in locker.

24. The respondent with regard to the allegation of the appellant that she was in the habit of leaving the matrimonial home along with the child, asserted that it had happened only on two occasions, i.e. once it was school holidays and she had decided to visit her family and secondly, when appellant had gone to her home town at Patna, Bihar.

25. The respondent blatantly denied that she was ever interested in settling in UK. It was not the respondent and minor son who had forced the appellant to get a foreign posting but the appellant himself was keen to shift to UK.

26. The respondent averred that it was she who had been managing the home affairs and taking care of all financial responsibilities for herself and also for son of the parties.

27. The respondent further averred that the appellant was earning salary of Rs.22,000/- per month out of which a huge portion was deducted towards



outstanding loan and he was left with a meagre amount of Rs.8,000/- per month in his hand, and so, the appellant cannot not be heard to say that he was managing the financial affairs of family. The respondent alleged that the appellant had a lavish lifestyle and whatever money he had in his hand, he used to spend on himself and was irresponsible towards her requirements and that of their son.

28. The respondent alleged that it was the appellant who sought transfer from his bank to a Branch in UK Bank as he was keen to settle over there. The respondent also alleged that she tolerated physical and mental torture at the hands of appellant and his mother but never lodged a complaint fearing no action would be taken on her complaint as appellant's father was an influential man. The appellant used to come back home late at nights and used to shout upon the respondent and their son. He never cared about the study of their son. Even the grand-parents of their child did not love him and whatever gifts their son received on his birthday, were passed on to the children of appellant's sister.

29. With regard to the unfortunate incident of 28.07.2004, the respondent averred that in the evening of 27.07.2004, a few guests had come to their home and their son was playing in the garden when appellant's mother, i.e. child's grand-mother, started shouting and screaming and became angry on the child. The respondent did not like it, however, the appellant intervened and hysterically scolded the child and hit the respondent and dragged her into the bedroom. The respondent claimed that the appellant twisted his arm at least 2-3 times, kicked her with his legs on her feet, pulled her hair and



pushed her on the floor and upon seeing this, the child of the parties called the police and appellant was detained in Police Station.

30. The respondent averred that the appellant belonged to a high profile family and so whenever he beat her in India, her complaints were never got registered by the police in India, however, in UK prompt action was taken.

31. The respondent denied the allegations that she ever used her minor child as a pawn in her scheme of things but it was the appellant's aggressive, abusive and cruel temperament towards the child and in such circumstances, the learned Cardiff Family Court, U.K. had given a restraint order in favour of the respondent. The respondent averred before the learned Family Court that it was the appellant who had misbehaved with her and because he was arrested in London, he was hurt and wanted to take revenge from the respondent. She prayed for permanent alimony and maintenance for herself and for her minor child and also prayed for return of her jewellery and educational certificates back to her.

32. The learned Family Court on the pleading of the parties framed the following Issues: -

“I. Whether the petitioner husband has been subjected to cruelty by the respondent wife, as alleged in the petition? OPP

II. Whether the petitioner has concealed material facts and made false statements to this Court? OPR.

III. Whether the respondent and her child have suffered cruelty at the hands of the petitioner husband as alleged in the written statement? OPR
IV. Relief.”



33. In support of his case, the appellant examined himself as PW-1 and got examined his childhood friend and colleague as Kamaljeet Khanna as PW-2; Shri Anand Kumar, Personal Secretary of his late father as PW-3. The respondent-wife got herself examined as RW-1 and one of her colleagues, Ms. Anita Bhartiya as RW-2. In addition, she got examined Mr.Sanjay Kumar Srivastava, her brother as RW-4 and her sister-in-law, Ms. Neeta Srivastava, as RW-5. The respondent had also filed affidavit of her sister Ms. Kamini Srivastava, Advocate in evidence, however, her sister was not examined.

34. Based upon the testimony of the witnesses recorded and the material on record, the learned trial court held that issue Nos.1 and 3 were decided against the appellant-husband and in favour of the respondent-wife.

35. Being aggrieved against the impugned judgment, present appeal has been filed by the appellant-husband.

36. The submissions advanced by learned counsel for the parties were heard at length and the impugned judgment, decisions relied upon and the other material placed has been carefully perused.

37. The learned Family Court with regard to the misbehaving allegations of appellant against the respondent of smashing TV, throwing away wedding ring or mangalsutra, had observed that these are little skirmish in the early part of settling into matrimonial relationship. The learned Family Court has observed that PW-2 & PW-3 were hearsay witnesses and also no questions were put to RW1 in her cross-examination in respect of her arrogant behaviour. The Family Court has also relied upon Letter dated 06.10.1991 Mark-X written by the elder sister of the appellant to the



respondent to observe that appellant also had blames to share. However, the Family Court has in very clear words stated that the misbehaviour of respondent with senior politician on appellant's birthday is very well supported by the testimony of PW-2 and PW-3. Further held that *this was definitely not appreciable, and highly condemnable, and must have resulted in loss of face, pride and quite agonizing for the petitioner husband and his family members*. However, thereafter the learned Family Court observed that appellant has miserably failed to lead any specific instances of cruelty on the part of his wife from the year 1992 till about the time of filing of the petition, to substantiate his claims that respondent was an arrogant, intemperate or abusive woman.

38. The learned Family Court also observed that the respondent wife has not elected to institute any civil or criminal proceedings which exhibits that she is not a vindictive person and not aggravating the marital discord and the larger picture is that the appellant-husband comes out as a person primarily responsible for destroying the sanctity of his marriage by perpetuating mental and physical cruelty upon the respondent wife.

39. The learned trial court further observed that from the photographs of the year 2003 when the parties with their child had gone for trip to Australia, Bangkok and Singapore; it cannot be said in the year 2005 that the appellant was under tremendous physical or psychological torture at the hands of his wife. The trial court further observed that immediately after the incident of 28.07.2004, the appellant rushed to India and instituted the case in February, 2005 ignoring the medical problem of the child and never tried for a patch up. The Court did take note of the photographs produced by the respondent



to allege that appellant was in relationship with another woman and observed that those photographs were admitted by the appellant during his cross-examination on 30.11.2017 but held that there was no iota of allegation of adultery by the respondent against her husband, but it shows that he did not want to resume marital ties with the respondent and so, no mileage could be taken by them that respondent did not participate in the mediation proceedings or that she admitted during her cross-examination that she was unwilling to reside with appellant. With the afore-noted observations, the learned trial court held that appellant had not been able to establish cruelty committed upon him within the ambit of Section 13(1) (ia) of the Act and so the marriage cannot be dissolved.

40. Having gone through the chain of events of married life of the parties, this Court finds that the undisputed facts of the present case are that parties to the present appeal got married on 19.09.1990 in Arya Samaj Mandir, Patna, Bihar and appellant's family gave a reception on 28.09.1990 in honour of the parties. A son was born from this wedlock on 06.09.1991, who has been suffering from epilepsy since 2000-01.

41. It is trite to note that even though parties who married each other by choice and love, without even waiting for consent of their families, have by this petition raised counter allegations of chasing and persuading the other for marriage. Not only this, the parties shifted to UK, the appellant took official transfer-posting and the respondent took study leave from her Government job, to explore their livelihood in U.K. It is undisputed that appellant applied for a posting in London in August/September, 2002 and was given four-year work permit from the Office of the British High



Commission and respondent had also applied for two-year study leave and the parties shifted to UK in September, 2002. However, both raised counter allegations of being forced to shift to UK on the asking of the other. But the fact remains that both sides had willingly chosen to explore a life in U.K. and had moved together.

42. Also, both sides have raised allegations of not respecting and ill-treating the other, thereby committing cruelty, since the day of their marriage.

43. What is cruelty, has been enunciated by the Hon'ble Supreme Court in **Savitri Pandey Vs. Prem Chandra Pandey** (2002) 2 SCC 73 has recited "Cruelty" in married life in the following words:-

"6. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. 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.”*

44. The Hon’ble Supreme Court in **Roopa Soni Vs. Kamalnarayan Soni 2023** SCC OnLine SC 1127 has observed “the word ‘cruelty under Section 13(1)(ia) of the Act of 1955 has got no fixed meaning, and therefore, gives a very wide discretion to the Court to apply it liberally and contextually. What is cruelty in one case may not be the same for another. As stated, it has to be applied from person to person while taking note of the attending circumstances.” The Hon’ble Supreme Court further held “on the question of burden in a petition for divorce, burden of proof lies on the petitioner. However, the degree of probability is not one beyond reasonable doubt, but of preponderance.”

45. The respondent has alleged that she tolerated physical and mental torture at the hands of appellant and his mother but never lodged a complaint fearing no action would be taken on her complaint as appellant’s father was an influential man. Even though respondent has asserted that appellant’s father was an influential Member of Parliament but nothing had stopped her to recourse to law if any grievance persisted during the period she stayed in India. The learned Family Court has observed that by not filing a complaint she has asserted that she was willing to make the marriage work. In our considered opinion, raising a voice against alleged cruelty in any matrimonial relationship, does not in any way indicate that the



complainant is not interested in continuing with the matrimonial bond or is not ready to adjust. What is important is, whether the allegations levelled are premised upon facts or concocted.

46. Pertinently, the letter dated 06.10.1991 Mark-X written by the elder sister of the appellant to the respondent, relied upon by the learned Family Court to observe that appellant also had blames to share, also shows that the elder sister of the appellant has played a good role in making married life of his brother and Bhabhi getting settled. Not only she had asked her brother to mend his ways but also told the respondent to be responsible. This makes manifestly clear that appellant's family had in no way, tried to disturb married life of the parties but made effort to settle them gracefully and so, the allegation of respondent that there were disputes since the day of their marriage due to interference of the family of the appellant, do not borne out from the record.

47. With regard to allegation of misbehaviour, on one hand the learned Family Court has discarded the testimony of PW-1 and PW-2 being hearsay, but has also in later part of the judgment criticized respondent's misbehaviour with Senior Politician on appellant's birthday. There is no doubt that there can be regular fights between the couple which are normal wear and tear of the married life, but certainly there is fine thin line which has to be taken care of so that parties not only respect each other socially but also do not misbehave with the near and dear ones of the spouses.

48. In the present case, PW-2 in his examination has stated that he was a witness to the unfortunate incident that occurred in the birthday party of appellant in the year 1990 when respondent had misbehaved with the Senior



Politician, who was a very respected citizen of Patna and Ex-Industries Minister and record time MLA, who had enquired about wellbeing of her father, who was facing charges in fodder scam. This witness has stated that respondent had without any provocation, called names and threw plates and dishes and criticized every one. PW-2, a childhood friend and neighbour of appellant, stated that the appellant was very disturbed when he showed statement of respondent before the Court in UK alleging that his father was coming to UK to abduct her son and fraudulently obtained Restraint Order against appellant and his family, depriving them of meeting their son. The learned Family Court has though observed that the testimony of PW-2 and PW-3 have supported the allegation of appellant in respect of alleged incident but has erroneously held that no specific instance of respondent's misbehaviour has been narrated by the appellant and that it cannot be said that respondent committed cruelty upon the appellant.

49. The Supreme Court in the case of **Ravi Kumar Vs. Julmidevi** (2010) 4 SCC 476 has categorically held that "*reckless, false and defamatory allegations against the husband and family members would have an effect of lowering their reputation in the eyes of the society*" and it amounts to 'cruelty'. Similar observations were made by the Coordinate Bench of this Court in the case of **Rita Vs. Jai Solanki** (2017) SCC OnLine Del 907. 45. Further, in the case of **K. Srinivas Vs. K. Sunita** (2014) SLT 126 the Hon'ble Supreme Court held that filing of the false complaint against the husband and his family members also constitutes mental cruelty for the purpose of Section 13 (1) (ia) of the Hindu Marriage Act. 46. In totality, the respondent, having completely failed in substantiating her allegations and



has left no stone unturned to cause disgrace to the appellant and his family

50. The unfortunate incident of 28.07.2004 shook the foundation of the marriage between the parties. The brawl caused mental agony and anguish to the child of the parties, who called for police assistance. A perusal of copy of statement of Stacy Hinchuffe, Police Officer recorded on 28.07.20004 shows that respondent raised allegations of physical and mental assault against the appellant, who was there and then arrested and detained in police custody. On the very next day i.e. 29.07.2004, the appellant was released on bail but the respondent, along with child of the parties, left the matrimonial home and shifted to Cardiff. She also preferred an assault case against the appellant on 29.07.2004 and obtained Restraint Order against the appellant, which precluded him to meet his child or to seek any information about them. The appellant preferred a Custody Petition on 27.08.2004 in U.K. but the petition was dismissed. However, thereafter, the Metropolitan Magistrate, Hendon Magistrate Court, U.K. dismissed all the charges against the appellant on 15.09.2004.

51. At this juncture, this Court is taking note of the contents of Order dated 22.09.2005 passed by the learned Court at U.K. which heavily took upon the appellant for his behaviour towards the respondent during his cross-examination. This Court cannot lose sight of the fact that just prior to the relevant time, the appellant had been under arrest in U.K. and was also filled with anguish and hurt. In such circumstances, his focus was probably to disprove respondent's allegations before the Court instead of focusing on child's custody.

52. It is not in dispute that the respondent before the Court at U.K., stated
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that she wanted to follow up legal recourse in India but even thereafter, chose to stay in U.K. as illegal immigrant and was deported to India only in 2007. During all this period, the respondent has enjoyed the Restraint Order against appellant, disallowing him to meet his child and enjoy his fatherhood. To obtain a Restraint Order against the father of the appellant, who had come to meet the child, on the false allegations and ground of his ill intention to abduct the child, is clearly a mental cruelty committed upon the appellant and his family.

53. When the legal battle between the parties was pending in court at UK, the appellant chose to file the petition seeking divorce under the provisions of Section 13 (ia) of the Act alleging cruelty at the hand of the respondent. But even after her return from U.K. in the year 2007, the respondent did not file petition under Section 9 of the Act seeking restitution of Conjugal Rights. In her cross-examination dated 21.08.2010, the respondent has stated *"I donot want to live my husband now"*. She also acceded in her cross-examination that she has not spoken with her husband for the last six years after she walked away from her matrimonial home in July, 2004 and also never written any e-mail or SMS. In the reconciliation proceedings by the learned Family Court, the respondent categorically stated that *"we cannot stay together"*. This amply shows that the respondent has deliberately and willing chosen to live away from appellant-husband.

54. During the course of hearing, the appellant placed reliance upon decision in ***Vishwanath Agarwal (Supra)***. In the said case, the Hon'ble Supreme Court in an appeal preferred by the husband against the decisions of the trial Court and the High Court, whereby his petition under Section 13



i(ia) of the Act, was dismissed, had allowed the Appeal while observing that the wife had initiated proceedings under Section 498 A IPC against the husband and his family, who were acquitted by the court; had published in the newspaper that her husband was a womanizer and a man of poor character, which had demolished his personal and public life and that the witnesses examined by the husband could not be called interested witnesses. In the present case, even though there is no complaint by the respondent alleging dowry demand while she was living with appellant in India, however, in the divorce proceedings she has raised allegations of dowry demand but has failed to establish the same.

55. In *Samar Ghosh (Supra)*, the wife was already a divorcee, who had custody of her daughter from first marriage. When the husband from first marriage filed Appeal against the divorce awarded by the trial court, she persuaded the appellant therein to marry her under the Special Marriage Act. The appellant had alleged that soon after the marriage, the respondent asked the appellant not to interfere with her career. She had also unilaterally declared her decision not to give birth to a child for two years and the appellant should not be inquisitive about her child and he should try to keep himself aloof from her as far as possible. According to the appellant, there was imposition of rationing in emotions in the arena of love, affection, future planning and normal human relations; however, he tried hard to reconcile himself to the situation created by the respondent-wife. Appellant's Appeal was allowed by the learned trial court, which was reversed by the High Court and the husband thus reached the Hon'ble Supreme Court. The Supreme Court held that "*the concept of mental cruelty*



cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.” The Hon’ble Supreme Court, in the facts of the said case that parties had been living separately, allowed the appeal in the year 2007 holding that parties were living separately since 1990 and there was a complete breakdown of marriage.

56. In ***N.G. Dastane (Supra)***, the husband had filed a petition seeking divorce from his wife under sec. 12 (1)(c) of the Hindu Marriage Act, 1955, alleging that the respondent had been treated at a Mental Hospital for schizophrenia, and that the respondent’s father had fraudulently made him believe the fit state of mind of the respondent. Additionally, the husband filed for Divorce under sec. 13(1)(iii) and for Judicial separation under sec. 10(1)(b) on the ground that the respondent treated him cruelty and his life’s safety was at risk. In the facts of the said case, the Hon’ble Supreme Court held that when a spouse makes a complaint of cruelty, the court should not search for standard of life. Further held that “*when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. We the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the*



parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents.”

57. It is worthy to note that in the impugned judgment, it has been observed that the respondent, at the fag-end of the trial had sought permission of the Court to lead additional evidence to bring on record certain photographs of the appellant to show that appellant wanted to leave India and to settle himself in UK with another woman. However, during trial respondent-wife did not raise any objection that appellant was living in adultery.

58. The learned Family Court after going through the photographs observed that appellant seemed friendly and intimate to another lady, which shows his proximity with other woman out of his marriage. However, since those photographs were not contested by the wife in evidence, without going into this aspect, we have deliberated upon the material relied upon by the learned Family Court in the impugned judgment. Even if it is assumed that appellant is in relationship with another woman, it cannot be ignored that parties to the present Appeal have been living separately since the year 2004 and respondent has not made any effort to reconcile the dispute or shown any willingness to resume her matrimonial relationship.

59. In light of the above discussion, this Court finds that even though the incidents narrated by the appellant do not implicate the respondent if viewed in isolation, but altogether demonstrate her non adjusting attitude, due to which appellant had to suffer public humiliation and thereby, suffered mental cruelty. The testimony of PW-2 and PW-3 strengthens the allegations of appellant and this Court finds that the discord between the



parties was not a mere normal wear and tear of marriage but the acts of cruelty, which discouraged the appellant to continue his matrimonial relationship with the respondent.

60. We, therefore, conclude that the appellant has been subjected to cruelty during his matrimonial life and therefore, set aside the impugned judgment and grant divorce to the appellant on the ground of cruelty under Section 13(1)(ia) of Hindu Marriage Act, 1955.

61. The appeal is allowed. Decree sheet be prepared accordingly.

62. Pending application is disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 22, 2024

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