

2022 LiveLaw (Del) 192

IN THE HIGH COURT OF DELHI AT NEW DELHI

VIPIN SANGHI; JASMEET SINGH, JJ.

MAT.APP.(F.C.) 247/2019; 10.03.2022

Appellant Through: Mr. Sumeet Verma and Mr. Mahinder Pratap Singh, Advocates along with appellant (in-person).

Respondent Through: Mr. Pratyush Chirantam, Advocate with respondent in person.

J U D G M E N T

JASMEET SINGH, J

1. The present appeal has been filed under Section 19(1) of the Family Courts Act, 1984 read with Section 28 of Hindu Marriage Act, 1955 challenging the judgment and decree dated 14.08.2019 passed by the learned Judge, Family Court, East District, Karkardooma Courts, Delhi in H.M.A. No. 309/2017, whereby the petition seeking divorce under Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 filed by the appellant, was dismissed.

2. Briefly stated the facts are that marriage of the parties was solemnized on 02.05.2008. On 30.06.2009, a son, was born out of the wedlock.

3. The case of the appellant is that on 04.01.2010, the respondent unilaterally left their matrimonial home with the child, without informing or seeking the appellant's consent. On the same day, the appellant along with his brother and mother went to his in-law's residence at Vaishali, Ghaziabad, with the aim to bring the respondent back. However, she flatly refused to come back to the matrimonial home. Following this, there was a physical altercation between the appellant and his brother on one side, and the respondent's brothers on the other side. These experiences have led to immense bitterness in the relationship between the parties.

4. It has further been submitted that for more than one and a half years from 04.01.2010, there was no direct communication or contact between the appellant and the respondent, or even their families. On 06.07.2011, the appellant sent a legal notice, demanding the respondent to rejoin her matrimonial home, and resume their conjugal relationship. However, the respondent neither rejoined her matrimonial home, nor responded to the legal notice. Troubled by this, on 20.08.2011, the appellant filed a petition under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights, in Karkardooma Courts, Delhi.

5. The appellant further submitted that after receiving the notice of the appellant's petition seeking restitution of conjugal rights, rather than joining the appellant back, the respondent filed a complaint dated 10.10.2011 before the Crime Against Women (hereinafter referred to as CAW) Cell, Krishna Nagar, Delhi alleging harassment due to dowry demand and domestic violence, amongst others. As per the appellant, the complaint before the CAW Cell was a counterblast to the appellant's petition under Section 9 of the Hindu Marriage Act, 1955.

6. On 17.04.2012, the respondent filed a reply to the appellant's petition under Section 9 of the Hindu Marriage Act, 1955, wherein she had sought dismissal of the said petition, and also filed a copy of her CAW Cell complaint as an annexure to reiterate her allegations. On 13.07.2012, the respondent filed a petition under Section 125 of Criminal Procedure Code, 1973 (hereinafter referred to as Cr. P.C.) seeking maintenance from the Appellant.

7. The appellant submits that after noting the conduct of the respondent i.e. filing complaint before the CAW cell; opposing the appellant's petition filed under Section 9 of the Hindu Marriage Act, 1955, and; on account of her adamance to not rejoin her matrimonial home, the appellant withdrew his petition filed under Section 9 of the Hindu Marriage Act, 1955 on 13.12.2012. On 27.02.2013, the appellant filed a divorce petition under Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 on grounds of cruelty and desertion.

8. On 07.10.2013, the respondent filed her written statement, reiterating her stand in her complaint filed before the CAW Cell. Another application under Section 24 of the Hindu Marriage Act, 1955 was also filed by the respondent on the same day, seeking maintenance from the appellant.

9. On 09.01.2014, an order of interim maintenance under Section 24 of the Hindu Marriage Act, 1955 was passed, directing the payment of Rs. 21,000/- per month for respondent and her minor son, along with the litigation expenses of Rs. 11,000/-. The said amount was later enhanced to Rs. 30,000 per month, which the appellant continues to regularly pay.

10. The parties led their evidence before the Family Court, and after hearing the arguments on both sides, the Family Court dismissed the Appellant's petition. Aggrieved thereby, the appellant has preferred the present appeal.

11. This Court issued notice to the Respondent-wife on 23.09.2019. Further, vide order dated 27.02.2020, this Court, referred the parties to the Delhi High Court Mediation and Conciliation Centre to explore the possibility of reaching a settlement. Thereafter on 22.10.2021, the Court ordered both parties to remain present in Court to explore the possibility of a mediated settlement. On 13.12.2021, the Court noted that the respondent was not present, and presumably she was not interested in a settlement. Accordingly, we listed the appeal for hearing on 05.01.2022.

12. Counsel for the appellant, Mr. Sumeet Verma, has argued that on 04.01.2010 the respondent left her matrimonial home with the newborn son. Since the appellant was interested in making their marriage work, he filed a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. However, the respondent not only vehemently opposed the petition, but as a counterblast against the same, the respondent on 10.10.2011 filed a complaint before the CAW Cell. According to the appellant, the allegations made before the CAW Cell were not only false, baseless and malicious, but also of a degree which has caused much mental agony to the Appellant tantamounting to cruelty.

13. In the complaint before CAW Cell, the respondent had stated that she was harassed for dowry by the appellant and his family members. However, during her cross-examination in these proceedings, the statement made was totally contrary i.e. no dowry demand was made, either prior to, or at the time of marriage by the appellant or his family members. The Respondent in her cross - examination had stated :-

*“.....I have stated in my reply as well as my affidavit which is correct that, the petitioner & his family were not Happy with the articles given to them by my parents. **There was no demand made to me of any nature by the family members of the petitioner before or at the time of marriage in the name of dowry.** My parents didn't inform me of any demand made by the petitioner & his family. **After the marriage, I didn't lodge any complaint with regard to the complaints of my in laws qua the substandard dowry articles.** I only lodged a complaint with CAW cell.*

***I filed the complaint with CAW cell only after filing of the petition under Sec.9 of HMA.** I don't remember whether I filed my reply to Sec.9 petition subsequent to my filing of the complaint. The complaint in the CAW Cell was lodged against the petitioner, his mother & his elder brother only. There was no complaint lodged by me prior to complaint at CAW Cell, 2012, against my in Laws” (emphasis supplied)*

14. Learned counsel for the appellant has further submitted that the complaint in CAW Cell had been made more than two and a half years after the marriage, which points to the mal-intent on behalf of the Respondent-wife. The appellant has further submitted that before the said filing of the complaint before the CAW Cell, the entire focus of the appellant was to make his marriage work. It was for this reason that the appellant, along with his brother and mother, went to the house of the Respondent to bring her back on the same night i.e. 04.01.2010. The appellant has further submitted that after filing of the CAW Cell complaint, the appellant has visited the CAW Cell, at least, fifteen to twenty times and had to face acute harassment, mental and physical torture of the litigation process before the CAW Cell. Additionally, the appellant contended that making such false and frivolous complaints of dowry demands amounted to mental cruelty to him.

15. The appellant submits that, had he and his family members indeed thrown the Respondent out of her matrimonial home, why would they – the very same evening, go to the respondent's house and request her to come back?

16. Lastly, the counsel for the appellant contended that the parties had been living separately for more than a decade now, and that the entire substratum of the marriage had irrevocably been destroyed and that there was no chance of reconciliation.

17. In support of his submissions, learned counsel for the appellant has relied upon the following judgments: *Nishi vs. Jagdish Ram* [2016(6) LRC 180 (Del)], *K Srinivas Rao vs. D.A. Deepa* [1 (2013) DMC 458 (SC)], *Sanjay Choudhary @ Sanjay Jaiswal vs. Anjali Devi & Ors.* [1 (2017) DMC 355 (DB) (Pat.)], *Raj Talreja vs. Kavita Talreja* [2013 (2) LRC 349 (SC)], *Swati vs. Arvind Mudgal* [2015(2) LRC 301(Del)] and *Renu Yadav vs. Arun Singh Yadav* [1 (2017) DMC 305 (DB) (Del)].

18. Per contra, Mr. Pratyush Chirantam, learned counsel for the respondent has argued that the respondent has always been ready and willing to join the appellant's company and restore their matrimonial relationship. The said fact has duly been recorded in the order dated 13.12.2012 passed by the learned Additional District Judge, East District, Karkardooma Courts. The learned Additional District Judge recorded that the respondent has always been ready and willing to stay with the appellant, and it was for this reason, at the time of permitting the appellant to withdraw his petition filed under Section 9 of the Hindu Marriage Act, 1955, that the Petitioner (Appellant herein) was subjected to a cost of Rs. 2,500/- to be paid to the Respondent-wife. It has further been submitted by the learned counsel for the appellant, that from the date of that order, till the filing of the impugned order, the respondent has always been ready and willing to stay with the appellant, and the said fact has also been recorded in the impugned judgment dated 14.08.2019.

19. We have heard learned counsel for the parties and have gone through the documents and judgments relied upon.

20. The conduct of the appellant shows that, at least, till the time he filed the petition under Section 9 of the Hindu Marriage Act, 1955, he wanted to make his marriage work. It is for this reason that on 04.01.2010, he along with his brother and mother went to the house of the respondent. It is for this very reason the appellant sent a legal notice dated 06.07.2011, requisitioning the respondent to rejoin her matrimonial home and to resume conjugal relationship. It is for this reason that on 20.08.2011, the appellant filed a petition under section 9 of the Hindu Marriage Act, 1955 seeking restitution of conjugal rights. However, the respondent did not resume cohabitation or join the appellant in the matrimonial relationship. Rather, the respondent filed a complaint before the CAW cell alleging dowry demand, threat to life, and harassment at the hands of the appellant and his family members. The same allegations were reiterated in the reply to the section 9 petition, where the CAW cell complaint was also annexed. The respondent prayed for dismissal of the petition under section 9 of the Hindu Marriage Act, 1955.

21. The affidavit by way of evidence of the respondent, and her cross examination, have serious contradictions. At one stage, in her deposition the respondent stated:-

"9. I say that neither the Petitioner nor his relatives had visited the Deponent after throwing the Deponent and her minor son out of the matrimonial home or made any efforts to bring back the Deponent and her minor son at the matrimonial home....."

22. However, during her cross examination she stated:

"It is correct that Ritesh & his mother came to my parent's house in the evening of 4th January 2010. It is wrong to suggest that Ritesh & his mother requested me to return back to my matrimonial home, however, it is not denied that there was a quarrel. It is incorrect to suggest that the petitioner & his mother insisted for my return to the matrimonial home & I had refused the same. They both came of their own volition. The police had come to our residence on the said quarrel, but I didn't lodge any complaint."

23. The Respondent further reiterated in her reply before us that :

“It is wrong and denied that on 4th of January, 2010 appellant and his mother and brother visited the house of his in law to bring back the respondent.”

24. Despite the appellant and his mother visiting the house of the respondent – which fact was completely denied by the respondent at one stage, and admitted at another stage, the respondent did not join the matrimonial home of the appellant. Her subsequent statement that they had not requested her to return to the matrimonial home cannot be believed, since she even denied the said visit, which she admitted later. Even otherwise, it does not stand to reason as to why the appellant would go to the respondent's parental home with his mother and brother later in the day, when the respondent had left the matrimonial home. Pertinently, she had the child with her, and in this context, the appellant and his mother and brother must have been driven to bring her back. This is also probabalised by the subsequent contemporaneous conduct of the appellant in issuing a notice to her to rejoin his company, and in filing a petition for restitution of conjugal rights. Further, even after sending the legal notice and the petition under Section 9 of the Hindu Marriage Act, 1955 – which was filed as early as 20.08.2011, the respondent still did not join the matrimonial home of the appellant.

25. This conduct of the respondent not only demonstrated a clear intention on her part to desert the appellant, but also her lack of sensitivity to the physical and emotional needs of the appellant. After nearly two years of leaving the matrimonial home, and three years of the marriage, the respondent filed a complaint on 10.10.2011 before the CAW Cell, Krishna Nagar, Delhi against the Appellant and his family members, alleging dowry demands, abuse, physical and mental torture and harassment, amongst other cruelties. These allegations remained unsubstantiated.

26. The reply to petition under Section 9 of the Hindu Marriage Act, 1955 was filed on 17.04.2012, where again the respondent categorically sought dismissal of the petition under Section 9 of the Hindu Marriage Act, 1955 and also levelled the same allegations, as stated in CAW Cell complaint.

27. The above acts clearly show that the respondent, throughout, has been adamant and unwilling to resume her matrimonial relationship with the appellant. The statement made by her before the learned Additional District Judge on 13.12.2012 in an isolated statement, which is totally belied by her complaint in CAW Cell, as well as the reply to petition under Section 9 of the Hindu Marriage Act, 1955.

28. It was admitted by the respondent in her cross examination, that her brother-in-law was not staying with the couple and had, in fact, moved in with his wife at IP Extension upon the marriage of the parties. Yet she made allegations against him of harassment and dowry demand, none of which were ever substantiated.

29. A bare perusal of cross examination of the respondent shows that she could not establish any demand of dowry, either prior to the marriage, or at the time of marriage by the appellant. It was only two years after leaving the matrimonial home, did the

Respondent file the CAW cell complaint. This itself puts the credibility of the said complaint in doubt. It is, in fact, admitted that the Respondent only filed the CAW Cell complaint after the Section 9 petition was filed, and there were no complaints lodged by the Respondent-wife prior to that. Pertinently, even her parents/ brother never filed any complaints in that respect at any earlier point of time.

30. The Appellant, in his cross examination, regarding the CAW Cell complaint stated:

*"We stayed as husband and wife together till 4th January 2010 at our matrimonial home. I had not filed any complaint with the police from the date of marriage till 4th January 2010 against the Respondent. Neither did my wife lodge any complaint against me or my family. It was in September/October 2011 that my wife lodged a complaint against me and my family before the CAW Cell. **I used to attend the proceedings before the CAW cell about 15-20 times either when I as summoned or I visited on my own volition.** I had suggested to my wife to accompany me to our matrimonial house during the proceedings before the CAW Cell. Despite the allegations levelled against me and my family I had still suggested my wife to accompany me to our matrimonial home. My wife refused to accompany me at both places i.e. before the CAW cell as well as the court.*

I had endeavoured to reconcile with my wife using good offices of my relatives and friends but despite the effort my wife did not join me. I do not remember the date or time, but it was 8 to 10 times that I made an effort for my wife to join me. I had made this effort before the court and also outside the premises of the court."

(emphasis supplied)

31. As regards, the falsity of the allegations in the CAW Cell is concerned, the Family Court has stated :

"31. It is also the contention of the petitioner that the respondent had Filed a criminal complaint (Ex.PWI/F) alleging matrimonial cruelty and the demand of dowry and harassment on non fulfilment thereof against the petitioner, his mother and elder brother and this by itself is a sufficient ground for passing a decree of divorce against the respondent. This complaint was filed by the respondent on or around in January 2012.

32. It is not the case of the petitioner that an FIR was registered on this complaint and a trial was held in pursuance of that complaint. It appears that though this complaint was filed by the respondent and some proceedings took place before the Crime Against Women Cell in an attempt of reconciliation between the parties, the respondent did not pursue her complaint. In the facts of this case, mere filing of the complaint by itself cannot be considered an act of cruelty by the respondent. The allegations levelled by, the respondent in that complaint were not found incorrect by any court. Insofar as the present proceedings are concerned, it was for the petitioner to prove that the allegations levelled by the respondent were false in that complaint and were made without a reasonable cause but the petitioner has failed to do so. This contention of the petitioner must also fail."

(emphasis supplied)

32. We are unable to agree with this view of the Family Court. The approach of the Family Court that it was for the appellant to prove in negative – that he and his family had not subjected the respondent to harassment or cruelty the dowry, is palpably wrong and against all canons of justice and fairplay. Unless there is a statutory presumption created in respect of a state of affairs, the initial onus to prove ones case cannot be shifted by requiring the other party to prove the reverse. We may also rely upon the decision of this court in **KB v SS** (2016 SCC Online Del 3288) which reads:

“46. It is not only when such allegations are made in judicial proceedings that the person – against whom they are made may have valid grievance. The damage to the matrimonial bond had been done by the appellant when she made such serious and scandalous allegations against the respondent in her complaint to the CAW cell vide Ex. RW-1/5.

47. It is a settled position that leveling of unsubstantiated allegations in the pleadings or otherwise amount to mental cruelty under Section 13(1)(ia) of the Act (See AS v. SNS 226 (2016) DLT 565 Manisha Sandeep Gade v. Sandeep Vinayak Gade AIR 2005 Bom. 180). VimlaBalani (supra) Mahendra Kumar Sharma (supra) and Jayanta Nandi (supra).

48. Thus the writing of the complaint to the CAW cell (Ex. RW-1/5) tantamounted to causing grave mental agony and cruelty to the respondent as it contained serious and baseless allegations against the respondent and his family members of demanding dowry from the appellant and her parents and also of the respondent maintaining illicit relations with other women. The said allegations were nothing short of character assassination of the respondent. The making of such serious allegations must have caused grave mental agony to the respondent and his claim that the matrimonial bond has been destroyed on that account cannot be negated. The respondent has a reasonable ground to believe that living with the appellant may again lead to serious injury to his name and reputation and to that of his family. The finding of the learned ADJ on this aspect is therefore affirmed.

49. Turning to the aspect of desertion the appellant did not deny the fact that the parties remained separated from one another for a period of two years from March 2004 to March 2006. She sought to put the blame for the same at the door of the respondent by alleging that she had to leave the matrimonial home on account of cruelty caused by the respondent.

50. However other than her averments in the pleadings and her own examination in chief there is not a shred of evidence to suggest that the respondent had treated her with cruelty. In fact the respondent in his cross examination had specifically denied the suggestions alleging harassment and cruelty by him upon the appellant.

52. The parties have lived apart for approximately 10 years. Various police complaints/CAW Cell complaints were filed by the appellant and the family members of the respondent. There appears to be no possibility of the revival of the matrimonial

relationship between the parties and the relationship between the parties has irretrievably broken down. The marriage is as good as dead. The irretrievable breakdown is the result of the conduct of the appellant and the respondent/husband is entitled to a decree of divorce under Sections 13(1)(ia) and (ib) of the Act.”

33. It has been held by the Supreme Court in **Mangayakarasi v. M. Yuvaraj** (2020) 3 SCC 786 :

“14. It cannot be in doubt that in an appropriate case the unsubstantiated allegation of dowry demand or such other allegation has been made and the husband and his family members are exposed to criminal litigation and ultimately if it is found that such allegation is unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege that mental cruelty has been inflicted on him, certainly, in such circumstance, if a petition for dissolution of marriage is filed on that ground and evidence is tendered before the original court to allege mental cruelty it could well be appreciated for the purpose of dissolving the marriage on that ground....”

34. The Supreme Court in the case of **K. Srinivas Rao v. D.A. Deepa** (2013) 5 SCC 226 has held that making unfounded allegations against the spouse or his relatives in the pleadings, filing of complaints etc. which may have adverse impact on the job of the spouse in the facts of a case, amounts to causing mental cruelty to the other spouse. The same view was expressed by the Supreme Court in the case of **K. Srinivas v. K. Suneetha** (2014) 16 SCC 34.

35. The allegations made in the CAW Cell, reiterated in the reply to the section 9 petition are of a serious nature, and in contradiction to the cross-examination and evidence by way of affidavit of the Respondent-wife. These allegations were as follows:-

“3. That my parents financial status is not much sound yet the gifts that were given as much of good value as possible but my in-laws side seemed to be all cheap and often I had to listen from my husband, mother-in-law, and brother-in-law that "the sloppy girl from the slum colony should tell her parents that we are respectable people that such inferior goods are not even given to beggars here and come with branded gifts. Does anyone marry like this; bring at least 10 lakh rupees or die somewhere otherwise no need to come to this house.

4. That after the marriage of my first month when I have been harassing and beaten up by the my in- laws, I had objected to use abusing language and indecent words against my parents and my brothers then my brother-in -law said to me that if you have problem then tell your family come with 10 lakh rupees we will treat you like princes otherwise it will remain as it is. If you want to stay here then stay here otherwise go somewhere else and darken your face, if you said something upside down to the family members or even mention these things to any one we will burn you alive. I was too scared about the threat of my life that I have never told or mention these things or incidents to my parents. I was quietly tolerated their oppression and torture to maintain peace in my matrimonial home.

7. That I and my child became ill after coming to my mother's home, entire expenses of the treatment were borne by my father and my brothers. My in-laws even did not turn up to ask about us. My in-laws remained adamant about demanding 10 lakhs rupees even after my parents request and brothers apologized for holding their feet. After much persuasion, I came back to my in-laws, but all went vain and they continue to misbehave, using abusing language and beaten up me and also disrespecting my parents. I am not given enough food nor is any attention given to raising my child.

9. That on 4.01.2010 my husband, brother -in-law and mother in law came along with other 3-4 persons at my parents home and during the talking suddenly my mother- in-law and brother-in-law started abusing me, my husband and brother-in-law have fought with my parents , during this incident my father got some injuries by my in-laws.

11. That by this complaint against my husband Sh. Ritesh Babbar brother-in-law Sh. Manish Babbar S/o Late Sunil Babbar and Mother-in-law Smt. Chandra Mani w/o Late. Sunil Babbar illegally demanding 10 lakh rupees in the name of dowry and not meeting the demand abused me, beaten up, and threat to kill to me, complainant facing physical and mental torture by this. This complaint being given with the intention of taking legal action against the culprits.”

36. The allegations have not been established and amount to a clear and categorical character assassination of the appellant as well as his family members. The Family Court has ignored the said aspect of the matter. Moreover, the appellant had to make 30-40 visits to the police station in connection with the said complaint. A police station is not the best of places for anyone to visit. It must have caused mental harassment and trauma each time he was required to visit the police station, with the Damocles Sword hanging over his head, and he not knowing when a case would be registered against him and he would be arrested. So far as the respondent is concerned, she had done everything to get the appellant and his family entrapped in the criminal case. That was also her prayer in her complaint.

37. As regard to the ground of desertion is concerned, the Family Court has held:

“38. Record would show that the parties separated on 04.01.2010. The petitioner has not given any specific reason or circumstance in which the respondent went to her parental house. The respondent has alleged that she was driven out of her matrimonial house on that day with the child in her wearing clothes and all her belongings remained in the house of the petitioner. Separation by itself would not constitute desertion. Separation would transform into desertion only from the date of formation of animus deserendi by the respondent. It cannot be assumed that on the day, the respondent left her home, she did so with an intention to bring cohabitation permanently to an end.

40. In view of above facts and circumstances, I am of the opinion that the petitioner has failed to establish that the separation between the parties was accompanied by animus deserendi on the part of the respondent for two years prior to the date of filing of the present petition. Thus, the statutory condition for applicability of section 13(I)(ib)

is not satisfied.”

38. On the said aspect of desertion under section 13(1)(ib) of the Hindu Marriage Act, we note that the while there is a debate as to whether the Respondent-wife left her on her own volition, or whether she was thrown out of the matrimonial home, it is an admitted fact that she did not return to the matrimonial home despite the appellant going to bring her back with his brother and mother, despite the notice requisitioning the respondent to rejoin the appellant, and; despite the petition under section 9 being filed by the appellant.

39. The respondent could not justify not returning to the matrimonial home, and her refusal to cohabit with the Appellant, to us, is sufficient to establish desertion by her.

40. In this view of the matter, we are of the view that the appellant has been able to make out a case of being subjected to cruelty and desertion at the hands of the respondent. We are unable to agree with the findings of the Family Court. That the appellant is entitled to succeed on both the grounds i.e. Sections 13(1)(ia) and 13(1)(ib). The facts and circumstances that lead us to the following conclusion are:-

i. The respondent-wife filed an unsubstantiated criminal complaint against the Appellant and his family members which caused them immense mental cruelty and agony.

ii. The Respondent-wife made several contradictory and unsubstantiated allegations in her written statements, complaint before the CAW Cell, and her evidence by way of affidavit. The Respondent failed to prove and establish the averments she made, which itself amounts to mental cruelty. In respect of her testimony, she stood discredited in the light of the said contradictions.

iii. As far as the relations between the parties are concerned, they are sufficiently beyond repair. Both the Appellant and the Respondent allege acts of cruelty against each other.

41. It is an admitted fact that the parties have not lived together since 04.01.2010 i.e. a period of 12 years. It has been already noted time and again in the judgments of the Supreme Court that continuous separation between the parties for a long period should itself be a ground for divorce itself.

42. It has held in **Naveen Kohli v. Neelu Kohli** (2006) 4 SCC 558 :

“72. Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

73. A law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the fault theory, guilt has to be proved; divorce courts are presented with concrete instances of human behaviour as they bring the institution of marriage into disrepute.

74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of the fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period continuous separation, it may be fairly surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

87. The High Court ought to have visualised that preservation of such a marriage is totally unworkable which has ceased to be effective and would be a greater source of misery for the parties.

88. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life."

43. In **Samar Ghosh v. Jaya Ghosh** (2007) 4 SCC 511, the Supreme Court held:

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

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

.....(xiv) When there has been a long period of continuous separation, it may be fairly concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of the marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties, it may lead to mental cruelty"

44. We have also in our judgment in MAT. APP. (F.C) 5/2020 titled „**Laxmi v. Kanhaiya Lal**“ held that:

"22. The fact of the matter is that the parties stayed together only for a period of 8 - 9 months, and have been staying separately for the last 15 - 16 years. Keeping them bonded by the bond of marriage would in itself tantamount to cruelty. If not both, at least one party would be living in hell-day in and day out, feeling caged in an unwanted

and, possibly, a repulsive relationship. When a man and a woman get married, they do so with the intent of finding love; happiness; mental, physical and psychological satisfaction; progress; and; procreation. The dream of the parties is to jointly face the challenges that life has to throw, and to grow and progress financially, socially, spiritually, etc.

23. When the marriage sours, the vows that the couple takes at the time of marriage are a casualty. We take it that neither of the parties to a marriage enters into the matrimonial bond, only to break it later. For the said bond to breach, there are bound to be some underlying reasons. In some cases, those reasons may come to the surface and the court may be able to see them. In others, they may remain latent for myriad reasons. Those reasons would, invariably, be attributable to both the parties, as it takes two to fight. And when the fight goes to the point of them filing cases against each other, the situation becomes messy and bitter for both of them. Unless the situation is diffused early and the parties decide to reconcile and call a truce, with passage of time, the void between them only increases, and the feeling of love and warmth in their relationship begins to fade. What is left is only a feeling of hurt, hatred, disrespect, disregard and bitterness for the other. These negative feelings and thoughts are bound to give rise to mental trauma, harassment and cause immense cruelty to one-if not both the parties.....

24.....In such situations, the mere continuation of the relationship between the warring spouses causes immense emotional and psychological trauma to the parties which would, in itself, tantamount to cruelty by both parties, upon the other.”

45. In the facts of the present case:-

- i. The parties have lived separately for 12 years now.
- ii. There is no chance of reconciliation between the parties and the marriage has irretrievably broken down.
- iii. No useful purpose would be served by maintaining this matrimonial bond. The insistence to continue this relationship would only be inflicting further cruelty upon both the parties.
- iv. The marital discord between the parties at present is such that there is a complete loss of faith, trust, understanding and love between the parties. The conduct of the Respondent has been such as to cause great mental anguish to the Appellant, and the parties cannot be reasonably expected to live with each other anymore.

46. For the above reasons, the appeal is accordingly allowed, the marriage between the appellant and the respondent is dissolved by decree of divorce under Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955. Parties to bear their own costs.