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Judgment Reserved on 12.10.2022

Judgment Delivered on 03.11.2022

Court No. - 3

Case :- FIRST APPEAL No. - 20 of 2007

Appellant :- Smt. Gayatri Mohapatra

Respondent :- Ashit Kumar Panda

Counsel for Appellant :- M.D. Singh Shekhar,R.D.Tiwari

Counsel for Respondent :- K.M. Mishra,A.K. Singh,A.K.Rai,H.R. Mishra,V.K.Singh

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Rajendra Kumar-IV,J.

(Per: Surya Prakash Kesarwani,J.)

1. Heard Sri M.D. Singh Shekhar, learned Senior Counsel, assisted by Sri Vaibhav Goswami, learned counsel for the defendant-appellant and Sri Vishnu Singh, learned counsel for the plaintiff-respondent.

Facts

2. Briefly stated facts of the present case are that defendant – appellant/wife married with the plaintiff – respondent/husband on 10.06.1990 as per Hindu rites and rituals. Plaintiff – respondent is an I.P.S. Officer while the defendant – appellant is a Doctor holding M.B.B.S. Degree. The father of the plaintiff – respondent was in service of the Steel Authority of India, Raurkela while father of the defendant – appellant was Additional Director General of Police, Orissa and her mother has promoted a company known as JBS Capacitors Pvt. Ltd., Bhubaneswar. Initially, the defendant – appellant joined the service in Health Department, Aligarh, but after three or four months she left it. She became Director in the aforesaid Company promoted by her mother. Son, namely, Aparajita Issan Narayan was born on 05.06.1991 from the wedlock of the plaintiff and the defendant at SCB Medical College, Cuttack.

3. It appears that dispute between the plaintiff and the defendant arose even before their son was born which led to various incidents. Ultimately the plaintiff – respondent filed case No.260 of 2000 (Ashit Kumar Panda Vs. Smt. Gayatri Devi) under Section 13 of the Hindu Marriage Act, 1955, in the Court of Principal Judge Family Court, Meerut, for divorce. In the plaint, amongst other allegations; the plaintiff – respondent has alleged in paras 5, 9, 10, 11, 14, 15, 16, 17, 18 and 19 as under:

“5. यह कि पैंटीशनर व विपक्षी के परिवारो मे आचार व विचारो को असमानता होने के कारण भी विपक्षी एवं उसके पिता पैंटीशनर एवं उसके परिवार को अपने अनुचित प्रभाव का लाभ उठाकर तरह तरह से तंग व परेशान करते रहे है। जिससे पैंटीशनर अपने दाम्पत्य जीवन के सुख से वंचित हो गया है।

9. यह कि विपक्षी के पिता ने पैंटीशनर के पिता को तंग व परेशान करने की गरज से दिनांक 30.12.91 को गुण्डे भेजकर हमला करवाया। जिसकी रिपोर्ट पैंटीशनर के पिता ने सैक्टर-3 राउरकेला के थाने मे पंजीकृत करायी थी।

10. यह कि विपक्षी ने पैंटीशनर के पुत्र के नामकरण की रस्म भी कटक मे अपने पिता के घर पर सम्पन्न करायी जिसमे विपक्षी पैंटीशनर अथवा उसके माता पिता को इस सम्बन्ध मे कोई सूचना नही दी।

11. यह कि विपक्षी के पिता ने सन् 1991 के आखिर मे पैंटीशनर के पिता के खिलाफ सी०बी०आई० मे मेल जोल होने के कारण झूठे मुकदमे कायम कराने के लिये दबाव बनाया, उस समय एस०पी० सी०बी०आई० भुवनेश्वर श्री प्रकाश मिश्रा तैनात थे। जिन्होने कोई सबूत न पाते हुए पैंटीशनर के पिता जी के खिलाफ कोई कार्यवाही नही करी थी।

14. यह कि विपक्षी ने वर्ष 1991 मे जब पैंटीशनर की तैनाती बतौर ए०एस०पी० थी। तब कर्फ्यू के दौरान विपक्षी पैंटीशनर के पास आयी और एक रात रूककर पैंटीशनर पर दबाव दिया कि पैंटीशनर उसे वापिस उसके पिता के घर पर छोडकर आये, पैंटीशनर ने बामुश्किल छुट्टी लेकर विपक्षी को उसके पिता के घर पर छोडकर आया।

15. यह कि पैंटीशनर अब मेरठ मे पुलिस ट्रेनिंग सेन्टर हापुड रोड मेरठ मे तैनात है दिनांक 17.12.99 को विपक्षी ने पैंटीशनर के मकान से समस्त सामान डबल बेड, अलमारी , फ्रीज , कूलर आदि को ट्रक मे भरवाकर अपने साथ दिल्ली स्थित मकान ग्रेटर कैलाश मे ले गयी, ट्रक के साथ सामान चढवाने व उतरवाने मे कविन्द्र गौतम हैड. कांस्टेबिल, तालेवर सिंह, स्टैनो नेपाल सिंह, सी०एल०डी० राजन सिंह व वीर सिंह फोलोवर ट्रक के साथ मे गये थे व पडौसी अनन्त अग्रवाल पुत्र विनय अग्रवाल मकान सं० एल०-948 ने विपक्षी को सामान ट्रक मे भरते व ले जाते हुए देखा है।

16. यह कि उपरोक्त परिस्थितियो मे पैंटीशनर का विपक्षी के साथ साथ रहना नामुमकिन है। पैंटीशनर व विपक्षी के साथ रहने पर किसी भी समय कोई भी दर्घटना घटित हो सकती है।

17. यह कि विपक्षी ने पैंटीशनर तथा उसके माता पिता को परेशान एवं बेईज्जती करने की नियत से दिनांक 27.03.2000 को महिला थाने, सदर लखनऊ मे एक रिपोर्ट क्राईम नं० 17/2000 पर अ०धारा 498 ए, 323, 506 आई०पी०सी० व ३/४ दहेज एक्ट दर्ज करायी जिसमे विपक्षी ने पैंटीशनर एवं माता पिता पर झूठे बेबुनियाद

आरोप लगाये। इस तथाकथित रिपोर्ट में विपक्षी ने पैटीशनर पर चरित्र हीनता का आरोप भी लगाया जो कि सर्वथा गलत बेबुनियाद एवं कपोल कल्पित है। विपक्षी की इस रिपोर्ट से पैटीशनर एवं उसके परिवार की समाज में बहुत ही बेइज्जती हुयी है एवं पैटीशनर तथा उसके परिवार को मानसिक आघात भी पहुँचा है। इस घटना से पैटीशनर को इतना कष्ट हुआ कि अब पैटीशनर का विपक्षी के साथ रहना कतई सम्भव नहीं है और विपक्षी का यह कृत्य पैटीशनर के प्रति मानसिक क्रूरता पूर्ण है।

18. यह कि विपक्षी को पैटीशनर तथा उसके परिवार के विरुद्ध झूठी रिपोर्ट लिखाकर भविष्य में पैटीशनर के दाम्पत्य जीवन की एक मात्र आशा को भी समाप्त कर दिया है। अब पैटीशनर एवं विपक्षी का एक साथ रहकर दाम्पत्य जीवन यापन करना नामुमकिन है अतः उपरोक्त पैटीशनर प्रस्तुत करने की आवश्यकता पैदा हुयी है।

19. यह कि वाद का कारण दिनांक 10.06.90 में विपक्षी के साथ विवाह होने उसके उपरान्त दिनांक 13.12.99 में मेरठ से पैटीशनर के निवास से समस्त घर का सामान ले जाना एवं उसके बाद दिनांक 27.03.2000 को विपक्षी के द्वारा पैटीशनर पर चरित्र हीनता व उत्पीडन के झूठे आरोप लगाकर झूठी रिपोर्ट दर्ज कराई एवं पैटीशनर एवं विपक्षी का मेरठ शहर में अन्तिम समय पर एक साथ निवास करने के कारण माननीय न्यायालय के क्षेत्राधिकार में आता है। माननीय न्यायालय को उक्त वाद को सुनने एवं निस्तारण करने का पूर्णतया अधिकार है।"

4. The defendant – appellant filed written statement in which she denied allegations. The plaintiff – respondent filed examination in chief. In his examination-in-chief he affirmed the plaint version. He produced himself in evidence for cross – examination and was cross examined by the defendant – appellant. The plaintiff – respondent also produced in evidence Sri Golak Bihari Panda (PW 2), who is his father. In his evidence on the point of cruelty the PW 2, has stated as under :-

“8. यह कि मैं शपथपूर्वक कथन करता हूँ कि उक्त दिनांक- 12.06.1990 से लेकर दिनांक- 14.06.1990 की तीन दिन की अवधि में श्रीमती गायत्री ने अनेको बार शपथकर्ता एवं उसके परिवारजन को यह ताना दिया कि तुम्हारे घर का स्टैण्ड बहुत खराब है और आशीत कुमार का वेतन भी बहुत कम है इतने से कहीं अधिक तो हम अपने कर्मचारियों को बांट देते हैं। ऐसी स्थिति में उसका ससुराल में रहना किसी भी हाल में सम्भव नहीं है ऐसे ताने सुनकर शपथकर्ता एवं उसकी पत्नी एवं उसके पुत्र को बड़ा ही मानसिक कष्ट पहुँचा शपथकर्ता के पड़ोस में भी शपथकर्ता की छवि अत्यन्त खराब हो गयी।

9. यह कि मैं शपथपूर्वक बयान करता हूँ कि शपथकर्ता की पुत्र बधू श्रीमती गायत्री एम०बी०बी०एस० डाक्टर है और उसके पिता उडीसा पुलिस के सेवानिवृत्त एस०डी०जी०पी० है। श्रीमती गायत्री अपनी माता जी की कम्पनी जे०बी०एस०केपीसिटेस प्राईवेट लिमिटेड भुवनेश्वर स्थित कम्पनी डायरेक्टर भी है। और श्रीमती गायत्री उक्त कम्पनी के समस्त कामकाज की देखभाल करती है उक्त कम्पनी कम्प्यूटर के पार्ट्स बनाने का कार्य करती है। विवाह के पश्चात श्रीमती गायत्री अधिकतर समय अपने मायके में ही रही है।

10. यह कि मैं शपथपूर्वक बयान करता हू कि रेस्पोंडेन्ट के अधिकतर समय अपने मायके में रहने से एवं क्रूरता पूर्ण व्यवहार के कारण शपथकर्ता का पुत्र दाम्पत्य सुख से वंचित हो गया है और वह बड़े ही मानसिक कष्टों में अपना जीवन गुजार रहा है।
11. यह कि मैं शपथपूर्वक बयान करता हू कि रेस्पोंडेन्ट श्रीमती गायत्री को अपने मायके में ही रहते हुए एक पुत्र अपराजित ईशान नारायण का जन्म दिनांक- 05.06.1991 को हुआ था और जन्म से लेकर आज तक उस पुत्र को पेटिसपर की इच्छा के विरुद्ध रेस्पोंडेन्ट ने अपने मायके में ही रखा हुआ है और उसकी पढाई लिखाई भी वही चल रही है रेस्पोंडेन्ट ने शपथकर्ता एवं उसकी पत्नी को आज तक अपने एक मात्र पोते का मुंह भी देखने नहीं दिया है जिसका इतना भारी दुःख शपथकर्ता एवं उसकी पत्नी को है जिसके शब्दों में स्पष्ट करना सम्भव नहीं है।
12. यह कि मैं शपथपूर्वक कथन करता हूँ कि समस्त भारत में हिन्दू जाति में यह परम्परा है कि पुत्र या पौत्र का नामकरण एवं जनेऊ संस्कार उसके पिता के घर में सम्पन्न होता है जिसमें परिवार के सभी इष्ट मित्र एवं रिश्तेदार शामिल होकर खुशी मनाते हैं। परन्तु रेस्पोंडेन्ट की क्रूरता की तब सीमा समाप्त हो गयी जब रेस्पोंडेन्ट ने शपथकर्ता एवं उसके परिवारजनों को वगैर कोई सूचना दिये शपथकर्ता के पौत्र का जनेऊ संस्कार भी अपने मायके में ही मना लिया। ऐसी स्थिति में शपथकर्ता अपने पौत्र का संस्कार पूर्ण करने एवं उसको अपनी गाँव में खिलाकर उसकी मीठी-मीठी बातें सुनने से पूर्णरूप से वंचित हो गया तथा पैटिसनर आशीत कुमार जो उक्त बच्चे का प्राकृतिक पिता है वह रेस्पोंडेन्ट के उक्त क्रूरता पूर्ण व्यवहार से पितृ सुख व दाम्पत्य सुख से भी वंचित हो गया है।
13. यह कि मैं शपथपूर्वक बयान करता हूँ कि रेस्पोंडेन्ट के पिता ने शपथकर्ता को परेशान करने की नीयत से दिनांक 30.12.1991 को गुण्डे भेजकर शपथकर्ता पर हमला भी करवाया था जिसकी रिपोर्ट शपथकर्ता ने सेक्टर -3 राउरकेला के थाने में पंजीकृत करायी थी। इसके अतिरिक्त दिसम्बर 1991 में ही रेस्पोंडेन्ट के पिता ने सी०बी०आई० के जान पहचान होने के कारण शपथकर्ता को झूठी कार्यवाही में फंसाने के लिए प्रयास किया था उस समय एस०पी०सी०बी०आई० भुवनेश्वर श्री प्रकाश मिश्रा तैनात थे जिन्होंने कोई सबूत न पाते हुये शपथकर्ता के विरुद्ध कोई कार्यवाही नहीं की थी।
14. यह कि मैं शपथपूर्वक कथन करता हूँ कि शपथकर्ता का पुत्र आशीत कुमार जब वर्ष 1999 में मेरई में तैनात था तब वह गम्भीर रूप से मुँह के कैंसर से बीमार हो गया था तब रेस्पोंडेन्ट को उसकी पूर्ण देखभाल करनी चाहिए थी परन्तु रेस्पोंडेन्ट ने उसकी देखभाल करने के स्थान पर उससे लड़ाई झगड़ा किया और घर का समस्त घरेलू सामान जैसे डबल बेड, अलमारी, फ्रीज, कूलर आदि ट्रक में भरवाकर दिनांक 17.12.1999 को अपने साथ दिल्ली स्थित मकान ग्रेटर कैलाश में ले गयी थी ट्रक में सामान भरवाने में कविन्द्र गौतम हैंड कान्स०, तालेवर सिंह, स्टैनो नेपाल सिंह, सी०एल०डी० राजन सिंह व वीर सिंह फालोवर ट्रक में सामान भरवाकर दिल्ली साथ गये थे इनके अतिरिक्त पडोसी अनन्त अग्रवाल पुत्र श्री विनय अग्रवाल निवासी एल० 948 शास्त्री नगर मेरठ जिनकी पुलिस ट्रेनिंग सेण्टर हापुड रोड मेरठ शहर के पास पी०सी०ओ० की दुकान थी ने भी रेस्पोंडेन्ट को ट्रक में सामान भरवाते व ले जाते हुए देखा था।
15. यह कि मैं शपथपूर्वक कथन करता हूँ कि रेस्पोंडेन्ट ने बिना कारण तंग व परेशान करने व बेईज्जती करने की नीयत से पैटिसनर एवं शपथकर्ता एवं शपथकर्ता की पत्नी के नाम एक झूठी रिपोर्ट दिनांक- 27.03.2000 को महिला थाना सदर लखनऊ में अन्तर्गत धारा - 498 ए०/323/506 आई०पी०सी० व 3/4 दहेज एक्ट की दर्ज करायी थी जिसमें रेस्पोंडेन्ट ने शपथकर्ता एवं उसके परिवारजनों पर झूठे, बेबुनियाद, आरोप लगाये थे। उक्त रिपोर्ट में रेस्पोंडेन्ट ने अपने पति के विरुद्ध

चरित्रहीनता का झूठा आरोप भी लगाया जो रेषपोण्डेन्ट की क्रूरता को स्पष्ट करता है। ऐसी स्थिति में पेटिशनर व रेषपोण्डेन्ट का साथ सात पति पत्नी के रूप में रहना सम्भव नहीं रहा है।”

5. The plaintiff – respondent also filed additional affidavit in evidence in which he further narrated certain facts in paras 5 and 6 to support mental cruelty by the defendant – appellant.

6. P.W. 1 and P.W. 2 both were cross examined by the defendant – appellant on various dates.

7. In evidence, copies of First Information Report dated 27.03.2005 lodged by the defendant – appellant and various other evidence were also filed by the plaintiff – respondent. However, despite specific allegation of mental cruelty on various grounds including lodging of the false First Information Report against the plaintiff – respondent and his family members, the evidence led in this regard by him could not be disproved by the defendant – appellant. Despite specific allegations of lodging false first information report, the defendant – appellant/wife has chosen not to lead even her oral evidence. Considering the facts and evidences on record, the Principal Judge Family Court, Meerut decreed the suit by judgement dated 16.12.2006 dissolving the marriage.

8. Aggrieved with the aforesaid judgement and decree, the defendant – appellant has filed the present appeal.

9. Perusal of the order sheet of the aforesaid appeal shows that this Court made serious efforts for amicable settlement between the parties but it failed. In this regard, it would be appropriate to reproduce the order dated 03.04.2014 as under :

“In pursuance of the order dated 24.02.2014, both the parties along with their counsel are present.

We talked to them individually and in presence of each other alongwith their counsel. We are sorry to record that all our efforts for amicable settlement between the parties have failed. Thus there is no option left but to place the appeal for adjudication on merits.

List the appeal in its turn.”

Submissions of the defendant-appellant

10. (i) The plaintiff-respondent has not taken any ground of cruelty in the plaint. Therefore, the impugned judgment and decree granted by the Court below on the ground of cruelty and dissolving the marriage, is illegal.

(ii) The averments made in para no.15 of the plaint does not amount to cruelty.

(iii) The impugned order for dissolving the marriage under Section 13 of the Hindu Marriage Act, 1955 has been passed without affording opportunity of hearing to the defendant-appellant.

(iv) The application 20-Ga for summoning several police officers and staff in evidence was illegally rejected by the Court by order dated 21.11.2006.

(v) Not adding the sur-name "Panda" by the defendant-appellant, with her name or with the name of her son, does not amount to cruelty.

(vi) Even if the defendant-appellant has not filed her oral evidence yet it shall make no difference inasmuch as the PWs 1 and 2 were examined by the defendant.

Submissions of the plaintiff-respondent

11. (i) The cruelty has been well proved by the plaintiff-respondent and finding recorded in this regard in the impugned judgement are based on consideration of relevant evidences on record.

(ii) The plaintiff-respondent and the defendant-appellant are undisputedly living separately since 1999 and thus, more than 23 years have passed and they are not ready to live together. Therefore, in any view of the matter, the parties cannot be directed to live together. There is irretrievable break down and the tie of marriage cannot be restored. The decree of divorce

itself was passed on 16.12.2006 and thus, about 16 years have already passed from the date of decree of divorce. Reliance is placed upon the judgment of **Supreme Court dated 13.09.2021 in Civil Appeal Nos.4984-4985 of 2021, (Sivasankaran versus Santhimeenal).**

(iii) In any view of the matter, no order for the parties to live together, should be passed on facts of the present case. Reliance is placed upon the judgment of **Supreme Court in the case of Naveen Kohli versus Neelu Kohli, (2006) 4 SCC 558.**

Discussion and Findings

12. Brief facts of the case and the submissions of learned counsels for the parties as noted above clearly shows that the grounds for divorce taken by the plaintiff – respondent was mainly “mental cruelty”. The parties have also led their evidences in this regard. It has been admitted by the learned counsel for the defendant – appellant and also as reflected from his submission No.(vi) noted above, that although the plaintiff – respondents led the oral evidence of PW – 1 and PW -2 and were crossed examined at length by the defendant – appellant but the defendant – appellant has not led any oral evidence. She has also not even filed copies of the order/judgments of trial Court in criminal cases lodged by her against the plaintiff – respondent and his family members. The plaintiff – respondent has led evidences to prove that the first information report lodged by the defendant – appellant, were based on false allegations. The defendant – appellant has not led any evidence to disprove it or to prove that the first information report lodged by her were not based on false allegation. She has not even led her oral evidence. The court below has considered the evidence on record and framed five issues out of which the issue Nos. 1 and 5 were crucial for decision on the question of divorce which are reproduced below :

“1- क्या प्रतिवादिनी ने वादी के साथ क्रूरता का व्यवहार किया है? यदि हां तो इसका प्रभाव?

5- क्या वादी के पिता द्वारा पक्षकारों के वैवाहिक जीवन में अनावश्यक हस्तक्षेप करना व वादी के द्वारा अपने पिता के प्रभाव में अपने वैवाहिक जीवन में अपने दायित्वों का सही प्रकार पालन न करने के कारण प्रतिवादिनी को दाम्पत्य जीवन निर्वाह करने में अस्मर्थ किया गया जैसा कि प्रतिवाद पत्र में कहा गया है। यदि हां तो इसका प्रभाव?”

13. The issue nos. 1 and 5 aforequoted were collectively decided by the court below. The issue no. 1 was decided in affirmative in favour of the plaintiff. The conclusion was recorded as under :

“उपरोक्त समीक्षा के आधार पर मैं इस निष्कर्ष पर पहुंचा हूँ कि याची के साथ विपक्षी द्वारा क्रूरतापूर्ण व्यवहार किया गया है और याची के माता पिता द्वारा याची और विपक्षी के परिवारिक जीवन में कोई अनुचित हस्तक्षेप नहीं किया गया है तदनुसार यह वाद बिन्दु सं० -1 सकारात्मक रूप में एवं वाद बिन्दु संख्या-5 नकारात्मक रूप से याची के पक्ष में निर्णित किया जाता है। ”

14. The aforesaid conclusion in the impugned judgment is based on the findings recorded by the court below, briefly as under :

(i) *The plaintiff – husband has made allegations that the defendant – wife expressed her unwillingness to live with the plaintiff by alleging and insulting him that the standard of living of his and his family members is low and the salary of the plaintiff is so low that more than his salary, her parents used to distribute salary to their employees. To prove this allegation, the plaintiff – husband has filed affidavit 61 Ka, an additional affidavit 104 ka and PW 2 filed affidavit 62 Ka and additional affidavit 105 Ka supporting the plaintiff’s contention but the defendant – wife neither submitted any reply to the aforesaid evidences nor produce her evidence and also could not prove the papers filed by her by list 8 Ga.*

(ii) *The defendant wife firstly joined service as physician in Uttar Pradesh Health Department, Aligarh, but left the service for reason that infact she was having more interest in the business of her mother. The plaintiff -respondent filed habeas corpus Writ Petition No.22262 of 2001 (paper No.44 Ga) for custody of his son Aparajit Ishan Narayan, in which the father of the defendant - appellant filed an affidavit stating that he has better resources for protection of future of the aforesaid son and the plaintiff - respondent has not extended any affection or protection to the aforesaid child.*

(iii) *The PW – 1 has filed photographs 112 ka dated 19.8.1993, 43 Ka dated 06.09.1995, 114 Ka of the year 1993 and 115 Ka of the year 1995 to prove that the allegation of the defendant - appellant that the aforesaid child never remained with the plaintiff*

and his family members is incorrect. The aforesaid photographs were not denied by the defendant – appellant/wife.

(iv) On 17.12.1999, the defendant wife has left her matrimonial house and went to her parents home.

(v) The defendant – wife has alleged that the plaintiff husband has demanded in dowry Rs.5,00,000/- and a car and on non fulfilment of the dowry demand she was beaten by the plaintiff and for that reason she lodged crime case No.17/2000 under Section 498 A, 323, 506 I.P.C. and $\frac{3}{4}$ Dowry Prohibition Act on P.S. Mahila Thana Sadar, Lucknow on 27.03.2000 but she has not filed even copy of the FIR. The plaintiff – husband has filed photo copy of the aforesaid FIR and other papers 45 Ga, 78 Ga and 80 Ga which show that the aforesaid case crime registered as case no.210 of 2002 and is pending in the Court of 3rd Additional Chief Judicial Magistrate, Lucknow and as such no comment can be made on it.

(vi) The defendant – wife has made allegation that the plaintiff – husband is indulged in adultery with a lady Rita Rai. The plaintiff – husband has denied the allegation and got recorded his oral evidence in this regard as PW 1 and his denial was also supported by PW -2 in his evidence, but the defendant – wife has not produced any evidence. Thus, the plaintiff – husband has been able to prove that the allegation of his being characterless, made by the defendant – wife, is false. Allegations made by the defendant – wife against the parents of the plaintiff – husband were found to be incorrect.

(vii) The defendant – wife has made false complaints 78 Ga against the plaintiff – husband to his higher officers and the Director General of Police Uttar Pradesh, but she could not lead any evidence to prove the allegations.

15. So far as the submissions Nos. (i), (ii) and (v) of learned counsel for the defendant – appellant is concerned, we find that the averments made by plaintiff in paras 5, 9, 10, 11, 17 and 19 of the plaint clearly discloses the ground of cruelty.

16. So far as the submission No. (iii) made by learned counsel for the defendant – appellant that the impugned judgement for dissolving the marriage under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act 1955”) has been passed without affording an opportunity of hearing to the defendant – appellant, is incorrect. Perusal of the impugned judgment shows that the defendant – appellant has appeared in the aforesaid case before the court below and not only filed

her written statement but also cross examined PW – 1 and PW – 2 at length. Thus, the submission of learned counsel for the defendant – appellant that no opportunity of hearing was afforded to the defendant – appellant, is totally incorrect.

17. So far as the submission No. (iv) is concerned, we find that the defendant – appellant has not taken any such specific grounds in the grounds of appeal.

Cruelty

18. The word “cruelty” has not been defined in the Act, 1955. It has been used in Section 13(i) (i-a) of the Act 1955 in the context of human conduct or behaviour in relation to or in respect to matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical. It may be intentional or unintentional. If it is physical, it is question of fact and degree. If it is mental, the inquiry must begin as to the nature of cruel treatment and then as to the impact of such treatment on the mind of the spouse as to whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. It is a matter of inference to be drawn by considering the nature of the conduct and its effect on the complaining spouse. These principles find mention in the law laid down by Hon’ble Supreme Court in the case of **Shobha Rani Vs. Madhukar Reddi (1988) 1 SCC 105 (paras 4, 5, 6, 7 and 18)**.

19. Expressing similar view as aforesaid and following the decision in the case of Shobha Rani (supra), Hon’ble Supreme Court in the case of **V. Bhagat v D. Bhagat (1994) 1 SCC 337 (para 16)** broadly defined **mental cruelty**, as under :

16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be

*asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. **What is cruelty in one case may not amount to cruelty in another case.** It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.*

(Emphasis supplied by us)

20. In the aforesaid judgement in the case of *V. Bhagat (supra)* (paras 18 & 19) Hon'ble Supreme Court has referred to its earlier judgment in the case of **Chanderkala Trivedi Vs. Dr S.P. Trivedi (1993) 4 SCC 232** (paras 2 & 3), which appears to be relevant for the purposes of controversy involved in the present appeal.

21. Paras 18 and 19 of the judgement in the case of *V. Bhagat (supra)* is reproduced below :

18. In Chanderkala Trivedi v. Dr S.P. Trivedi [(1993) 4 SCC 232 : 1993 SCC (Cri) 1154 : (1993) 3 Scale 541] the husband sued for divorce on the ground of cruelty by wife. The wife filed a written statement wherein she attributed adultery to the husband. In reply thereto the husband put forward another allegation against the wife that she was having undesirable association with young boys. Considering the mutual allegations, R.M. Sahai, J. speaking for Division Bench, observed: (SCC p. 233, para 2)

*“Whether the **allegation of the husband that she was in the habit of associating with young boys** and the findings recorded by the three courts are correct or not but what is certain is that **once such allegations are made by the husband and wife as have been made in this case then it is obvious that the marriage of the two cannot in any circumstance be continued any further.** The marriage appears to be practically dead as from cruelty alleged by the husband it has turned out to be at least intimacy of the husband with a lady doctor and unbecoming conduct of a Hindu wife.”*

19. It was argued on behalf of the husband that the wife has failed to establish the charge of adultery levelled against him and that the charge of adultery must be proved beyond reasonable doubt. Dealing with the argument, the learned Judge observed: (SCC pp. 233-34, para 3)

“But we do not propose to examine it as we are satisfied that the marriage is dead and the findings of fact cannot be set aside by this Court except that the appeal can be sent back to the Division Bench to

decide it again which would mean another exercise in futility leading to tortuous litigation and continued agony of the parties.”

(Emphasis supplied by us)

22. In the case of **Savitri Pandey v. Prem Chandra Pandey, (2002) 2 SCC 73** Hon'ble Supreme Court has explained the word “**cruelty**” and “**desertion**” used in Section 13(1)(i) (i-a) of the Act, 1955 as under :

*“6. Treating the petitioner with cruelty is a ground for divorce under Section 13(1)(i-a) of the Act. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. **Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. “Cruelty”, therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other. In the instant case both the trial court as well as the High Court have found on facts that the wife had failed to prove the allegations of cruelty attributed to the respondent. Concurrent findings of fact arrived at by the courts cannot be disturbed by this Court in exercise of powers under Article 136 of the Constitution of India. Otherwise also the averments made in the petition and the evidence led in support thereof clearly show that the allegations, even if held to have been proved, would only show the sensitivity of the appellant with respect to the conduct of the respondent which cannot be termed more than ordinary wear and tear of the family life.***

*8. “**Desertion**”, for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations i.e. not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. After referring to a host of*

authorities and the views of various authors, this Court in *Bipinchandra Jaisinghbai Shah v. Prabhavati* [AIR 1957 SC 176] held that **if a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion.** It further held : (AIR pp. 183-84, para 10)

“For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly **two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid.** The petitioner for divorce bears the burden of proving those elements in the two spouses respectively. Here a difference between the English law and the law as enacted by the Bombay Legislature may be pointed out. Whereas under the English law those essential conditions must continue throughout the course of the three years immediately preceding the institution of the suit for divorce, under the Act, the period is four years without specifying that it should immediately precede the commencement of proceedings for divorce. Whether the omission of the last clause has any practical result need not detain us, as it does not call for decision in the present case. Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an *animus deserendi*. **The offence of desertion commences when the fact of separation and the animus deserendi coexist. But it is not necessary that they should commence at the same time.** The *de facto* separation may have commenced without the necessary animus or it may be that the separation and the animus *deserendi* coincide in point of time; for example, when the separating spouse abandons the marital home with the intention, express or implied, of bringing cohabitation permanently to a close. The law in England has prescribed a three years' period and the Bombay Act prescribed a period of four years as a continuous period during which the two elements must subsist. Hence, if a deserting spouse takes advantage of the *locus poenitentiae* thus provided by law and decide to come back to the deserted spouse by a bona fide offer of resuming the matrimonial home with all the implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for divorce have been commenced, desertion comes to an end and if the deserted spouse unreasonably refuses the offer, the latter may be in desertion and not the former. Hence it is necessary that during all the period that there has been a desertion, the deserted spouse must affirm the marriage and be ready and willing to resume married life on such conditions as may be reasonable. It is also well settled that in proceedings for divorce the plaintiff must prove the offence of desertion, like and other matrimonial offence, beyond all reasonable doubt. Hence, though corroboration is not required as an absolute rule of law the courts insist upon

corroborative evidence, unless its absence is accounted for to the satisfaction of the court.”

9. Following the decision in *Bipinchandra* case [AIR 1957 SC 176] this Court again reiterated the legal position in *Lachman Utamchand Kirpalani v. Meena* [AIR 1964 SC 40] by holding that in its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.

10. To prove desertion in matrimonial matter it is not always necessary that one of the spouses should have left the company of the other as **desertion could be proved while living under the same roof. Desertion cannot be equated with separate living by the parties to the marriage. Desertion may also be constructive which can be inferred from the attending circumstances.** It has always to be kept in mind that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case.

11. There is another aspect of the matter which disentitles the appellant from seeking the relief of divorce on the ground of desertion in this case. As desertion in matrimonial cases means the withdrawal of one party from a state of things i.e. the marital status of the party, no party to the marriage can be permitted to allege desertion unless he or she admits that after the formal ceremonies of the marriage, the parties had recognised and discharged the common obligation of the married life which essentially requires the cohabitation between the parties for the purpose of consummating the marriage. Cohabitation by the parties is an essential of a valid marriage as the object of the marriage is to further the perpetuation of the race by permitting lawful indulgence in passions for procreation of children. In other words, **there can be no desertion without previous cohabitation by the parties.** The basis for this theory is built upon the recognised position of law in matrimonial matters that no one can desert who does not actively or wilfully bring to an end the existing state of cohabitation. However, such a rule is subject to just exceptions which may be found in a case on the ground of mental or physical incapacity or other peculiar circumstances of the case. However, **the party seeking divorce on the ground of desertion is required to show that he or she was not taking the advantage of his or her own wrong.** In the instant case the appellant herself pleaded that there had not been cohabitation between the parties after the marriage. She neither assigned any reason nor attributed the non-resumption of cohabitation to the respondent. From the pleadings and evidence led in the case, it is apparent that the appellant did not permit the respondent to have cohabitation for

consummating the marriage. In the absence of cohabitation between the parties, a particular state of matrimonial position was never permitted by the appellant to come into existence. In the present case, in the absence of cohabitation and consummation of marriage, the appellant was disentitled to claim divorce on the ground of desertion.

12. No evidence was led by the appellant to show that she was forced to leave the company of the respondent or that she was thrown away from the matrimonial home or that she was forced to live separately and that the respondent had intended animus deserendi. There is nothing on record to hold that the respondent had ever declared to bring the marriage to an end or refused to have cohabitation with the appellant. As a matter of fact the appellant is proved to have abandoned the matrimonial home and declined to cohabit with the respondent thus forbearing to perform the matrimonial obligation.

(Emphasis supplied by us)

23. In recent decision in the case of **Devanand Tamuli Vs. Kakumoni Katakya (2022) 5 SCC 459 (paras 7 to 12)** Hon'ble Supreme Court explained the **principles of desertion** and interpreted the word **“desertion” to mean intentional abandonment of one spouse by the other without the consent of other and without a reasonable cause.**

24. In the case of **Parveen Mehta v. Inderjit Mehta, (2002) 5 SCC 706 (para 21)** Hon'ble Supreme Court further interpreted the words “mental cruelty” and held as under :

*“21. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. **Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case.** A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. **The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.**”*

(Emphasis supplied by us)

25. In the case of **Vishwanath Agrawal v. Sarla Vishwanath Agrawal, (2012) 7 SCC 288** (paras 22 to 33) Hon'ble Supreme Court again referred to its various earlier judgements interpreted the word "cruelty" and held as under :

"22. The expression "cruelty" has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.

23. In Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan [(1981) 4 SCC 250 : 1981 SCC (Cri) 829] , a two-Judge Bench approved the concept of legal cruelty as expounded in Pancho v. Ram Prasad [AIR 1956 All 41] wherein it was stated thus: (Pancho case [AIR 1956 All 41] , AIR p. 43, para 3)

"3. ... Conception of legal cruelty undergoes changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition that a second marriage is a sufficient ground for separate residence and separate maintenance. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used.

Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which may undermine the health of a wife."

It is apt to note here that the said observations were made while dealing with the Hindu Married Women's Right to Separate Residence and Maintenance Act (19 of 1946). This Court, after reproducing the passage, has observed that the learned Judge has put his finger on the correct aspect and object of mental cruelty.

24. In Shobha Rani v. Madhukar Reddi [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] , while dealing with "cruelty" under Section 13(1)(i-a) of the Act, this Court observed that the said provision does not define "cruelty" and the same could not be defined. "Cruelty" may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem to determine it. It is a question of fact and degree. If it is mental, the problem presents difficulty. Thereafter, the Bench proceeded to state as follows: (SCC p. 108, para 4)

*"4. ... **First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other.** Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. **There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases,***

the cruelty will be established if the conduct itself is proved or admitted.”

25. After so stating, this Court observed in *Shobha Rani* case [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] about the marked change in life in modern times and the sea change in matrimonial duties and responsibilities. It has been observed that: (SCC p. 108, para 5)

“5. ... when a spouse makes a complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. **The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance.**”

26. Their Lordships in *Shobha Rani* case [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] referred to the observations made in *Sheldon v. Sheldon* [1966 P 62 : (1966) 2 WLR 993 : (1966) 2 All ER 257 (CA)] wherein Lord Denning stated, “the categories of cruelty are not closed”. Thereafter, the Bench proceeded to state thus: (*Shobha Rani* case [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] , SCC p. 109, paras 5-6)

“5. ... Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.

6. These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Reid observed in *Gollins v. Gollins* [1964 AC 644 : (1963) 3 WLR 176 : (1963) 2 All ER 966 (HL)] : (All ER p. 972 G-H)

‘... In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman.’”

(emphasis in original)

27. In *V. Bhagat v. D. Bhagat* [(1994) 1 SCC 337] , a two-Judge Bench referred to the amendment that had taken place in Sections 10 and 13(1)(i-a) after the (Hindu) Marriage Laws (Amendment) Act, 1976 and proceeded to hold that the earlier requirement that such cruelty has caused a reasonable apprehension in the mind of a spouse that it would be harmful or injurious for him/her to live with the other one is no longer the requirement. Thereafter, this Court proceeded to deal with what constitutes mental cruelty as contemplated in Section 13(1)(i-a) and observed that mental cruelty in the said provision can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. To put it differently, **mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party.** It was further observed, while arriving at such conclusion, that **regard must be had to the social status, educational**

level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances. What is cruelty in one case may not amount to cruelty in another case and it has to be determined in each case keeping in view the facts and circumstances of that case. That apart, the accusations and allegations have to be scrutinised in the context in which they are made. Be it noted, in the said case, this Court quoted extensively from the allegations made in the written statement and the evidence brought on record and came to hold that the said allegations and counter-allegations were not in the realm of ordinary plea of defence and did amount to mental cruelty.

28. In **Parveen Mehta v. Inderjit Mehta [(2002) 5 SCC 706 : AIR 2002 SC 2582]** , it has been held that mental cruelty is a state of mind and feeling with one of the spouses due to behaviour or behavioural pattern by the other. Mental cruelty cannot be established by direct evidence and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. “A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living.” (Parveen Mehta case [(2002) 5 SCC 706 : AIR 2002 SC 2582] , SCC p. 716, para 21) The facts and circumstances are to be assessed emerging from the evidence on record and thereafter, a fair inference has to be drawn whether the petitioner in the divorce petition has been subjected to mental cruelty due to the conduct of the other.

29. In **Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate [(2003) 6 SCC 334 : AIR 2003 SC 2462]** , it has been opined that a conscious and deliberate statement levelled with pungency and that too placed on record, through the written statement, cannot be so lightly ignored or brushed aside.

30. In **A. Jayachandra v. Aneel Kaur [(2005) 2 SCC 22]** , it has been ruled that the question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status and environment in which they live. If from the conduct of the spouse, it is established and/or an inference can legitimately be drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse about his or her mental welfare, then the same would amount to cruelty. While dealing with the concept of mental cruelty, enquiry must begin as to the nature of cruel treatment and the impact of such treatment on the mind of the spouse. It has to be seen whether the conduct is such that no reasonable person would tolerate it.

31. In **Vinita Saxena v. Pankaj Pandit [(2006) 3 SCC 778]** , it has been ruled that as to what constitutes mental cruelty for the purposes of Section 13(1)(i-a) will not depend upon the numerical count of such incident or only on the continuous course of such conduct but one has to really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude necessary for maintaining a conducive matrimonial home.

32. In **Samar Ghosh v. Jaya Ghosh [(2007) 4 SCC 511]** , this Court, after surveying the previous decisions and referring to the concept of cruelty, which includes mental cruelty, in English, American, Canadian

and Australian cases, has observed that: (SCC pp. 545-46, paras 99-100)

“99. ... The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances....”

33. In Suman Kapur v. Sudhir Kapur [(2009) 1 SCC 422 : (2009) 1 SCC (Civ) 204 : AIR 2009 SC 589] , after referring to various decisions in the field, this Court took note of the fact that the wife had neglected to carry out the matrimonial obligations and further, during the pendency of the mediation proceeding, had sent a notice to the husband through her advocate alleging that he had another wife in USA whose identity was concealed. The said allegation was based on the fact that in his income tax return, the husband mentioned the “Social Security Number” of his wife which did not belong to the wife, but to an American lady. The husband offered an explanation that it was merely a typographical error and nothing else. The High Court had observed that taking undue advantage of the error in the “Social Security Number”, the wife had gone to the extent of making serious allegation that the husband had married an American woman whose “Social Security Number” was wrongly typed in the income tax return of the husband. This fact also weighed with this Court and was treated that the entire conduct of the wife did tantamount to mental cruelty.”

(Emphasis supplied by us)

Instances of cruelty

26. The word cruelty has not been defined under the Act 1955. In the case of **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511 (para 101)** Hon'ble Supreme Court has given certain illustrations. Some instances of human behaviour which may be relevant in dealing with the case of “mental cruelty”, and held as under :

“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.”

27. The aforementioned illustrations given in the case of **Samar Ghosh (supra)** have been reiterated by Hon’ble Supreme Court in the case of **K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226 (para 10)** and after referring to various judgments observed/held as under (paras 12 to 16) :

12. It is pertinent to note that in Samar Ghosh case [(2007) 4 SCC 511] the husband and wife had lived separately for more than sixteen-and-a-half years. This fact was taken into consideration along with other facts as leading to the conclusion that matrimonial bond had been ruptured beyond repair because of the mental cruelty caused by the wife. Similar view was taken in Naveen Kohli [(2006) 4 SCC 558].

13. In V. Bhagat v. D. Bhagat [(1994) 1 SCC 337] in the divorce petition filed by the husband the wife filed written statement stating that the husband was suffering from mental hallucination, that his was a morbid mind for which he needs expert psychiatric treatment and that he was suffering from “paranoid disorder”. In cross-examination her counsel put several questions to the husband suggesting that several members of his family including his grandfather were lunatics. This Court held that these assertions cannot but constitute mental cruelty of such a nature that the husband cannot be asked to live with the wife thereafter. Such pleadings and questions, it was held, are bound to cause immense mental pain and anguish to the husband.

14. In Vijaykumar Bhate [(2003) 6 SCC 334] disgusting accusations of unchastity and indecent familiarity with a neighbour were made in the written statement. This Court held that the allegations are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous to live with her husband.

15. In Naveen Kohli [(2006) 4 SCC 558] the respondent wife got an advertisement issued in a national newspaper that her husband was her employee. She got another news item issued cautioning his business associates to avoid dealing with him. This was treated as causing mental cruelty to the husband. In Naveen Kohli [(2006) 4 SCC 558] the wife had filed several complaints and cases against the husband. This Court viewed her conduct as a conduct causing mental cruelty and observed that: (SCC p. 582, para 82)

“82. ... The findings of the High Court that these proceedings could not be taken to be such which may warrant annulment of marriage, is wholly unsustainable.”

*16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh [(2007) 4 SCC 511] , 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.

(Emphasis supplied by us)

28. In the case of **Ravi Kumar v. Julmidevi, (2010) 4 SCC 476 (para 19)** Hon'ble Supreme Court while observing that "cruelty" in matrimonial behaviour defies any definition and its categories can never be closed and whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any pre-determined rigid formula, held as under :

"19. It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty".

29. In the case of **A. Jayachandra v. Aneel Kaur, (2005) 2 SCC 22, (para 13 & 14)** Hon'ble Supreme Court held as under :

"13. The court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

14. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles,

trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hypersensitive approach would be counterproductive to the institution of marriage. The courts do not have to deal with ideal husbands and ideal wives. It has to deal with a particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court. [See N.G. Dastane (Dr.) v. S. Dastane [(1975) 2 SCC 326 : AIR 1975 SC 1534]]”

30. In the case of **Mangayakarasi Vs. M Yuvaraj (2020) 3 SCC 786 (para 14)**, Hon’ble Supreme Court observed that **unsubstantiated allegation of dowry demand or such other allegation made by the wife against the husband and his family members which exposed them to criminal litigation and ultimately 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.**

Irretrievable Breakdown of the Marriage

31. In the case of *Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558 (paras 66 and 91)*, Hon’ble Supreme Court observed irretrievable breakdown of marriage as a ground for divorce and held as under :

“Irretrievable breakdown of marriage

66. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. Because of the change of circumstances and for covering a large number of cases where the marriages are virtually dead and unless this concept is pressed into service, the divorce cannot be granted. Ultimately, it is for the legislature whether to include irretrievable breakdown of marriage as a ground of divorce or not but in our considered opinion the legislature must consider irretrievable breakdown of marriage as a ground for grant of divorce under the Hindu Marriage Act, 1955.

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

(Emphasis supplied by us)

32. Three judges Bench of Hon'ble Supreme Court in the case ***Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511 (paras 90 to 95)*** referred and relied upon 71st report of law commission of India which briefly dealt with concept of Irretrievable breakdown of marriage and held as under:

“90. We have examined and referred to the cases from the various countries. We find strong basic similarity in adjudication of cases relating to mental cruelty in matrimonial matters. Now, we deem it appropriate to deal with the 71st Report of the Law Commission of India on “Irretrievable Breakdown of Marriage”.

91. The 71st Report of the Law Commission of India briefly dealt with the concept of irretrievable breakdown of marriage. This report was submitted to the Government on 7-4-1978. In this report, it is mentioned that during last 20 years or so, and now it would be around 50 years, a very important question has engaged the attention of lawyers, social scientists and men of affairs, should the grant of divorce be based on the fault of the party, or should it be based on the breakdown of the marriage? The former is known as the matrimonial offence theory or fault theory. The latter has come to be known as the breakdown theory. It would be relevant to recapitulate recommendation of the said Report.

*92. In the Report, it is mentioned that the germ of the breakdown theory, so far as Commonwealth countries are concerned, may be found in the legislative and judicial developments during a much earlier period. The (New Zealand) Divorce and Matrimonial Causes Amendment Act, 1920, included for the first time the provision that a separation agreement for three years or more was a ground for making a petition to the court for divorce and the court was given a discretion (without guidelines) whether to grant the divorce or not. The discretion conferred by this statute was exercised in a case *Lodder v. Lodder* [1921 NZLR 786] . Salmond, J., in a passage which has now become classic, enunciated the breakdown principle in these words:*

“The legislature must, I think, be taken to have intended that separation for three years is to be accepted by this Court, as prima facie a good ground for divorce. When the matrimonial relation has for that period ceased to exist de facto, it should, unless there are special reasons to the contrary, cease to exist de jure also. In general, it is not in the interests of the parties or in the interest of the public that a man and woman should remain bound together as husband and wife in law when for a lengthy period they have ceased to be such in fact. In the case of such a separation the essential purposes of marriage have been

frustrated, and its further continuance is in general not merely useless but mischievous.”

93. In the said Report, it is mentioned that restricting the ground of divorce to a particular offence or matrimonial disability, causes injustice in those cases where the situation is such that although none of the parties is at fault, or the fault is of such a nature that the parties to the marriage do not want to divulge it, yet such a situation has arisen in which the marriage cannot survive. The marriage has all the external appearances of marriage, but none in reality. As is often put pithily, the marriage is merely a shell out of which the substance is gone. In such circumstances, it is stated, there is hardly any utility in maintaining the marriage as a facade, when the emotional and other bonds which are of the essence of marriage have disappeared.

94. It is also mentioned in the Report that in case the marriage has ceased to exist in substance and in reality, there is no reason for denying divorce, then the parties alone can decide whether their mutual relationship provides the fulfilment which they seek. Divorce should be seen as a solution and an escape route out of a difficult situation. Such divorce is unconcerned with the wrongs of the past, but is concerned with bringing the parties and the children to terms with the new situation and developments by working out the most satisfactory basis upon which they may regulate their relationship in the changed circumstances.

95. 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.”

(Emphasis supplied by us)

33. In recent judgement in the case of **Munish Kakkar v. Nidhi Kakkar, (2020) 14 SCC 657**, relying upon the judgement in the case of **S. Srinivas Kumar Vs. R. Shametha (2019) 9 SCC 409** Hon'ble Supreme Court granted the decree of divorce on the ground of **irretrievable breakdown of marriage** in exercise of its extra ordinary power under **Article 142 of the Constitution of India** and specifically clarified that it is only this Court i.e. the Supreme Court which can do so in exercise of powers under **Article 142 of the Constitution of India**. Para 19 of the judgement is reproduced below :

“19. We may note that in a recent judgment of this Court, in R. Srinivas Kumar v. R. Shametha [R. Srinivas Kumar v. R. Shametha, (2019) 9 SCC 409 : (2019) 4 SCC (Civ) 522] , 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.”

(Emphasis supplied by us)

34. In the case of **Neha Tyagi Vs. Deepak Tyagi (2022) 3 SCC 86**, Hon'ble Supreme Court, exercising the powers under Article 142 of the Constitution of India; did not interfere with the dissolution of marriage on account of irretrievable breakdown of marriage.

35. **Thus, the principles of law for divorce under Section 13 of the Act, 1955, on the ground of cruelty, desertion or irretrievable breakdown of marriage, may be briefly summarised as under :**

(i) The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy married life. Too technical and hypersensitive approach in matrimonial matters would be counterproductive to the institution of marriage. Therefore, approach should be to make effort to reconcile differences as far as possible.

(ii) The word “cruelty” has not been defined in the Act, 1955. It has been used in Section 13(i)/(i-a) of the Act 1955 in the context of human conduct or behaviour in relation to or in respect to matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical. It may be intentional or unintentional. If it is physical, it is question of fact and degree. If it is mental, the inquiry must begin as to the nature of cruel treatment and then as to the impact of such treatment on the mind of the spouse as to whether it caused reasonable apprehension that it would be harmful or injurious to live with

the other. It is a matter of inference to be drawn by considering the nature of the conduct and its effect on the complaining spouse.

(iii) *The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system. Concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa.*

(vii) *Instances of cruelty given by Hon'ble Supreme Court in the case of **Samar Ghosh (supra)** and **K. Srinivas Rao (supra)** are not exhaustive but illustrative which have been reproduced in para 26 above.*

(iv) **Mental cruelty** is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life.

(v) *What is cruelty in one case may not amount to cruelty in another case. Unlike the case of physical cruelty, mental cruelty is difficult to be established by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.*

(vi) **First**, the enquiry must begin as to the nature of the cruel treatment. **Second**, the impact of such treatment on the mind of the spouse, Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. There may, however, be cases where the conduct complained of itself is bad enough and *per se* unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

(viii) *In the case of **K. Srinivas Rao (supra)** another instance of mental cruelty was added stating that 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.

*(ix) In **Mangayakarasi (supra)** Hon'ble Supreme Court further explained the scope of cruelty stating that unsubstantiated allegation of dowry demand or such other allegation made by the wife against the husband and his family members which exposed them to criminal litigation and ultimately 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.*

*(xi) "**Desertion**", for the purpose of seeking divorce under the Act, 1955, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations i.e. not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. If a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion. Two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The offence of desertion commences when the fact of separation and the animus deserendi coexist. But it is not necessary that they should commence at the same time.*

*(xii) **Irretrievable breakdown of marriage** is not a ground for divorce under the Hindu Marriage Act, 1955. Because of the change of circumstances and for covering a large number of cases where the marriages are virtually dead and unless this concept is pressed into service, the divorce cannot be granted. 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. The power to dissolve marriage on the ground of irretrievable breakdown is exercised in rare cases, and not in routine, in the absence of legislation in this behalf. In a recent judgment in Munish Kakkar (supra), it has been held that **it is only the Supreme Court which can dissolve marriage on the ground of irretrievable breakdown, in exercise of its power under Article 142 of the Constitution of India**, where it is found that a marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably.*

*(xiii) Hon'ble Supreme Court in the case of Naveen Kohli (supra) has recommended to the Union of India to seriously consider bringing an amendment in the Hindu Marriage Act, 1955 to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce and a copy of the said judgement was sent to the Secretary, Ministry of law and justice department of legal affairs Government of India for taking appropriate steps. In the case of Samar Ghosh (supra) Hon'ble Supreme Court referred to 71st report of Law Commission of India submitted to Government of India on 7-4-1978 in which it was mentioned that in case the marriage has ceased to exist in substance and in reality there is no reason for denying divorce. Nothing has been brought on record to indicate the steps, if any, taken by the Union of India either with respect to 71st report of Law commission of India or pursuant to the recommendation of Hon'ble Supreme Court in para 91 of the judgement in the case of Naveen Kohli (supra). **Therefore, we remind the Union of India the recommendation made by Hon'ble Supreme Court in the case of Naveen Kohli (supra) and the 71st report of the Law Commission of India dated 7-4-1978 and request to consider it.***

36. We find from the facts noted in paras 2 to 9, the discussion in paras 12 to 17 and principle summarised in para 35 above that the plaintiff – respondent has proved mental cruelty by the defendant – appellant, before the Court below. Instances of making false complaints by the defendant appellant against the plaintiff – respondent to higher authorities, making wild allegations against the parents of the plaintiff – respondent, unproved allegation of indulgence of the plaintiff in adultery and damaging their reputation in the society, etc. leaves no manner of doubt that the court below has not committed any illegality in the impugned judgment to hold commission of mental cruelty by the defendant – appellant to the plaintiff – respondent. The impugned judgement of the court below is based on

consideration of evidences on record. Thus, the impugned judgement does not suffer from any illegality.

37. For all the reasons aforestated, we do not find any merit in this appeal. The impugned judgment of the court below does not suffer from any illegality. Consequently, the appeal is **dismissed**. Pending applications, if any, stand disposed of.

38. Let a copy of this judgement be sent by the Registrar General of this Court to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India to remind the Union of India in the light of the judgements referred in paragraphs 31, 32 and 35(xiii) above.

Order Date :- 03.11.2022/vkg