

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

F.A. 125 of 2022

Ranji Saha

Vs.

Sarika Saha

For the appellant : Mr. Rachit Lakhmani,
Mr. Madhusudan Chakraborty.

For the State respondents : Mr. Sourav Sen,
Mr. Muhammad Obaid.

Heard on : 18.07.2024 & 13.11.2024.

Judgment on : 12.02.2025

Madhuresh Prasad, J.:

1. The appellant was the plaintiff in the suit claiming a decree of divorce. The suit has been dismissed on contest. The case of the plaintiff at the trial is that his marriage was solemnized with the respondent as per Hindu rites, rituals and customs on 09.12.2002. The marriage thereafter was registered. After the marriage the appellant started living with the respondent. One male child and a female child were born from the wedlock. The appellant and the respondent along with their children and the appellant's parents resided at the matrimonial home until the year 2006, when the respondent forced and compelled the appellant to relocate from the matrimonial home in Salt Lake leaving his parents to live near the

respondent's parental home. It is alleged that the respondent threatened the appellant that she would commit suicide and slashed her wrist with scissor and kitchen knife. It is alleged that the respondent's family is having a genetic background of epilepsy. The son, who was about two years old at that time was traumatized by such behavior of the respondent. The trauma had a negative effect on the behavioural pattern of the son. The appellant has further alleged that this genetic ailment which was pre-existing the negotiations leading to the marriage, was suppressed from the appellant and his family. It only came to light after the marriage when the respondent repeatedly got into fits and rage. The appellant then learnt that the respondent was treated for this neurological disorder by one Dr. Prasenjit Chakraborty, before marriage. It is alleged that the episodes of fit would last for 5 to 10 minutes when the respondent lost her sense of decency and behaved abnormally. The after effects of such events lasted for 2 to 3 days as she continued to speak incoherently.

2. The respondent even attempted to jump off from the third floor veranda of the flat where they resided since 2009. She tried to set ablaze the cooking gas cylinder for burning down the house. When she was stopped, she barged into the toilet while his son was using it at around 1 am. She has repeatedly humiliated the appellant by calling him impotent in front of her relatives and friends. There is also allegation of the respondent publicly humiliating the appellant. Under the circumstances, the decree is sought on the grounds of cruelty.

3. The respondent wife entered appearance in the suit and filed her written statement controverting the allegations made by the appellant. According to her version the appellant's family members treated the respondent with disrespect and hurled abuses and criticised her for not being good looking. It is due to such ill behaviour of the parents that the appellant and the respondent shifted their residence along with their first baby, born in the year 2005. In fact, the petitioner's mother is suffering with psychopathic disorder as well as hypertension. She repeatedly quarrelled with the respondent. The respondent on her part despite all odds made efforts to maintain normalcy and to live a happy conjugal life with the appellant and his family members. The efforts, however, failed because the appellant did not take sufficient efforts to provide medical attention to the psychopathic disorder of his mother. Due to the ill treatment meted out to the respondent by the appellant's parents she developed health issues. The respondent has thus resisted the appellant's claim for divorce.

4. Based on the above noted case of the parties the Trial Court has framed four issues:

- "i) Whether the suit is maintainable in its present form or not?***
- ii) Whether cruelty has been inflicted upon the petitioner by the respondent/wife or not?***
- iii) Whether the act and conduct of the respondent/wife tantamount to cruelty or not?***
- iv) Whether the petitioner has been able to prove the charges of cruelty or not?"***

The issues No. 2, 3 and 4 were decided against the plaintiff.

Submissions

5. The learned Counsel for the appellant submits that cruelty is not defined under the statute. The same can be inferred based on the conduct of the spouse against which cruelty is alleged. If the conduct is of such a nature or degree that it becomes dangerous and impossible for the spouse alleging cruelty to continue to reside in matrimony then cruelty would be made out as a ground for dissolution of marriage. He draws attention of the Court towards the cross-examination of the wife (D.W.1) to submit that she has admitted that she went to the office of the appellant and even wrote a letter to the appellant's Boss. Copy of the letter (exhibit -18) has also been referred to by the learned Counsel for the appellant. It is submitted that such act of the respondent in demeaning the petitioner, by making such false accusations before his employer; and by actually going to the place of employment to make such complaints has a tendency of causing grave humiliation to the appellant amongst his peers in the office and his official society. Such conduct leaves a bad impression of the appellant in the minds of his superior (Boss) whose perception regarding the petitioner is determinative of his career prospects, which stands jeopardized. In fact after the respondent's visit, the petitioner was reprimanded by his colleagues and seniors in the office. The respondent was frequently visiting the appellant's office which is evident from the statements made in paragraph 10 of the objection/ reply filed by the respondent.

6. The learned Counsel for the appellant submits that the appellant also filed an application under Order XXXIX Rule 1 and 2 C.P.C. before the Trial Court seeking an order restraining the respondent and her men and agents or any person acting on her behalf from entering the office of the petitioner. It is submitted that such application was filed being compelled by the actions of the respondent, maligning the petitioner's reputation in his official society. On perusal of the Trial Court records, we find that the application was filed in the matrimonial suit on 01.09.2017, but the same was adjourned after hearing the learned Advocate for the petitioner for enabling the learned Advocate for the wife to make his submissions. Upon scrutiny of the Trial Court records we find that thereafter the application seeking interim injunction against the respondent wife was not moved by the appellant on any subsequent date.

7. The learned Counsel for the appellant submits that in addition to the above noted act constituting cruelty, the respondent has subjected the appellant to cruelty even during the divorce proceedings before the Trial Court. In paragraph 9 and 11 of the written statement filed by her, she has made scathing and caustic remarks regarding the appellant's family, particularly regarding his mother. She has alleged that the appellant's family members were constantly disrespectful, verbally abusive and always criticizing the respondent. She has made a specific allegation against the appellant's mother that she was a patient suffering with

psychopathic disorder having a proclivity to quarrel with the respondent without any rhyme or reason. Such allegations against the mother made in the pleadings filed in the divorce proceedings, itself constitutes conduct amounting to cruelty providing the basis for dissolution of marriage on this ground. It is thus submitted that the making of such allegations in the pleadings filed in the divorce proceedings was required to be looked into by the Trial Court to be constituting cruelty as a ground for divorce.

8. From the order dated 01.09.2017 passed in the Trial Court during the proceedings there it is evident that the application under Order XXXIX Rule 1 and 2 seeking interim injunction for restraining the respondent from entering the office of the appellant was moved on 01.09.2017. On that day it was adjourned. From perusal of the entire order sheet thereafter it is obvious that the application was adjourned at the instance of the respondent.

9. It is also submitted by the learned Counsel for the appellant that in light of such allegations made against the appellant's family members and his mother, the respondent wanting to continue in marriage itself amounts to an act of cruelty. The behavior and conduct of the respondent as derived from the incidents, noted above are indicative of the fact that the marriage has become a mere fiction supported by a legal tie. There being total loss of feelings and emotions between the parties and continuous separation between them since long. Refusal by the Trial Court to sever the tie in such a case does not serve the sanctity of marriage. On the contrary it

shows scant regard for the feelings and emotions of the parties. He, therefore, submits that there was sufficient grounds for dissolution of marriage and the Trial Court has committed an error by dismissing the suit.

10. On the other hand, the learned Advocate on behalf of the respondent submits that in fact she was subjected to cruelty and neglect by the appellant, who made her shift to Dover Lane. Thereafter he was even denying the respondent monetary support for her bare maintenance. The shifting was, in fact, forced upon her to pacify the situation arisen due to the fact that the mother-in-law was constantly irritated by her presence at the family house.

11. The respondent was being neglected by the appellant and struggling to somehow sustain her life. It was under such circumstances that she was compelled to visit the appellant's office and to bring these facts to the notice of the appellant's employer (Boss) so that remedial measures could be taken to enable the respondent to survive the crisis.

12. Referring to the cross-examination of PW2 conducted on 02.04.2018 before the Trial Court it is submitted that P.W. 2 (father-in-law) of the respondent/father of the appellant has stated in his deposition regarding the present respondent residing at the Dover Lane address. The learned Counsel submits that P.W. 2 has categorically affirmed the fact that his grandson and grand-daughter came to his house every Saturday morning and they went back on Sunday night. It is further stated that the driver goes to pick up the

children from the house of the respondent and they are taken back to the house of the respondent by the appellant. In his cross-examination he has also stated that after marriage the appellant and respondent voluntarily went away from his house to a rented accommodation in Salt Lake in the year 2006. Later they shifted to the Company accommodation in the year 2009. He has also stated that it is a fact that I have no direct knowledge about Ranji Saha and his wife since 2006. This deposition discloses a state of affairs which belies the allegations of cruelty levelled by the appellant against the respondent. On the contrary it discloses a more or less normal matrimonial life.

13. D.W. 1 (wife) herself during further cross-examination on 11.07.2018 has clearly stated that ***“my husband comes to me, leaves the children and sometimes stays at night. Not a fact that my husband never spend night with me. Not a fact that my husband never take any tea or coffee at the flat. Not a fact that my husband had no extra marital relation”***.

14. The matrimonial suit for divorce was filed by the appellant on 30.09.2013. A conjoint reading of the averments made in paragraph 16 and 17 of the affidavit-in-chief filed by the plaintiff PW1 along with his deposition during further cross examination on 27.07.2020 reveals that until 2006 the appellant and the respondent resided along with the appellant's parents. Thereafter they shifted to Salt Lake near the respondent's parents' house. The landlord at Salt Lake insisted for vacating the premises. The appellant thus approached

his company for providing an accommodation which was provided by company at Dover Lane having an area about 2000 sq.ft. in the year 2009 and since then the two have been living there. The fact that in December 2012 they went for a family vacation to Thailand is also borne from paragraph 16 of the affidavit-in-chief filed by P.W. 1. It is thus obvious from a plain reading of the affidavit-in-chief and from the deposition of P.W. 2 that the appellant has been residing at the company provided Dover Lane residence along with his wife (respondent) till September 2013. This is evident from a statement made by him in the cross-examination on 17.04.2015 wherein he has stated ***“I reside at my parental house at 42/1/B Gariahat since October 2013 after filing of this suit.”***

15. The evidence is replete with statement/averments made in the evidence on affidavit as well as during his examination in Court that the appellant and respondent resided together till the time of filing of the suit for divorce on 30.09.2013. Prior thereto, i.e. in August 2013 the parties have gone on vacation abroad (Thailand). There is, therefore, no material in the evidence to suggest any cruelty being meted out to the appellant by the respondent. Rather there appears to be a normal relationship as husband and wife between the appellant and respondent. The same may be subject to genuine differences and normal wear and tear in any marital relation, but insufficient to constitute a level of discord and acrimony to even suggest cruelty against the respondent so as to lay the foundation for a decree of divorce.

16. The respondent's counsel has drawn attention of the Court to Exhibit 18, being letter sent to the petitioner's Boss by the respondent to show that the same was not sent with an intention to cause any embarrassment to the appellant. On the contrary, it is apparent from bare reading of the letter that the same has been sent by the respondent in a state of helplessness, penury and distress. In the letter she has clearly narrated how the happy married life of the respondent and the appellant changed for the worse after 13th March, 2013 when some female were recruited in his office. Thereafter, he started indulging in frequent parties and attending clubs and his attitude became hostile towards the respondent. In the letter she has named some of the female employees in the office and has gone on to narrate to the appellant's Boss the circumstances in which she is being made to live without any support from the appellant. Finding it difficult to nurture her children and sustain her livelihood she has sought help from the appellant's Boss in the hope that the situation between them may improve by his intervention. The allegation of cruelty is thus baseless, lacks *bona fide* and has been made to somehow get rid of the respondent and to free himself from the marital tie and responsibilities arising therefrom.

17. The learned Counsel has thus placed reliance on decision of the Apex Court of ***Parveen Mehta vs. Inderjit Mehta*** reported in **(2002) 5 SCC 706**. He thus submitted that whether the alleged cruelty is physical or mental the same is necessarily a matter of inference to be drawn from the facts and circumstances of the case if only from the

cumulative attending facts and circumstances it can be made out that the conduct of the spouse is causing anguish, disappointment and frustration. Fair inference is to be drawn from the evidence on record, which is absent, from the facts and circumstances of the present case.

18. Insofar as the allegation made by the appellant that the petitioner lost his job on account of the Police case vide Exhibit 15/1 i.e. GDE dated 05.06.2017, Exhibit 16 i.e. GDS dated 30.07.2017 and Exhibit 17 i.e. GDE dated 23.10.2017. It is submitted that this evidence has been led in the trial without introducing any pleadings to the effect that the petitioner lost his job. It is trite law that evidence is adduced to corroborate/ substantiate/ prove the case made out in the pleadings. In absence of any foundation in the pleadings with respect to any claim/ allegation, the evidence cannot be considered. Evidence is required to prove a fact alleged. Fact which is not alleged, therefore, is incapable of being proved by any evidence. In this connection, the learned Counsel for the respondent has relied upon decision of the Apex Court in the case of **Sayed Muhammed Mashur Kunhi Koya Thangal vs. Badagara Jumayath Palli Dharas Committee and Others** reported in (2004) 7 SCC 708 (para 8), in the case of **Siddik Mahomed Shah vs. Mt. Saran and Others** reported in AIR 1930 PC 57 (1).

19. Though it is the case of the appellant that the respondent was misbehaving and disrespectful with him and his family the mother of the appellant never came forward to support such allegation. In fact,

the father-in-law who deposed at the trial as P.W.2 in the cross-examination has stated that the appellant and respondent voluntarily went together from his house without any compelling circumstances to the rented accommodation in Salt Lake in the year 2006 where they stayed till 2009. He has also stated about their subsequent relocation to the Dover Lane accommodation at Tribeni Apartment. In his further cross-examination on 08.05.2018, he has in unambiguous terms stated that his son and his wife were more or less happy in their marital life.

Conclusion

20. The petitioner/husband has sought for divorce under Section 13 (1) (Ia) and Section 13 (1) (Ib) of the Hindu Marriage Act, 1955. Section 13 (1) (Ia) and Section 13 (1) (Ib) of the Hindu Marriage Act, 1955 lays down as follows:

“13. Divorce.—(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

...

***(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or
(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]***

21. In so far as the ground of desertion is concerned we find that from the deposition and cross-examination of PW-2, father-in-law of the respondent/father of the appellant, a state of affairs emerges from which it can be said that there was no element of *animus*

deserendi so as to sustain the allegation of desertion. The evidence does not disclose that there is any intention between the parties to bring cohabitation to an end in fact what emerges is a continuous but intermittent, consensual relationship. The father has stated in his deposition that the children who are staying with the respondent at the Dover Lane address come to his house every Saturday and return on Sunday. The driver picks up the children from the respondent's house and he has further stated that the appellant sometimes goes to drop the children back to the respondent's house on Sunday. This evidence has to be viewed with the evidence of the wife/DW-1 which is consistent with the evidence of P.W. 2. She has stated that when the husband comes to drop the children, it is not a fact that sometimes he does not stay over for the night. We also consider it appropriate to take into consideration the evidence of the appellant in the affidavit as well as his examination in Court that the appellant and the respondent resided together till the time of filing of the suit for divorce on 30th September, 2013.

22. There is also material to show that the parties to the suit have together gone for a vacation in Thailand in August, 2013 that is just a month prior to filing of the suit. The fact that the appellant has stated in cross-examination on 17th April, 2015 that he resides at his parental house since October, 2013, therefore, does not support the existence of desertion by the other spouse (wife/respondent) since two years prior to filing of the suit. In fact such statement only discloses that after filing of the suit in September, 2013 the appellant

has started residing with his parent. Even if this is to be accepted then continuous interaction is obvious from the evidence of his father, PW-2 when considered in harmony with the evidence of the wife, DW-1, taken note of above.

23. We, at this juncture must consider the legal position, which by now is settled that for establishing desertion as a ground for divorce the spouse alleging desertion is required to establish by evidence that the separation is accompanied by an intention on the part of the deserting spouse to bring co-habitation permanently to an end. Inference of such desertion is required to be based upon the facts and circumstances. In the facts and circumstances noted above we do not find material to show the existence of *animus deserendi* along with the separation between the parties. Such inference cannot be drawn based on the facts and circumstances we have noted above.

24. We, therefore, find no reason to sustain the allegation of desertion by the respondent so as to constitute a ground for claiming divorce under Section 13 of the Hindu Marriage Act.

25. The other ground on which the plaintiff has sought divorce is cruelty.

26. The appellant in support of his contention that the respondent comes from a family having a genetic medical background of epilepsy has produced prescriptions. Only one of the prescriptions is dated 15.11.1995, which is prior to their marriage. The other prescriptions are dated 15.01.2005, 19.02.2005, 16.03.2005, 29.07.2009 and 15.10.2011. The prescription dated 29.07.2009 has been issued in

the name of one Sweety Saha and not in the name of Sarika Saha who is the respondent. The remaining prescriptions are prescriptions issued after the marriage between the appellant/husband and the respondent/wife which took place on 09.12.2002 as per Hindu Rites and Customs. On careful perusal of the aforementioned prescriptions it transpires that these prescriptions have been issued during the period of pregnancy.

27. From the prescriptions issued during the course of pregnancy it transpires that even the doctor, namely Dr. Pranab Dasgupta was not sure that the respondent/wife had at all been affected by epilepsy. The doctor while recording the patient history regarding epilepsy has used the punctuation “?” in the prescription dated 12.02.2005 while recording ‘**H/o**’ (history of) the patient. Apart from the few prescriptions the appellant/husband has not been able to produce any assessment/test report of the respondent/wife; or any specific finding that the respondent was affected by epilepsy, much less since before the marriage.

28. The appellant/husband has alleged that due to the effect of seizure the respondent/wife continues to behave abnormally with her in-laws for consecutive two to three days but no evidence whatsoever to that effect has been adduced.

29. A written complaint dated 04.08.2013 (Exhibit-10) lodged by the appellant/husband has been placed by the husband to prove abnormal behaviour by the wife amounting to physical torture. On perusal of the said document it transpires that the said documents

bears the writing ***‘however we are amicably resolving the issue and are not taking any legal action or proceedings.’*** This document also states that the couple had an altercation and quarrel. This document does not help the appellant/husband either to prove the fact of physical assault or abnormal behaviour by the wife. On the contrary there is an assertion that the matter is being amicably resolved without taking any legal action and proceeding, and the document is of the month of August, 2013 which is just prior to the filing of the Matrimonial Suit before the Trial Court on 30th September, 2013.

30. Insofar as the submission regarding the respondent suffering with epilepsy, so as to constitute a ground for divorce, we consider it necessary to view such allegation in light of the provisions contained in Section 13(1)(iii) which reads:

“13. Divorce.—(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

...

[(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.—In this clause,—

the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]”

31. From a plain reading of the provision the legislative intent is clear. For constituting a ground for divorce the spouse seeking divorce, is required to prove that the other spouse has been incurably of unsound mind, continuously or intermittently of such a kind and to such an extent that it cannot be reasonably expected to live with such spouse. The provision further contains an explanation regarding the expression mental disorder which includes certain disorders. The explanation further contemplates that the psychopathic disorder must be a persistent disorder which results in abnormally aggressive or seriously irresponsible conduct on the part of the other spouse. The fact that such mental disorder requires or is susceptible to medical treatment or not is considered irrelevant by the statute.

32. From a consideration of the entire evidence on record we do not find that the appellant has been able to make out that the respondent is suffering from incurable unsoundness of mind either continuously or intermittently of such a kind or to such an extent that the appellant cannot reasonably be expected to live with the respondent. The medical prescriptions, as also the evidence does not suggest that the respondent is suffering from mental illness or incomplete development of mind. The same does not suggest any psychopathic disorder or any other disorder or disability of mind. The evidence considered above also does not even suggest that the respondent has abnormally aggressive or seriously irresponsible

conduct so as to constitute a ground for the appellant to seek a divorce under Section 13(1)(iii) of the Act. We have held that there is insufficient material to sustain the appellant's allegation of the respondent suffering with epilepsy. Even if, for the sake of argument such allegation is to be accepted, then from a holistic consideration of the evidence on record, including the evidence of the appellant's father, we are of the considered opinion that the respondent was not in the least suffering with a condition that may be said to be an impediment in normal matrimony.

33. Insofar as Exhibit-18 being relied upon by the appellant to sustain the allegation of cruelty on the ground that the respondent has inflicted mental torture by putting the appellant in disrepute amongst his peers in the office, we find such allegation to be devoid of any substance. A bare reading of Exhibit-18, keeping in background the evidence of the respondent as well as the appellant's father P.W.2 shows that the letter has been written by the respondent under compelling circumstances. She has specifically stated that she has been deprived of her belongings, isolated from the appellant's society and left in penury since the husband was not providing for the needs of the respondent and her children. She has also complained to the employer that such behavioral pattern started after some females whom she has named in the letter had been appointed in the office. The letter, therefore, cannot be said to be a letter intended to bring any disrepute or lowering the esteem of the

appellant amongst his official peers. By no stretch of imagination the letter may be termed as constituting an act of cruelty.

34. Insofar as the allegations levelled by the appellant based on Exhibits-15/1, Exhibit-16 and Exhibit-17 being the General Diary Entry dated 15.06.2017, General Diary dated 30.07.2017 and General Diary dated 23.10.2017 respectively, we find force in the submissions advanced by the learned Counsel for the respondent based on decisions in the case of **Sayed Muhammed Mashur Kunhi Koya Thangal (Supra)** and decision of the Privy Council in the case of **Siddik Mahomed Shah (Supra)** from which the settled legal position that emerges is that no amount of evidence can be looked into upon a plea which was never put forward. The Trial Court thus has rightly refused to consider the three General Diary Entries to support the plea of cruelty, based thereon as the three entries have been marked as exhibits without any pleadings on record in this regard.

35. Insofar as the submissions that the respondent's behavior shows total, or scant regard for the plaintiff's feelings and emotions, and that refusal to sever the marital tie would not serve the sanctity of marriage, we find such submissions to be unsustainable so as to constitute a ground for divorce. The sum and substance of such submissions is founded on plaintiff's perception and allegation of irretrievable breakdown of marriage. The legislature does not provide for seeking of a divorce on the basis of irretrievable breakdown of marriage. Reliance is placed by the appellant's counsel on the

judgments of the Apex Court in the case of **Naveen Kohli Vs. Neelu Kohli** reported in **(2006) 4 SCC 558**. The said judgment is passed by the Hon'ble Apex Court in exercise of jurisdiction under Article 142 of the Constitution of India which is evident from a bare reading of paragraphs 89 and 91 of the judgment, which reads as follows:

“89. In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the trial court. In our opinion, wisdom lies in accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties.

90.

91. Before we part with this case, on consideration of the totality of facts, this Court would like to recommend the Union of India to seriously consider bringing an amendment in the Hindu Marriage Act, 1955 to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps.”

36. Judgment of the Apex Court in the case of **Naveen Kohli (Supra)** is of no avail, as the judgment has been rendered by the Apex Court in exercise of jurisdiction under Article 142 of the Constitution of India, and, therefore, cannot be followed by this Court, for want of such jurisdiction.

37. The appellant's counsel has also relied upon a Division Bench judgment of the Bombay High Court in the case of **Rajan Vasant Revankar vs. Mrs. Shobha Rajan Revankar** reported in **(1994) SCC Online Bom 116**. In the said case also it was contended by the husband that letters exchanged between the parties subsequent to the filing of the petition were required to be considered as relevant for determining the issue whether ground under Section 13(1) (ia)

existed for the purposes of divorce. Before the Bombay High Court, the spouse claiming divorce had established by way of evidence that the father and uncle of the wife abused and tried to assault him. There was specific evidence of the husband in this regard, along with a notice issued on his behalf by an advocate dealing with such an incident with reference to a specific date and place. Soon thereafter the paternal uncle of the wife filed a complaint against the husband alleging several acts of harassment to the wife. The husband was required to take anticipatory bail. Some months later the wife's father filed another complaint under Section 498A I.P.C. against the husband and his family members. The wife deposed in the said proceedings alleging additional demand of dowry and harassment due to non-fulfilment of such demand. The husband, his father, his two brothers-in-law were all detained in police custody for two days. The mother of the husband and his two sisters were also roped in as accused in the criminal case. The newspapers reported the arrest of the husband's father and his brothers-in-law. When the wife fell from a moving train on 02.04.1990 then also she alleged that the brother-in-law of her husband must have hired someone to push her out of the train. There are several such instances based on which the Division Bench has come to a conclusion that the husband has been able to make out a case for grant of divorce. In the instant case there is a solitary instance of a letter being written to the husband's Boss. As discussed above we have taken note of the circumstances in which the wife was compelled to write such a letter. The present

case, therefore, is distinguishable on facts from the judgment of the Division Bench of Bombay High Court being relied upon by the appellants.

38. On the other hand, the respondent has relied upon decision of the Apex Court in the case of **Sayed Muhammed Mashur Kunhi Koya Thangal vs. Badagara Jumayath Palli Dharas Committee and Others** reported in **(2004) 7 SCC 708** relying on this report it is submitted that since there is no pleading in the suit filed by the husband regarding the husband losing his job due to the complaints made by the respondent wife, the letters (evidence) sought to be introduced as evidence in this regard could not be looked into. He has relied upon paragraph 8 and 9 of the said judgment to submit that in absence of necessary pleading in the plaint a finding on an issue cannot be sustained. He has also relied upon judgment of the Apex Court in the case of **Siddik Mohamed Shah vs. Mt. Saran and Others** reported in **AIR 1930 PC 57 (1)** to support his contention that no amount of evidence can be looked into upon a plea which was never put forward. The proposition advanced by the learned Counsel for the respondent, by now is well established. In absence of pleadings with regard to the fact that the plaintiff lost his job because of the complaints made by the wife, the same was not required to be looked into by the Trial Court.

39. Insofar as decision in the case of **Parveen Mehta vs. Inderjit Mehta** Reported in **(2002) 5 SCC 706** we find that for the purpose of establishing mental cruelty on account of embarrassment in social

situations, in the said case there was sufficient material in support of such allegation. The wife therein was refusing to subject herself to medical test in spite of their doctor's advice. She stayed away from the matrimonial home and the respondent was deprived of her company. The respondent was found to be enjoying normal health and, therefore, the Court was of the view that he was likely to feel a sense of anguish and frustration on being deprived of normal co-habitation that every married person expects and also social embarrassment due to the behavior of the appellant. The wife was also approaching the police complaining against her husband and his parents. She was not also accepting the advice of her superior Judicial Officers. She was taking false plea in a case that she had conceived. It was considering this bundle of facts that the Court held cruelty to be established. As considered above the facts and circumstances in the instant case are otherwise which do not suggest existence of cruelty by the respondent so as to enable the appellant to seek a divorce on such plea.

40. In view of the consideration above we have no hesitation in holding that the appellant has not been able to establish existence of grounds for dissolution of marriage/ divorce. The conclusions of the Trial Court, therefore, in our opinion, does not require any interference.

41. The appeal is thus dismissed.

42. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

A.D.