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NEHA TYAGI

v.

LIEUTENANT COLONEL DEEPAK TYAGI

(Civil Appeal No. 6374 of 2021)

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DECEMBER 01, 2021

**[M. R. SHAH AND A. S. BOPANNA, JJ.]**

- Matrimonial disputes: Divorce and maintenance – Appellant-wife filed complaints against respondent-husband before his employer Army Authorities including allegations of extra-marital affairs – Respondent was exonerated after enquiry by Army Authorities – Thereafter, he filed divorce petition on the ground of cruelty and desertion by appellant wife – Meanwhile, Army Authorities started deducting 27.5% of the salary per month from the pay and allowances of the respondent in terms of s. 90(1) of the Army Act, 1950 – Family Court passed decree of divorce – High Court confirmed decree of divorce – Hence appeal by wife – Respondent did not appear – Despite the order of status quo, respondent has remarried – Prayer of appellant that the findings against her on ‘cruelty’ may be expunged on account of irretrievable breakdown of marriage since the parties were residing separately since 2011 and respondent-husband has remarried – Appellant further prayed for direction to respondent to pay maintenance to wife and minor son – It was submitted that since December 2019, the appellant-wife and her son were not paid any maintenance which they were receiving from Army Authorities – Held: There were concurrent findings recorded by the Family Court as well as the High Court on “cruelty” and “desertion” by the appellant-wife, which as such were on appreciation of evidence on record – In view of the fact that the couple are not staying together since May, 2011, it can be said to be a case of irretrievable breakdown of marriage between them – Respondent-husband has already remarried – Therefore, in the facts and circumstances of the case and in exercise of powers under Art.142 of the Constitution of India, the decree passed by the Family Court, confirmed by the High Court, dissolving the marriage between the parties is not interfered with on account of irretrievable breakdown of marriage – However,*

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*liability and responsibility of the father to maintain the child would continue till the child/son attains the age of majority – The son has a right to be maintained as per the status of his father – It is reported that the mother is not earning anything and is residing at her parental house – Therefore, a reasonable/sufficient amount is required for maintenance of her son including his education etc. which shall have to be paid by respondent-husband – Respondent is directed to pay Rs. 50,000/- per month w.e.f December 2019 towards maintenance of minor son.*

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#### **Disposing of the appeal, the Court**

**HELD :** 1. There are concurrent findings recorded by the Family Court as well as the High Court on “cruelty” and “desertion” by the appellant-wife, which as such are on appreciation of evidence on record. The appellant-wife made number of complaints against the respondent-husband to his employer-Army Authorities making serious allegations of extra-marital affairs. On the basis of the complaints made by the appellant-wife, an enquiry was initiated by the Army Authorities and the Army Authorities exonerated the respondent-husband of the allegation of extra-marital affairs. 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 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. [Paras 4, 5][626-F-H; 627-A-C]

2. At the same time, the respondent-husband cannot be absolved from his liability and responsibility to maintain his son 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.

- A **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 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.**
- B **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**
- C **15.11.2012 has also been stopped by the respondent-husband since December, 2019. The decree of divorce/dissolution of the marriage between the appellant-wife and the respondent-husband is confirmed. 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 as per the status of the respondent. [Paras 5, 6][627-C-G]**
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6374 of 2021.

- E **From the Judgment and Order dated 18.09.2019 of the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Civil Miscellaneous Appeal No.2845 of 2018.**

Ms. Neela Gokhale, Ms. Anannya Ghosh, Ilam Paridi, Ms. Shradha Agrawal, Kushal Choudhary, Brian Henry Moses, Advs. for the Appellant.

- F **The Judgment of the Court was delivered by**
- M. R. SHAH, J.**
- G **1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature for Rajasthan at Jaipur passed in D.B. Civil Miscellaneous Appeal No. 2845 of 2018, by which the Division Bench of the High Court has dismissed the said appeal preferred by the appellant herein and has confirmed the judgment and decree passed by the learned Family Court dissolving the marriage between the appellant and the respondent on the ground of cruelty and desertion by the appellant herein, the original appellant-wife has preferred the present appeal.**
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2. The facts leading to the present appeal in nutshell are as under: A

That the marriage between the appellant and the respondent was solemnised on 16.11.2005. That the respondent herein was serving as an Army Officer as Major. That out of the said wedlock, the appellant and the respondent had one son Pranav Tyagi who is aged 13 years presently being born on 23.2.2008. That the dispute arose between the husband and the wife. That the appellant-wife filed number of complaints against the respondent-husband before his employer – Army Authorities including the extra-marital affairs of the respondent-husband. An enquiry was initiated by the Army Authorities against the respondent-husband for extra-marital affairs on the basis of the complaints dated 29.09.2014 and 5.2.2015 made by the appellant-wife. In the enquiry, the respondent-husband was exonerated. B C

2.1 That the respondent-husband filed Case No. 1496/2016 against the appellant-wife before the learned Family Court, Jaipur on 25.11.2014 seeking a decree of divorce and dissolution of marriage on the ground of cruelty and desertion by the appellant-wife. That, in the meantime and since 2012, the Army Authorities were deducting 27.5% of the salary per month from the pay and allowances of the respondent-husband as per Section 90(1) of the Army Act, 1950. That by judgment and decree dated 19.05.2018, the learned Family Court passed a decree for dissolution of marriage between the appellant and the respondent on the ground of cruelty and desertion by the appellant-wife. D E

2.2 Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned Family Court dissolving the marriage between the appellant and the respondent, the appellant herein preferred an appeal before the High Court being D.B. Civil Miscellaneous Appeal No. 2845/2018. By the impugned judgment and order, the High Court has dismissed the said appeal and has confirmed the judgment and decree passed by the learned family Court. Hence, the present appeal is at the instance of the appellant-wife. F

3. We have heard Ms. Neela Gokhale, learned Advocate appearing on behalf of the appellant. It is very unfortunate that though served, the respondent-husband has not appeared in the present appeal and it is reported that despite the order of *status quo* passed by this Court vide interim order dated 22.11.2019, the respondent-husband has re-married. G

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- A 3.1 Number of submissions have been made by the learned Advocate appearing on behalf of the appellant-wife on the findings recorded by the learned Family Court as well as the High Court on cruelty and desertion by the appellant-wife. It is also the case on behalf of the appellant-wife that subsequently and despite the order of *status quo* passed by this Court on 22.11.2019, the respondent-husband has re-married and that is why he is not appearing in the present proceedings.
- B 3.2 It is urged on behalf of the appellant-wife that in the alternative, the findings against the appellant-wife on “cruelty” may be expunged and marriage may be continued to remain dissolved on account of irretrievable breakdown of marriage since both wife and husband are residing separately since May, 2011 and the respondent-husband has already re-married. However, it is submitted to direct the respondent-husband to pay maintenance to the appellant-wife and minor son – Pranav as they have no means of maintaining themselves and have no independent income to sustain themselves.
- C 3.3 It is submitted that since December, 2019, the appellant-wife and her son are not being paid any maintenance which they were receiving from the Army Authorities as per order passed by the Army Authorities dated 15.11.2012. It is submitted that the appellant and her son were getting Rs. 40,000/- towards maintenance which they received from 2012 till November, 2019. It is therefore prayed to direct the respondent-husband to pay the maintenance to the appellant and her minor son.
- D 4. Having heard learned counsel for the appellant-wife and having gone through the findings recorded by the learned Family Court as well as by the High Court, on “cruelty” and “desertion” by the appellant-wife, we are of the view that there are concurrent findings recorded by the learned Family Court as well as the High Court on “cruelty” and “desertion” by the appellant-wife, which as such are on appreciation of evidence on record. The appellant-wife made number of complaints against the respondent-husband to his employer – Army Authorities making serious allegations of extra-marital affairs. On the basis of the complaints made by the appellant-wife, an enquiry was initiated by the Army Authorities and the Army Authorities exonerated the respondent-husband of the allegation of extra-marital affairs.
- E 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

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

Devika Gujral

Appeal disposed of.