IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1538 of 2020(O&M)
Reserved on: 08.08.2025
Pronounced on: 28.08.2025

RAVI KUMAR SAINI

...Appellant

VERSUS

SUNITA SAINI

....Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA

Present: Mr. Aman Arora, Advocate
for the appellant.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Veer Imaan Singh Gill, Advocate
for the respondent.

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DEEPINDER SINGH NALWA, J.

1. Challenge in the present appeal is to the judgment and decree dated 15.01.2020 (HMA No. 1212 of 2016), passed by the learned Principal Judge, Family Court, Amritsar, whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the appellant-husband, was dismissed.

2. The aforesaid petition had been filed by the appellant-husband, *inter alia,* pleading therein that his marriage with the respondent-wife was solemnized on 30.11.1986, according to Sikh rites. After the marriage, the parties cohabited together as husband and wife, but no child was born from the lawful wedlock of parties.

3. It was pleaded that both the parties had lived together for a period of six months and during this period, their relationship was extremely strained

on account of the wrongful acts and conduct so performed by the respondent-wife. Earlier, the appellant-husband filed a divorce petition on 23.01.1996 under Section 13 of Hindu Marriage Act **(Petition No. 51 of 1996)**, which was declined by the learned District Judge, Amritsar, vide judgment dated 26.10.1999 and the first appeal **(FAO No. 12-M of 2000)** against the said judgment was also dismissed by this Court.

4. It was further pleaded by the appellant-husband that since the entrance of respondent-wife to her matrimonial house, her behavior and conduct towards him was quite strange and usually behaved in a very rude and arrogant manner with appellant-husband and his old aged parents.

5. It was further asserted that in May, 1987, after raising unnecessary quarrels, respondent-wife left the society of the appellant-husband and went to her parental house. At that time, she conceived a child from the loins of appellant-husband. The appellant-husband had been visiting parental house of the respondent-wife and asked her to accompany him but all went in vain. In November, 1987, appellant-husband received a message that respondent-wife was admitted in maternity ward of the hospital upon which appellant-husband alongwith Dr. Ashok Uppal and his wife had gone there and appellant-husband tried his level best to make her understand to come back to her matrimonial house but she refused to same. Unfortunately, pregnancy of the respondent-wife was terminated. In April, 1989, brother of the respondent-wife met with an accident and after getting the information, appellant-husband visited hospital and even donated blood to the respondent-wife's brother but he unfortunately died. In the month of July/August, 1989, the appellant-husband had 5/6 meetings with the respondent-wife and again requested her to resume

cohabitation, but all went in vain. Ultimately, a petition under Section 9 of Hindu Marriage Act was filed by the appellant-husband but after some time, on assurance given by the respondent-wife, the appellant-husband withdrew his petition in the year 1992 and in the month of September, 1993 respondent-wife returned back to her matrimonial house but she continued with similar unchanged behavior towards the appellant-husband and his parents. In addition to this, the respondent-wife refused to perform her marital obligations towards the appellant-husband and also refused to develop physical relations with the appellant-husband. Respondent-wife also maltreated old parents of the appellant-husband.

6. It was also the case of the appellant-husband that the respondent-wife told him that she wants to celebrate Lohri festival in her parental house and left her matrimonial house on 14.01.1994, thereafter respondent-wife came back to the house of the appellant-husband and took away all her belongings and went back to her parental house. Ultimately, on 21.01.1994, the respodent-wife told appellant-husband that she had clear intentions to break up her matrimonial relationship with the appellant-husband and refused to come back.

7. As such, the appellant-husband was constrained to file a divorce petition against the respondent-wife in month of January, 1996 which was dismissed by the Family Court. Aggrieved by the aforesaid judgment and decree passed by the Family Court, the appellant-husband preferred first appeal before this Court, which was also dismissed.

8 It was further pleaded that in the year 2005, the respondent-wife filed a petition under Section 18 of Hindu Adoption and Maintenance Act against the appellant-husband by levelling wrong and frivolous allegations with

the sole motive to harass and humiliate the appellant-husband. The said petition was decided by the learned Civil Judge (Senior Division), Amritsar in favour of the respondent-wife. The appellant-husband filed an appeal before the lower Appellate Court against the above said order which was dismissed and thereafter, a revision petition was filed by the appellant-husband before this Court whereby, the execution proceedings were stayed and the matter was referred to Mediation and Conciliation centre for exploring some amicable settlement between the parties.

9. Further, it was asserted that the respondent-wife also filed a complaint under Sections 415/418/420/463/464/468/470/471/494 read with Section 120-B IPC against the appellant-husband alleging that he had performed second marriage with one Sudeep Kaur @ Sandeep Kaur during existence of the marriage with the respondent-wife and had two children out of the said wedlock. During the pendency of the above said complaint, the respondent-wife made a request that the appellant-husband and Sudeep Kaur @ Sandeep Kaur may be directed to undergo DNA examination which was declined by the trial Court. Thereafter, the respondent-wife filed a revision against the above said order which was also declined by the learned Additional Sessions Judge, Amritsar vide order dated 14.12.2015.

10. It was further asserted that the above said complaint filed by the respondent-wife was dismissed vide order dated 10.02.2016. Aggrieved against the above said order, respondent-wife filed a revision before the competent Court which was partly allowed by the learned Additional District Judge, Amritsar and remanded back matter in question to the trial Court for its fresh consideration vide order dated 24.06.2016. Thereafter, appellant-husband filed

a petition under Section 482 Cr.P.C. in which, this Court was pleased to issue notice of motion and directed the trial Court to adjourn the case beyond the date fixed by trial Court. It was further pleaded by the appellant-husband that in order to explore possibility of some amicable settlement between the parties, Rs. 10,00,000/- were also offered by the appellant-husband. However, the above said settlement was not accepted by the respondent-wife. Lastly, it was pleaded by the appellant-husband that the respondent-wife had deserted him since 21.01.1994. Hence, the appellant-husband has filed petition under Section 13 of Hindu Marriage Act for dissolution of the marriage on the grounds of cruelty and desertion.

11. Upon notice, the respondent-wife entered appearance and filed a written statement. While admitting the factum of marriage, it was alleged that the petition filed by the appellant-husband under Section 13 of the Hindu Marriage Act was counterblast to the complaint filed by the respondent-wife against the appellant-husband. It was further pleaded by the respondent-wife that the appellant-husband had contracted a second marriage with one Sudeep Kaur @ Sandeep Kaur during subsistence of the first marriage, and in this regard, the respondent-wife had filed a complaint under Sections 494/420/467/471 IPC before the competent authority. It was further pleaded that the appellant-husband had two children out of second marriage with Sudeep Kaur @ Sandeep Kaur. The respondent-wife further pleaded that she became pregnant but suffered a miscarriage in the eighth month of pregnancy due to atrocities committed by the appellant-husband and his family members. It was further asserted that earlier, the appellant-husband had filed a divorce petition against the respondent-wife, which was dismissed by the learned

District Judge, Amritsar and the appeal filed against the same by the appellant-husband was also dismissed. It was also pleaded by the respondent-wife that she was always ready and willing to join the society of the appellant-husband, but it was the appellant-husband who himself had been refusing to rehabilitate the respondent-wife. The respondent-wife suffered mental torture due to atrocities committed by the appellant-husband and his family members and her health was adversely affected. As such, respondent-wife left her matrimonial house and went to her parental house on 08.05.1987. It was further pleaded by the respondent-wife that her brother got her admitted in the hospital where, despite the best efforts made by doctors, respondent-wife suffered a miscarriage. It was also the case of the respondent-wife that the appellant-husband was guilty of turning the respondent-wife out of her matrimonial home while raising different demands of dowry time and again and it was always the efforts of the respondent-wife and her parents who requested the appellant-husband to reconcile with respondent-wife but all went in vain.

12. On the basis of the pleadings of the parties, following issues were framed by the learned Family Court:-

> "1. Whether the petitioner is entitled to get decree of divorce on the ground of cruelty? OPP
> 2. Whether the petitioner is entitled to get decree of divorce on the ground of desertion? OPP
> 3. Whether the present petition is legally not maintainable? OPR.
> 4. Relief."

13. In evidence, the appellant-husband examined himself as PW1, and also examined Dr. Rakesh Bharti as PW2, Sanjiv Saini as PW3 and Darshana Kumari as PW4.

14. On the other hand, the respondent-wife examined Sanjeev Kumar as RW1, Rishi Rai as RW2, Baldev Singh as RW3, Rajinder Kumar as RW4, Raubins Kumar as RW5, Jagdeep Kumar as RW6, Aman Sethi as RW7, Sukhdeep Singh as RW8, Karamjit Singh as RW9, Mohpreet Singh as RW10, Ashwani Sharma as RW11, Shiv Parshad Yadav as RW12, Sanjeev Kumar as RW13 and herself as RW-14 and Parveen Kumar as RW15.

15. The learned Family Court, upon consideration of the rival contentions and the evidence on record, dismissed the petition filed by the appellant-husband.

16. Learned counsel appearing on behalf of the appellant-husband vehemently argued that the impugned judgment and decree passed by the learned Family Court are unsustainable, having been rendered on mere conjectures and surmises. The learned counsel further submits that the parties have been residing separately since the year 1994 i.e. for nearly three decades, during which no cohabitation has taken place, and there is no child born out of the wedlock. The learned counsel submits that the marriage has virtually become flat, devoid of affection and companionship, and taking into consideration the above-said facts, the relationship stands dead. Such circumstances amounts to cruelty to both the parties, warranting dissolution of marriage under Section 13 of the Act. Reliance is placed on the judgment of Hon'ble the Supreme Court in ***Rakesh Raman Vs. Kavita, 2023(2) RCR(Civil) 781.***

17. Per contra, learned counsel appearing on behalf of the respondent-wife, defending the impugned judgment and decree passed by the learned Family Court, has argued that the findings recorded by the learned Family

Court are based on the evidence available on record and it is rightly held that the appellant-husband could not prove the alleged cruelty committed by her against the appellant-husband and she is willing to reconcile and cohabit with the appellant-husband.

18. Before proceeding further, it is pertinent to note that the appellant-husband is not present before this Court as the appellant-husband is undergoing treatment for prostate cancer however, the respondent-wife appeared in-person. A suggestion was put to the respondent-wife as to whether, she is willing to explore the possibility of settlement. The respondent-wife adamantly declined to enter into any settlement.

19. We have heard the learned counsels for both the parties and have carefully perused through the records of the case, including the impugned judgment and decree. In our considered opinion, the following questions would arise for adjudication in the present appeal:-

1. Whether a long separation between the parties, rendering the marital bond as unworkable and its having been ruptured beyond repair, amounts to mental cruelty?

2. Whether the impugned judgment and decree passed by the learned Family Court, requires any interference?

20. The learned Family Court while dismissing the divorce petition filed by the appellant-husband, held that since the appellant-husband and respondent-wife have admittedly been residing separately since 1994, and that there has been no cohabitation during this time, as such, question of physical cruelty committed by the respondent-wife upon the appellant-husband did not arise. The learned Family Court further observed that even though two

litigations were filed by the respondent-wife against the appellant-husband, one being civil suit for maintenance and other a criminal complaint alleging that the appellant-husband had contracted a second marriage with one Sudeep Kaur @ Sandeep Kaur and fathered two children from her does not amount to any cruelty as it is the legal right of a citizen under the Constitution of India to avail legal remedies before a court of law. With regard to the allegation that the appellant-husband solemnized marriage with Sudeep Kaur @ Sandeep Kaur and had begotten two children, the learned Family Court observed that the same could not be proved, as all the photographs produced were not proved in accordance with law. The Court further held that no substantive evidence was led by the appellant-husband to establish the acts of cruelty on behalf of the respondent-wife. The Court also held that mere filing of litigation in the Court does not amount to mental cruelty to the appellant-husband.

21. On the issue of desertion, the learned Family Court held that the respondent-wife joined the company of the appellant-husband in the year 1993 and hence the plea of continuous desertion could not be sustained. Further the evidence led by PW2, Dr. Rakesh Bharti, the learned Family Court recorded a finding that as Dr. Rakesh Bharti being admittedly a close friend of the appellant-husband, he was an interested witness and could not be relied upon to prove desertion.

22. The learned Family Court also observed that in light of the allegation regarding appellant-husband's relationship with another woman namely, Sudeep Kaur @ Sandeep Kaur and the existence of two children as such, it was apparent that the respondent-wife has been living separately and could not be held responsible for desertion. Lastly, the learned Family Court

took note of the fact that the parties have been living separately since 1994 and there is no possibility of resumption of cohabitation between them. Nevertheless, it was held that long separation, by itself, is not a statutory ground for divorce under the Hindu Marriage Act,1955. In the absence of any specific provision enabling dissolution of marriage solely on the basis of dead marriage the petition was dismissed.

23. Although the appellant-husband was unable to produce convincing evidence before the learned Family Court to establish the allegations of cruelty or desertion, the question that arises for consideration is whether the marriage has become unworkable to such an extent that it no longer serves its very purpose. The admitted position is that the parties have been living separately for over thirty-one years. Throughout this prolonged period of separation, there has been no resumption of cohabitation, nor any genuine effort has been made by either side to revive the marital relationship. Instead of bringing the parties closer, the long-drawn litigation between them has only fueled further animosity, mistrust and hostility worsening their relationship with each passing day.

24. In the present case, efforts have been made firstly to resolve the matrimonial dispute through the process of mediation by the learned Family Court, which is one of the effective modes of alternative mechanism in resolving the personal dispute but the mediation between the parties failed. An attempt for reconciliation was made by this Court in the earlier appeal filed by the appellant-husband **(FAO-12-M-2000)** under Section 13 of Hindu Marriage Act wherein the Court interacted with the parties present in person.

Resultantly, time was sought by the parties to deal with their differences and reunite. The order dated 08.05.2002 reads as under:

> *"Both the parties are present in Court. The matter has been taken up in my chamber in the presence of learned counsel for the parties. The parties seeks time for making an effort to reconciliate their marriage. Adjourned to 08.05.2002."*

25. However, all went in vain and ultimately, the divorce was not granted to the appellant-husband as he was unable to prove the cruelty committed upon him. Subsequently, another divorce petition **(HMA 1212-2016)** under Section 13 of the Act was filed by the appellant-husband wherein, the parties were directed to be present before the Mediator vide order dated 15.12.2016 passed by the learned Family Court. The report of the Mediator dated 18.02.2017 reads as under:

> "*The present case was referred by the Hon'ble Court of Ms. Rajni Chhokra, ADJ, Amritsar in the Mediation centre, Amritsar to facilitate the settlement between the parties. In this case, both the parties have appeared in the Mediation Centre and efforts were made for amicable settlement between the parties in single as well as in joint sessions but inspite of those efforts compromise could not be effected. As such, the case is being returned to the referral Court for date fixed."*

26. Furthermore, an effort was put in by a Co-ordinate Bench of this Court on 16.10.2023 for reconciliation or One Time Settlement between the parties but all remained futile. The order dated 16.10.2023 reads as under:

> *"Both the parties present in person. We have also interacted with them to some extent. It appears that there is no chance of amicable resolution of the dispute. The appeal needs to be argued on merits. Adjourned to 18.12.2023 for arguments."*

27. It is an undisputed fact on record that the parties have been residing separately since 1994. For more than three decades, there has been a complete cessation of marital obligations and cohabitation between them, which clearly demonstrates that the very foundation of their matrimonial relationship has collapsed. The long passage of time without any effort or inclination on either side to restore companionship leaves no real possibility of reunion. Even the mediation proceedings conducted before the learned Family Court and this Court ended in failure. These unsuccessful attempts at reconciliation is reflective of the deep-seated biterness, resentment and lack of mutual trust that has come to define their relationship.

28. It is true that the Court bears the solemn duty to safeguard the sanctity of marriage and to encourage the preservation of matrimonial ties wherever feasible. However, this obligation cannot be stretched to compel the continuation of a relationship that has become wholly unworable and devoid of substance. When a marriage has broken down, has lost all vitality and has become nothing more than a dead formality, insisting upon reunion would not only be futile but would also amount to prolonging the suffering of both the parties.

29. It is a well established legal principle that, for conduct to amount to cruelty, the alleging party must clearly demonstrate that the behaviour of the other party has been such that continued cohabitation is no longer reasonably possible. The acts complained of must be of such a nature that they lead to the logical and reasonable conclusion that reconciliation between the parties is not feasible. Cruelty may be physical harm, mental distress or both. While there is no fixed formula to quantify cruelty, each

case must be assessed individually, with due regard to the seriousness and context of allegations.

30. In **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511**, it was held by Hon'ble the Supreme Court that no straightjacket formula can be laid down regarding cruelty, but certain instances/conduct of human behaviour are relevant for the purpose of dealing with the cases of `mental cruelty'. The relevant extract of the judgment is reproduced hereunder:-

> *"**101.** 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:*
>
> *(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.*
>
> *(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.*
>
> *(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.*
>
> *(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.*
>
> *(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.*
>
> *(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.*

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be 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 marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

31. In **Naveen Kohli v. Neetu Kohli, 2006 (4) SCC 558**, Hon'ble the Supreme Court while considering a case of irretrievable breakdown of marriage, held that mere fact that the wife had been living separately for a

long time but did not not want divorce by mutual consent only to make the life of her husband miserable, such conduct amounts to cruelty. The relevant extract of the judgment is reproduced hereunder:-

> "62. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.
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> xxx xxx xxx
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> 67. 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.
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> 68. 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."

32. In **R. Srinivas Kumar v. R. Shametha, 2019(4) RCR (Civil) 936**, Hon'ble the Supreme Court considered a case where the husband and wife had been residing separately for the last 22 years. All efforts to continue the marriage had failed. It was held by Hon'ble the Supreme Court that in the aforesaid case the marriage between the parties had irretrievably broken

down, and exercising the powers under Article 142 of the Constitution of India, the marriage between the appellant-husband and respondent-wife was ordered to be dissolved. The relevant extract of the judgment is reproduced hereunder:-

> *"5. We have heard the learned counsel for the respective parties at length.*
>
> *5.1 At the outset, it is required to be noted and does not seem to be in dispute that since last 22 years both the appellant husband and the respondentwife are residing separately. It also appears that all efforts to continue the marriage have failed and there is no possibility of reunion because of the strained relations between the parties. Thus, it appears that marriage between the appellant-husband and the respondentwife has irretrievably broken down. In the case of Hitesh Bhatnagar (supra), it is noted by this Court that Courts can dissolve a marriage as irretrievably broken down only when it is impossible to save the marriage and all efforts are made in that regard and when the Court is convinced beyond any doubt that there is actually no chance of the marriage surviving and it is broken beyond repair.*
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> *5.2 In the case of Naveen Kohli (supra), a three Judge Bench of this Court has observed as under:*
>
> > *"74. ……Once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.*
> >
> > *85. Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that*

event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist.…

86. In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of he fact and to declare defunct de jure what is already defunct de facto.…"

A similar view has been expressed in the case of Samar Ghosh (supra).

6. In the similar set of facts and circumstances of the case, this Court in the case of Sukhendu Das (supra) has directed to dissolve the marriage on the ground of irretrievable breakdown of marriage, in exercise of powers under Article 142 of the Constitution of India. 6. Now so far as submission on behalf of the respondent-wife that unless there is a consent by both the parties, even in exercise of powers under Article 142 of the Constitution of India the marriage cannot be dissolved on the ground of irretrievable breakdown of marriage is concerned, the aforesaid has no substance. If both the parties to the marriage agree for separation permanently and/or consent for divorce, in that case, certainly both the parties can move the competent court for a decree of divorce by mutual consent. Only in a case where one of the parties do not agree and give consent, only then the powers under Article 142 of the Constitution of India are required to be invoked to do the substantial Justice between the parties, considering the facts and circumstances of the case. However, at the same time, the interest of the wife is also required to be protected financially so that she may not have to suffer financially in future and she may not have to depend upon others.

7. This Court, in a series of judgments, has exercised its inherent powers under Article 142 of the Constitution of India for dissolution of a marriage where the Court finds that the marriage

is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted. In the present case, admittedly, the appellanthusband and the respondentwife have been living separately for more than 22 years and it will not be possible for the parties to live together. Therefore, we are of the opinion that while protecting the interest of the respondentwife to compensate her by way of lump sum permanent alimony, this is a fit case to exercise the powers under Article 142 of the Constitution of India and to dissolve the marriage between the parties.

8. In view of the above and for the reasons stated above, the application for divorce filed by the appellanthusband for dissolution of marriage is hereby allowed. The marriage between the appellanthusband and the respondentwife is ordered to be dissolved in exercise of powers under Article 142 of the Constitution of India on the condition and as agreed by the learned Senior Advocate appearing on behalf of the appellant husband that the appellanthusband shall pay to the respondent wife a lump sum permanent alimony, quantified at Rs.20,00,000/ (Rupees Twenty Lakhs) to be paid directly to the respondentwife by way of demand draft within a period of eight weeks from today. Till the permanent alimony as above is paid to the respondentwife, the appellant-husband to continue to pay the maintenance as being paid to her.

9. The appeal is allowed in the aforesaid terms. No costs."

33. In case of **Neha Tyagi v. Lieutenant Colonel Deepak Tyagi, 2022(1) RCR (Civil) 250**, the wife and husband were not staying together for a long time. It was held by Hon'ble the Supreme Court that there was an irretrievable break down of the marriage between the parties and, exercising the powers under Article 142 of the Constitution of India, the Court confirmed the decree passed by the learned Family Court, which was upheld by the High Court, dissolving the marriage between the wife and the husband. The relevant extract of the judgment is reproduced hereunder:-

"5. However, considering the fact that both, the appellant-wife and the respondent-husband are not staying together since May, 2011 and therefore it can be said that there is irretrievable breakdown of marriage between them. It is also reported that the respondent-husband has already re-married. Therefore, no useful purpose shall be served to further enter into the merits of the findings recorded by the courts below on "cruelty" and "desertion" by the appellant-wife. Therefore, in the facts and circumstances of the case and in exercise of powers under Article 142 of the Constitution of India, the decree passed by the learned Family Court, confirmed by the High Court, dissolving the marriage between the appellant-wife and the respondent-husband is not required to be interfered with on account of irretrievable breakdown of marriage.

However, at the same time, the respondent-husband cannot be absolved from his liability and responsibility to maintain his son Pranav till he attains the age of majority. Whatever be the dispute between the husband and the wife, a child should not be made to suffer. The liability and responsibility of the father to maintain the child continues till the child/son attains the age of majority. It also cannot be disputed that the son Pranav has a right to be maintained as per the status of his father. It is reported that the mother is not earning anything. She is residing at her parental house at Jaipur. Therefore, a reasonable/sufficient amount is required for the maintenance of her son including his education etc. which shall have to be paid by the respondent-husband, irrespective of the decree of dissolution of marriage between the appellant-wife and the respondent-husband. The amount which was being paid pursuant to the order passed by the Army Authorities on 15.11.2012 has also been stopped by the respondent-husband since December, 2019.

6. In view of the above and for the reasons stated above, the present appeal stands disposed of by confirming the decree of divorce/dissolution of the marriage between the appellant-wife and the respondent-husband. However, the respondent-husband is directed to pay Rs.50,000/- per month with effect from December, 2019 to the appellant-wife towards the maintenance of son Pranav as per the status of the respondent herein. The arrears @ Rs. 50,000/- per month since December, 2019 to November, 2021 shall be paid within a period of eight weeks from today. The current maintenance @ Rs. 50,000/- per month from the month of December, 2021 onwards be deducted from the salary of the respondent-husband by the Army Authorities, which shall be directly credited in the bank account of

the appellant-mother. The appellant-mother is directed to furnish the bank details to the Army Authorities within a period of one week from today. It is further ordered that if the arrears @ Rs. 50,000/- per month commencing from December, 2019 till November, 2021, as ordered hereinabove is not paid by the respondent-father within a period of eight weeks from today, in that case, the recovery of arrears + monthly maintenance shall be worked out by the Army Authorities and the same shall be deducted in equal monthly instalments from the salary of the respondent-father, so as not to exceed 50% of the total monthly pay and allowances of the respondent.

7. The instant appeal stands disposed of, with the aforesaid directions."

34. In **Munish Kakkar v. Nidhi Kakkar, 2020(14) SCC 657,** Hon'ble the Supreme Court, taking into consideration that the parties had been living apart for the last 22 years and that a re-union was found to be impossible, exercised the powers under Article 142 of the Constitution of India granted a decree of divorce, thereby dissolving the marriage inter se the parties. The relevant extract of the judgment is reproduced hereunder:-

"13. We have given our deep thought to the matter and to the discussions in the trial court judgment and the High Court judgment. Learned single Judge appears to have brushed aside the allegations of extra marital affairs as also of a child out of the wedlock as part of the wear and tear of marriage and as "inflamed passions." The fact, however, remains that the relationship appears to have deteriorated to such an extent that both parties see little good in each other, an aspect supported by the counselor's report; though the respondent insists that she wants to stay with the appellant. In our view, this insistence is only to somehow not let a decree of divorce be passed against the respondent. This is only to frustrate the endeavour of the appellant to get a decree of divorce, completely losing sight of the fact that matrimonial relationships require adjustments from both sides, and a willingness to stay together. The mere say of such willingness would not suffice.

14. It is no doubt true that the divorce legislations in India are based on the 'fault theory', i.e., no party should take advantage of his/her own fault, and

that the ground of irretrievable breakdown of marriage, as yet, has not been inserted in the divorce law, despite a debate on this aspect by the Law Commission in two reports.

15. We, however, find that there are various judicial pronouncements where this Court, in exercise of its powers under Article 142 of the Constitution of India, has granted divorce on the ground of irretrievable breakdown of marriage; not only in cases where parties ultimately, before this Court, have agreed to do so but even otherwise. There is, thus, recognition of the futility of a completely failed marriage being continued only on paper.

16. We have noticed above that all endeavours have been made to persuade the parties to live together, which have not succeeded. For that, it would not be appropriate to blame one or the other party, but the fact is that nothing remains in this marriage. The counselor's report also opines so. The marriage is a dead letter.

17. Much could be said about what the learned single Judge has observed as wear and tear of marriage and "inflamed passions", but wisdom requires us to not traverse that same path, as we feel that, on the ground of irretrievable breakdown of marriage, if this is not a fit case to grant divorce, what would be a fit case!

18. No doubt there is no consent of the respondent. But there is also, in real terms, no willingness of the parties, including of the respondent to live together. There are only bitter memories and angst against each other. This angst has got extended in the case of the respondent to somehow not permit the appellant to get a decree of divorce and "live his life", forgetting that both parties would be able to live their lives in a better manner, separately, as both parties suffer from an obsession with legal proceedings, as reflected from the submissions before us.

19. We may note that in a recent judgment of this Court, in **R. Srinivas Kumar v. R. Shametha**, **(2019) 9 SCC 409** to which one of us (Sanjay Kishan Kaul, J.) is a party, divorce was granted on the ground of irretrievable breakdown of marriage, after examining various judicial pronouncements. It has been noted that such powers are exercised not in routine, but in rare cases, in view of the absence of legislation in this behalf, where it is found that a marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably. That was a case where parties had been living apart for the last twenty-two (22) years and a re-union was found to be impossible. We are conscious of the fact that this

Court has also extended caution from time to time on this aspect, apart from noticing that it is only this Court which can do so, in exercise of its powers under Article 142 of the Constitution of India. If parties agree, they can always go back to the trial court for a motion by mutual consent, or this Court has exercised jurisdiction at times to put the matter at rest quickly. But that has not been the only circumstance in which a decree of divorce has been granted by this Court. In numerous cases, where a marriage is found to be a dead letter, the Court has exercised its extraordinary power under Article 142 of the Constitution of India to bring an end to it.

20. We do believe that not only is the continuity of this marriage fruitless, but it is causing further emotional trauma and disturbance to both the parties. This is even reflected in the manner of responses of the parties in the Court. The sooner this comes to an end, the better it would be, for both the parties. Our only hope is that with the end of these proceedings, which culminate in divorce between the parties, the two sides would see the senselessness of continuing other legal proceedings and make an endeavour to even bring those to an end.

21. The provisions of Article 142 of the Constitution provide a unique power to the Supreme Court, to do “complete justice” between the parties, i.e., where at times law or statute may not provide a remedy, the Court can extend itself to put a quietus to a dispute in a manner which would befit the facts of the case. It is with this objective that we find it appropriate to take recourse to this provision in the present case.

22. We are of the view that an end to this marriage would permit the parties to go their own way in life after having spent two decades battling each other, and there can always be hope, even at this age, for a better life, if not together, separately.

23. We, thus, exercising our jurisdiction under Article 142 of the Constitution of India, grant a decree of divorce and dissolve the marriage inter se the parties forthwith.

24. The respondent is a qualified lawyer; she claims to have not gone back to her family in Canada, but stayed in India only to battle this litigation. The respondent is being paid L 7,500 per month by the appellant. With a law degree she would be able to meet her needs better, though she claims that her sole concentration has been on the inter se dispute. Be that as it may, we are of the view that the maintenance of L 7,500 per month should be continued to be paid by the appellant to the respondent, and it is open

> for the parties to move appropriate proceedings for either enhancement of this maintenance or reduction and cessation thereof. We only hope that this aspect can also be reconciled between the parties once a decree of divorce is granted.
>
> 25. The appeal is allowed leaving the parties to bear their own costs."

35. In **Shri Rakesh Raman vs. Smt. Kavita 2023(2) RCR (Civil) 781,** Hon'ble the Supreme Court held that as the couple was living separately for the last almost 25 years with no cohabitation and no child was born from the marriage, and there was no possibility of compromise and settlement, it is not necessary in every case to pin point to an act of "cruelty" or blameworthy conduct of the spouse. The nature of relationship, the general behaviour of parties towards each other, or long separation between them are relevant factors to be considered. Taking into consideration the facts of the above said case, Hon'ble the Supreme Court held that long separation, absence of cohabitation, complete breakdown of all meaningful bonds, and the existing bitterness between the two, has to be read as cruelty under Section 13(1) (ia) of the 1955 Act. The relevant extract of the judgment is reproduced hereunder:-

> "18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1) (ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then

> continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.
>
> 19. Under these circumstances, we uphold the Order of the Trial Court, though for different grounds given by us in our order, and we set aside the Order of the High Court and grant a decree of divorce to the appellant/husband. Their marriage shall stand dissolved.
>
> 20. However, considering the fact that the appellant/husband is an employee in Life Insurance Corporation, as we have been informed at the Bar and his present salary is more than Rs.1,00,000/ (One Lakh Rupees) per month, we deem it fit and proper that he gives an amount of Rs.30,00,000/ (Thirty Lakh Rupees) to the respondent/wife as permanent alimony. This amount of Rs.30,00,000/ (Thirty Lakh Rupees) shall be deposited in the name of the respondent, within a period of four weeks from today with the Registry of this Court. The decree of divorce shall be made effective only from the date of such a deposit. On the event of such deposit, the Registry after verifying the credentials of the respondent/wife shall disburse the amount to the respondent/wife without further reference to this Court.
>
> With the aforesaid directions, the appeal stands allowed."

36. Co-ordinate Bench of this Court in **FAO-M-118-M of 2004 titled 'Som Dutt v. Babita Rani', decided on 25.05.2022,** held that the relationship of husband and wife has come to an end, and if the respondent-wife is not ready to give mutual divorce to the husband, whether this act of her would amount to cruelty towards husband, keeping in view the fact that the wife is not staying with the husband for the last more than 23 years and there is no scope that they can cohabitate as husband and wife. It was held that taking into consideration the peculiar facts of the case, as the parties have separated and the separation has continued for a sufficient length of time, it can be presumed that the marriage has been broken down. The

consequence of preservation in law of an unworkable marriage, which has long ceased to be effective, are bound to be a source of greater misery for the parties. The relevant extract of the judgment is reproduced hereunder:-

> *"[11] The issue for consideration in the present appeal would be whether the relationship of the husband and wife has come to an end and if the respondent-wife is not ready to give mutual divorce to the appellant-husband, whether this act of her, would amount to cruelty towards husband, keeping in view the fact that she is not staying with her husband for the last about 23 years and there is no scope that they can cohabit as husband and wife again. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of* ***Chandra Kala Trivedi vs. Dr. S.P.Trivedi, 1993 (4) SCC 232*** *wherein Hon'ble the Supreme Court was considering a case where marriage was irretrievably broken down and held that in these case, the decree of divorce can be granted where both the parties have levelled such allegations against each other that the marriage appears to be practically dead and the parties cannot live together.*
>
> *[12] Reference at this stage can be made to a judgment of three Judge Bench of Hon'ble the Supreme Court of India in case of* ***A Jayachandra vs. Aneel Kaur, 2005 (2) SCC 22*** *wherein Hon'ble the Supreme Court was having an occasion to consider the case of divorce on the basis of cruelty including mental cruelty. While examining the pleadings and evidence brought on record, the Court emphasized that the allegation of cruelty is of such nature in which resumption of marriage is not possible, however, referring various decisions, the Court observed that irretrievable breaking down of marriage is not one of statutory grounds on which Court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in longdrawn legal battle, directed in those cases dissolution of marriage. In para 17, it has been observed as under:-*
>
> > *"17. Several decisions, as noted above, were cited by learned counsel for the respondent to contend that even if marriage has broken down irretrievably decree of divorce cannot be passed. In all these cases it has been categorically held that in extreme cases the court can direct dissolution of marriage on the ground that the marriage had broken down irretrievably as is clear from*

para 9 of Shyam Sunder case. The factual position in each of the other cases is also distinguishable. It was held that long absence of physical company cannot be a ground for divorce if the same was on account of the husband's conduct. In Shyam Sunder case it was noted that the husband was leading adulterous life and he cannot take advantage of his wife shunning his company. Though the High Court held by the impugned judgment that the said case was similar, it unfortunately failed to notice the relevant factual difference in the two cases. It is true that irretrievable breaking of marriage is not one of the statutory grounds on which court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in long- drawn legal battle, directed in those cases dissolution of marriage. But as noted in the said cases themselves, those were exceptional cases."

[13] Hon'ble the Supreme Court in a case of Naveen Kohli vs. Neetu Kohli, 2006 (4) SCC 558 was considering a case of irretrievable break down of marriage. In this case, wife living separately for long but did not want divorce by mutual consent only to make life of her husband miserable. Thus, the decree of divorce was granted and held it is a cruel treatment and showed that the marriage had broken irretrievably. In para 62, 67, 68 and 69, it has been observed as under:-

"62. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

xxx xxx xxx

67. 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 decreeof divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

68. 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.

69. Consequently, we set aside the impugned judgment of the High Court and direct that the marriagebetween the parties should be dissolved according to the provisions of the Hindu Marriage Act, 1955. In the extra-ordinary facts and circumstances of the case, to resolve the problem in the interest of all concerned, while dissolving the marriage between the parties, we direct the appellant to pay Rs.25,00,000/- (Rupees Twenty five lacs) to the respondent towards permanent maintenance to be paid within eight weeks. This amount would include Rs.5,00,000/- (Rupees five lacs with interest) deposited by the appellant on the direction of the Trial Court. The respondent would be at liberty to withdraw this amount with interest. Therefore, now the appellant would pay only Rs.20,00,000/- (Rupees Twenty lacs) to the respondent within the stipulated period. In case the appellant fails to pay the amount as indicated above within the stipulated period, the direction given by us would be of no avail and the appeal shall stand dismissed. In awarding permanent maintenance we have taken into consideration the financial standing of the appellant."

[14] In the present case, the marriage between the parties had broken down irretrievably since long and there is no chance of their coming together, or living together again. Further, not to grant decree of divorce would be disastrous for the parties.

[15] The three Judges' Bench of Hon'ble the Supreme Court in a case of ***Samar Ghosh vs. Jaya Ghosh, 2007 (4) SCC 511*** *passed the decree on the ground of mental cruelty but the concept of irretrievable breakdown of marriage has been discussed in detail referring the 71st report of the Law Commission of India*

*[16] Hon'ble the Supreme Court in a case of **K. Srinivas Rao vs. D.A. Deepa, 2013 (5) SCC 266** has observed that though irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, however, marriage which is dead for all purposes, cannot be revived by Court's verdict, if parties are not willing since marriage involves human sentiments and emotions and if they have dried up, there is hardly any chance of their springing back to life on account of artificial reunion created by court decree.*

[17] It is well settled that once the parties have separated and separation has continued for a sufficient length of time and anyone of them 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.

[18] In the present case, the appellant and the respondent are living separately for the last more than 23 years. Firstly efforts were made to resolve the matrimonial dispute through the process of mediation, which is one of the effective mode of alternative mechanism in resolving the personal dispute but the mediation failed between the parties.

[19] Applying the ratio of the above-mentioned judgments to the facts of the present case and keeping in view the extra-ordinary facts and circumstances of the case, the appeal is allowed, judgment dated 07.04.2004 passed by the Additional District Judge, Faridkot, is set asideand decree of divorce is granted in favour of the appellant-husband. Decree-sheet be prepared accordingly. However, we direct the appellant-husband to make an F.D. of Rs.10 lakhs as permanent alimony in the name of the respondent-wife"

37. Co-ordinate Bench of this Court in **FAO-M-925 of 2022 titled 'Yash Paul v. Pawan Kumari', decided on 13.02.2025,** held that where the parties have been living separately for a considerably long period, compelling them to live together, would become a fiction supported by a legal tie and it would show scant regard for the feelings and emotions of the

parties. This, in itself, would amount to mental cruelty to both the parties. The relevant extract of the judgment is reproduced hereunder:-

> "*In Naveen Kohli v. Neetu Kohli, 2006 (4) SCC 558, the Hon'ble Apex Court was considering a case of irretrievable breakdown of marriage. In the said case, the wife had been living separately for a long time, but did not want divorce by mutual consent only to make life of her husband miserable. The Hon'ble Apex Court, while holding the acts and conduct of the wife as cruelty, has held as under:-*
>
> > *"62. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.*
> >
> > *xxx xxx xxx*
> >
> > *67. 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.*
> >
> > *68. 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."*
>
> ***In K. Srinivas Rao v. D.A. Deepa, 2013(2) RCR (Civil) 232,** Hon'ble Apex Court observed as under:-*

"14. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse…"

A Coordinate Bench of this Court in ***Amandeep Goyal Vs. Yogesh Rani****, 2022(1) PLR 479, while considering the long separation of 10 years between the parties and the factum of wife not ready and willing to give mutual divorce, held that the marriage was dead and it amounts to cruelty towards the husband. The relevant extract from the said judgment would read as under:-*

"20. In the present case, it is not in dispute that both the appellant and respondent are working as teachers on regular basis in Government departments. Further they are living separately since 27.07.2011. The elder son (Manav Goyal), who is suffering from cancer, is living with appellant- husband and the younger son (Rooham) is staying with the mother. After living separately from her husband for more than 10 years, the respondent- wife is still not ready to give divorce to him.

21. The issue for consideration in the present appeal would be whether the relationship of the husband and wife has come to an end and if the respondent-wife is not ready to give mutual divorce to the appellant- husband, whether this act of her, would amount to cruelty towards husband, keeping in view the fact that she is not staying with her husband for the last 10 years and there is no scope that they can cohabit as husband and wife again.

xx xx xx

32. In the present case, the appellant-husband is looking after his son Manav Goyal since 27.07.2011 and has borne all the expenses incurred upon his son, who is suffering from Cancer. Thus, if the appeal filed by the appellant-husband is dismissed, he will face mental agony with his son, who is ill and requires repeated check ups and treatments from various hospitals. The appellant and the respondent are very sure that they cannot live together as husband

and wife. The appellant-husband has shown that he also loves his second son i.e Rooham, as he brought gifts for him on 18.08.2021 and even respondent-wife also brought gifts for Manav Goyal. Both the appellant and the respondent are regular government teachers and are getting good++ salary and they are bringing up one child each. If the parents are not granted divorce, then both the children namely Manav Goyal and Rooham Goyal will not be able to meet each other in a positive environment. This will further result in cruelty because of the rigid attitude in giving divorce. Further when the appellant and the respondent came to this Court on 18.08.2021, they expressed their love and affection to child, who is not staying with them. The element of marriage which has become dead will result in further loss to both the children. It is a right time if both the children meet with each other in a positive environment as the parents are finally independent. The element of silence between the parties will result into mental cruelty to the children, as both the siblings cannot meet with each other. Mental cruelty will blend with irretrievable and dead marriage is a good ground to grant divorce to the parties."

A Division Bench of the Chhattisgarh High Court in ***Duleshwari Sahu Vs. Ramesh Kumar Sahu****, 2023 AIR (Chhattishgarh) 95, has held that where the wife had been residing separately from the husband for a long period without any justifiable cause, the same would amount to cruelty. It was held as under:-*

"15. In the present matter, on perusal of the pleadings of the respective parties and the evidence adduced by them in support thereof, as also the admission of the parties and their witnesses, it is found that the respondent wife is living separately from her husband at her parental home without any just and reasonable cause since May, 2014. She lodged a report on 17/09/2014 against the husband under Sections 498-A, 323, 294, 506 of IPC and after trial, he was acquitted of all the charges. This apart, the wife also made a report against the husband and his parents under Protection of Women from Domestic Violence Act. It is also admitted position that the wife filed divorce petition under section 13 of the Hindu Marriage Act which was dismissed for want of prosecution.

> *It is also admitted by the wife that no application under section 9 of the Hindu Marriage Act for restitution of conjugal rights was filed by her. It is not disputed that the wife is working as Panchayat Secretary and is also getting Rs. 7,000/- per month as maintenance.*
>
> *Therefore, in the given facts and circumstances of the case, the conduct of the wife, in light of the judgments of Hon'ble Supreme Court as mentioned above, the act committed by the wife against the husband amounts to cruelty and it stands proved that she is living separately from the husband since 2014 without any just and reasonable cause. They are seems to be no possibility of their re union. In these circumstances, this Court finds no illegality or perversity in the impugned judgement of the Family Court granting decree of divorce in favour of the husband."*
>
> *16. If the facts of the present case are examined in the light of the law laid down by the Hon'ble Supreme Court in the aforesaid judgments, it would come out that the parties, who have been living separately since 2012, if compelled to live together, would become a fiction supported by a legal tie and it would show scant regard for the feelings and emotions of the parties. This, in itself would amount to mental cruelty to both the parties"*

38. Division Bench of the Kerala High Court in ***Sreedharan v. Ahsa, 2023(5) KLT 559,*** held that irretrievable marriage breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955 but, where a marriage is beyond repair on account of bitterness created by the act of the husband or the wife or of both, the Courts have always taken irretrievable breakdown of marriage as a very weighty circumstance, amongst other necessitating severance of the marital tie. A marriage which is dead for all purposes cannot be revived by the Court's verdict. This is because marriage involves human sentiments and emotions, and if they are dried up, there is hardly any chance of their springing back to life on account

of artificial reunion created by the Courts's decree. The relevant extract of the judgment is reproduced hereunder:-

> "*31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree.*"

39. In view of the aforesaid position, the facts of the present case deserve to be examined in the backdrop of the principles laid down by the Hon'ble Supreme Court as well as by the Co-ordinate Bench of this Court. It is an admitted fact on record that the parties have been living separately since the year 1994 and despite the long passage of time, there has been no reconciliaion or effort to restore matrimonial harmony. It is also undisputed that no child has been born out of the wedlock. During the hearing, a specific question was put to the respondent-wife who is present in person, whether she is willing for One Time Settlement with the appellant-husband as they only cohabit for a short period of 06 months and have been living apart for more than 31 years. However, she remains adamant for not settling the matter either way.

40. When either of spouses have chosen to live apart for over three decades without even a show of reconciliation or cohabitation, the very essence of marriage stands eroded. What remains is only a legal bond

without any substance. To compel the parties to reside together after such a prolonged separation would be unrelaistic and infact, would inflict further mental cruelty on both sides. Accordingly, question No.1 is answered in affirmative.

41. Consequently, the present appeal is allowed, and impugned judgment and decree passed by the learned Family Court is set aside, and the marriage between the parties is dissolved by a decree of divorce. Question No.2 is answered accordingly. The decree sheet be prepared accordingly.

42. We, furthermore, grant liberty to the respondent-wife to move an appropriate application before the learned Family Court, for permanent alimony. If any such application is filed by the respondent-wife, the same shall be considered and decided by the Court concerned in accordance with law, preferably within a period of six months from the date of filing thereof.

43. Pending application(s), if any, shall stand(s) disposed of accordingly.

(GURVINDER SINGH GILL)
JUDGE

(DEEPINDER SINGH NALWA)
JUDGE

28.08.2025
Rimpal

Whether speaking/reasoned: Yes
Whether reportable: Yes