

A SH. RAKESH RAMAN

V.

SMT. KAVITA

(Civil Appeal No. 2012 of 2013)

B APRIL 26, 2023

[SUDHANSU DHULIA AND J. B. PARDIWALA, JJ.]

*Hindu Marriage Act, 1955: s. 13(1)(ia) and (ib) – Divorce –
Grounds of cruelty and desertion – Marital discord between the parties – Petition for dissolution of marriage by the husband on the ground that the wife treated him with cruelty and deserted him, that there was no co-habitation between the parties, and that the wife had filed multiple false and frivolous criminal cases against him – Trial court passed a decree of divorce holding that the wife had deserted the husband and had meted out cruel behaviour against him – However, the High Court set aside the order – On appeal, held: There are bitter allegations of cruelty and desertion from both the sides, the marital relationship has broken down irretrievably, there is a long separation of 25 years, absence of cohabitation, no child out of the wedlock, with multiple court cases between the parties – Repeated efforts for reconciliation by the Courts has failed – Marital relationship which has only become more bitter and acrimonious over the years, does nothing but inflicts cruelty on both the sides – To keep the façade of this broken marriage alive would be doing injustice to both the parties – Marriage being irretrievably broken down spells cruelty, thus, a ground for dissolution of marriage u/s.13(1)(ia) – Judgement by the High Court set aside and decree of divorce is granted.*

Allowing the appeal, the Court

HELD: 1.1 The husband and wife, have been living

G separately since the last 25 years. There is no child out of the wedlock. There are bitter allegations of cruelty and desertion from both the sides and multiple litigations between the two in the last more than 25 years. This embittered relationship between the appellant and the respondent which has not witnessed any moment of peace for the last 25 years is a marital relationship only on paper. The fact is that this relationship has broken down

irretrievably long back. Other aspect to be considered is the fact that for the last 25 years the appellant and respondent, are living separately, and have not cohabitated. There is absolutely no scope of reconciliation between the parties. There is in fact no bond between the two and as the Law Commission in its 71st report said about such a marriage, which is a marriage which has *de facto* broken down, and only needs a de jure recognition by the law. The same was reiterated by the Law Commission in its 217th report. [Paras 10, 12][558-A-B, E-F]

1.2 The view taken by the High Court that mere filing of criminal cases by the wife does not constitute cruelty as what has also to be seen are the circumstances under which cases were filed, is a finding is not to be disregarded totally, in fact as a pure proposition of law it may be correct, but then the entire facts of the case are to be closely examined. When the facts as they exist are taken into consideration, the continuation of this marriage would mean continuation of cruelty, which each one inflicts on the other. Irretrievable breakdown of a marriage may not be a ground for dissolution of marriage, under the Hindu Marriage Act, but cruelty is. A marriage can be dissolved by a decree of divorce, *inter alia*, on the ground when the other party "has, after the solemnization of the marriage treated the petitioner with cruelty". A marital relationship which has only become more bitter and acrimonious over the years, does nothing but inflicts cruelty on both the sides. To keep the façade of this broken marriage alive would be doing injustice to both the parties. A marriage which has broken down irretrievably, spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is therefore a ground for dissolution of marriage under Section 13(1)(ia). [Para 16][560-D-G]

1.3 The matrimonial bond is completely broken and is beyond repair. This relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1)(ia) of the 1955 Act. Therefore, in a given case, where the marital relationship has broken down

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- A irretrievably, where there is a long separation and absence of cohabitation (as in the instant case for the last 25 years), with multiple Court cases between the parties; then continuation of such a ‘marriage’ would only mean giving sanction to cruelty which each is inflicting on the other. A dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.
- B [Para 18][562-C-E]
- 1.4 Under these circumstances, the order of the trial court is upheld, though for different grounds given and the order of the High Court is set aside and a decree of divorce is granted to the appellant/husband. Their marriage shall stand dissolved. However,
- C considering the fact that the appellant/husband is an employee in Life Insurance Corporation present salary is more than Rs.1,00,000/- (One Lakh Rupees) per month, it is deemed fit and proper that he gives an amount of Rs.30,00,000/- (Thirty Lakh Rupees) to the respondent/wife as permanent alimony. [Paras
- D 19, 20][562-F-H]

Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511- relied on.

- E *Naveen Kohli v. Neelu Kohli (2006) 4 SCC 558; K. Srinivas Rao v. D.A. Deepa (2013) 5 SCC 226; R. Srinivas Kumar v. R. Shametha (2019) 9 SCC 409; Munish Kakkar v. Nidhi Kakkar (2020) 14 SCC 657; Neha Tyagi v. Lieutenant Colonel Deepak Tyagi (2022) 3 SCC 86 - referred to.*

Case Law Reference

F	(2006) 4 SCC 558	referred to	Para 11
	(2013) 5 SCC 226	referred to	Para 11
	(2019) 9 SCC 409	referred to	Para 13
G	(2020) 14 SCC 657	referred to	Para 13
	(2022) 3 SCC 86	referred to	Para 13
	(2007) 4 SCC 511	relied on	Para 16

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2012 A
of 2013.

From the Judgment and Order dated 08.04.2011 of the High Court of Delhi at New Delhi in MATAP No. 52 of 2009.

S K Rungta, Sr. Adv., Arvind Kumar Gupta, Naresh Daksh, Abhiesumat Gupta, Ranjan Bhoria, C Prakash, Advs. for the Appellant. B

S. K. Bhalla, S. R. Setia, Ms. Anjali Tewari, Advs. for the Respondent.

The Judgment of the Court was delivered by

SUDHANSU DHULIA, J. C

1. This appeal arises out of a divorce proceeding initiated by the appellant under Section 13 of the Hindu Marriage Act, 1955, (hereinafter referred to as the “Act”), in the Court of Additional District Judge (North), Tis Hazari Courts, Delhi. His suit was decreed and the marriage was dissolved by the Order of the Additional District Judge (North) dated 02.05.2009. The respondent/wife, then, filed an appeal before the Delhi High Court which has set aside the order of the Trial Court and dismissed the petition of the husband. Aggrieved by the said Order, the appellant/husband has filed a Special Leave Petition before this Court, in which leave was granted on 26.02.2013. E

2. The appellant and the respondent were married under Hindu rituals and customs in Delhi, on 16.04.1994. Regrettably, it did not take long for the marital discord to set in their marital life. The appellant’s case is that his wife was not happy in their small dwelling, and used offensive, even abusive language against him. It has also been alleged that in September, 1994, she got her pregnancy terminated, without any prior intimation to her husband (this allegation was denied by the wife and could never be proved against her). It was in September 1994, again when she left her matrimonial home, but due to the efforts made by the well-wishers and relatives, they started living together from March 1995 onwards. This again did not last long, as on 16.02.1998 she left her matrimonial house, and lodged a complaint with the local police on 16/17.02.1998. In March 1998, she agreed to join her husband, on the condition that the appellant would take another accommodation and consequently in April, 1998 another house was taken on rent, and the two started living together in the new house. But then, on 24.08.1998, F G H

- A the appellant alleges that he was beaten by his wife and her brother. On 29.11.1998, he was kept out of his own house for the entire night. On 17.12.1998 she left her matrimonial house and lodged an FIR against the appellant and his brother, under Section 498A/406 of the Indian Penal Code, at Anand Parbat Police Station, New Delhi. The appellant and his brother were arrested the same day, while they were attending a marriage ceremony, and this was done in the presence of 15 to 20 of his friends. Later the two were released on bail, though the wife persisted with the matter and even moved an application for cancellation of their bail. The wife then filed a complaint under Sections 323 and 324 read with Section 34 IPC against the appellant/husband and his family members, however,
- B they were subsequently discharged from the case. The respondent also initiated proceedings against appellant under Section 107 read with Section 150 of the Code of Criminal Procedure. She then filed a petition, under Section 18 of Hindu Adoption and Maintenance Act, 1956, for her maintenance.
- C 3. Left by his wife and burdened with multiple litigations slapped on him, the appellant took the decision to end the matrimonial relations. He thus moved his petition for dissolution of marriage under Section 13(1) (ia) & (ib) of Hindu Marriage Act, 1955, before the Additional District Judge, North Delhi on 20.09.2002, *inter alia*, on the facts, as narrated in the preceding paragraph.
- D 4. The respondent denies that she ever ‘deserted’ her husband or inflicted any cruelty on him. Her counsel would submit that she only took recourse to legal avenues available to her under the law. She alleges that her ornaments which were her ‘stridhan’, were taken away and were never returned, and how she was forced to file a case against her
- E husband under Sections 498A & 406 of the Indian Penal Code (IPC). It was also her case that she had made every possible effort for reconciliation, but due to the non-cooperation of the appellant, all efforts towards mediation and settlement resulted in failure. She has denied that she had terminated her pregnancy.
- F 5. The Family Court on 15.10.2003 framed issues on cruelty and desertion. The Trial Court gave the findings on cruelty as well as desertion in favour of the husband and a decree for the dissolution of marriage was passed.
- G 6. The High Court in appeal, came to the conclusion that the mere fact that the respondent did not allow her husband to enter his house on

29.11.1998, would not prove that it was her intention to bring cohabitation permanently to an end and therefore the ground of dissolution of marriage on desertion were not made out. As far as filing of various complaints under Sections 323, 324 and 498A IPC are concerned, the High Court was of the view that mere filing of such complaints, or their result in acquittal would not amount to cruelty, as the wife was only exercising her options available to her under the law. Moreover, what has to be seen are also the circumstances under which these complaints were filed.

7. We have heard Mr. S.K. Rungta, learned Senior Advocate for the appellant/husband and Mr. S.K. Bhalla learned Advocate for the respondent/wife at length and perused the material on record.

8. This case has travelled from the Family Court to the High Court and now finally to this Court. The decision of Delhi High Court is of 08.04.2011, which goes back to twelve years. We have to take into consideration all the facts which are before us as of now. To our mind the facts which we must take into account are: (i) that the “couple” is now living separately for the last almost 25 years, and all these years there has been no cohabitation between them. (ii) That there is no child out of the wedlock, and the couple lived together as husband and wife for barely 4 years. (iii) That repeated efforts by the Courts for reconciliation or settlement have resulted in failure.

9. At the very initial stage the Trial Court had sent the parties for mediation, which did not succeed. This Court had also sent the two for mediation, which failed. The case was again sent for settlement in the Lok Adalat but with no results. On 11.04.2015, this Court again requested the parties to explore possibilities of living together, but nothing materialised. Then on 09.05.2015, this Court asked the parties to come to some mutual settlement, but in vain. In other words, every single effort of the Court and the mediators, towards a compromise or settlement has led to a blind alley. Even now, before giving a formal hearing to the parties we tried to gather the current situation from the parties. The appellant has unequivocally stated that there is no room for any compromise or settlement and he requests that a decision be made in this case on its merits, whereas the counsel for the respondent apprised this Court that the respondent would like to save her marriage and he prays for mediation once again. He would also submit that no ground for divorce has been made out and the well-considered decision of Delhi High Court should be upheld.

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- A 10. The husband and wife, who are before us have been living separately since the last 25 years. There is no child out of the wedlock. There are bitter allegations of cruelty and desertion from both the sides and multiple litigations between the two in the last more than 25 years. This embittered relationship between the appellant and the respondent which has not witnessed any moment of peace for the last 25 years is a marital relationship only on paper. The fact is that this relationship has broken down irretrievably long back.
- B 11. The High Court has taken a view that mere filing of criminal cases against the appellant-husband would not constitute cruelty. All the same, the number of criminal cases filed by the respondent-wife against the appellant-husband are far too many which have been discussed above. All these cases have either resulted in discharge or acquittal of the appellant-husband, if not before the pronouncement of the Judgment of the Delhi High Court but definitely after the pronouncement of the Judgment of the Delhi High Court. Moreover, a three Judge Bench of this Court in *Naveen Kohli v. Neelu Kohli*¹ held that repeatedly filing of criminal cases by one party against the other in a matrimonial matter would amount to cruelty and the same was reiterated by a Division Bench of this Court in *K. Srinivas Rao v. D.A. Deepa*².
- C 12. Other aspect which we must consider is the fact that for the last 25 years the appellant and respondent, are living separately, and have not cohabitated. There is absolutely no scope of reconciliation between the parties. There is in fact no bond between the two and as the Law Commission in its 71st report said about such a marriage, which is a marriage which has *de facto* broken down, and only needs a *de jure* recognition by the law. The same was reiterated by the Law Commission in its 217th report.
- D 13. Under similar circumstances, this Court in *R. Srinivas Kumar v. R. Shametha*³, *Munish Kakkar v. Nidhi Kakkar*⁴ and *Neha Tyagi v. Lieutenant Colonel Deepak Tyagi*⁵ has held that an irretrievable marriage is a marriage where husband and wife have been living

¹(2006) 4 SCC 558

²(2013) 5 SCC 226

³(2019) 9 SCC 409

⁴(2020) 14 SCC 657

H ⁵(2022) 3 SCC 86

separately for a considerable period and there is absolutely no chance of their living together again. In all the above cited three cases, this Court in exercise of its power under Article 142 of the Constitution of India has dissolved the marriage on the ground of irretrievable breakdown as a ground, which otherwise does not exist under the Hindu Marriage Act.

14. In *Naveen Kohli (supra)*, a strong recommendation has been made by this Court to the Union of India to consider adding irretrievable breakdown down of a marriage as a ground for divorce under the Hindu Marriage Act.

15. The multiple Court battles between them and the repeated failures in mediation and conciliation is at least testimony of this fact that no bond now survive between the couple, it is indeed a marriage which has broken down irretrievably.

16. Matrimonial cases before the Courts pose a different challenge, quite unlike any other, as we are dealing with human relationships with its bundle of emotions, with all its faults and frailties. It is not possible in every case to pin point to an act of “cruelty” or blameworthy conduct of the spouse. The nature of relationship, the general behaviour of the parties towards each other, or long separation between the two are relevant factors which a Court must take into consideration. In *Samar Ghosh v. Jaya Ghosh*⁶ a three judge Bench of this Court had dealt in detail as to what would constitute cruelty under Section 13(1)(ia) of the Act. An important guideline in the above decision is on the approach of a Court in determining cruelty. What has to be examined here is the entire matrimonial relationship, as cruelty may not be in a violent act or acts but in a given case has to be gathered from injurious reproaches, complaints, accusations, taunts, etc. The Court relied on the definition of cruelty in matrimonial relationships in Halsbury’s Laws of England (Vol 13, 4th Edn, Para 1269, Pg 602) which must be reproduced here:

“The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of

⁶(2007) 4 SCC 511

- A acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse. Malevolent intention is not essential to cruelty but it is an important element where it exists."
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- D The view taken by the Delhi High Court in the present case that mere filing of criminal cases by the wife does not constitute cruelty as what has also to be seen are the circumstances under which cases were filed, is a finding we do not wish to disregard totally, in fact as a pure proposition of law it may be correct, but then we must also closely examine the entire facts of the case which are now before us. When we take into consideration the facts as they exist today, we are convinced that continuation of this marriage would mean continuation of cruelty, which each now inflicts on the other. Irretrievable breakdown of a marriage may not be a ground for dissolution of marriage, under the Hindu Marriage Act, but cruelty is. A marriage can be dissolved by
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- F a decree of divorce, *inter alia*, on the ground when the other party "has, after the solemnization of the marriage treated the petitioner with cruelty"⁷. In our considered opinion, a marital relationship which has only become more bitter and acrimonious over the years, does nothing but inflicts cruelty on both the sides. To keep the façade of this broken marriage alive would be doing injustice to both the parties. A marriage which has broken down irretrievably, in our opinion spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is therefore a ground for dissolution of marriage under Section 13(1)(ia) of the Act.
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H ⁷Section 13 (1) (ia) of the Hindu Marriage Act, 1955

17. Cruelty has not been defined under the Act. All the same, the context where it has been used, which is as a ground for dissolution of a marriage would show that it has to be seen as a ‘human conduct’ and ‘behavior’ in a matrimonial relationship. While dealing in the case of *Samar Ghosh* (supra) this Court opined that cruelty can be physical as well as mental: -

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“46...If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to 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, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

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Cruelty can be even unintentional: -

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...The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.”

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This Court though did ultimately give certain illustrations of mental cruelty. Some of these are as follows:

(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.

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(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.

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

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- A (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.**
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(emphasis supplied)

- C 18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1) (ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a ‘marriage’ would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.
- F 19. Under these circumstances, we uphold the Order of the Trial Court, though for different grounds given by us in our order, and we set aside the Order of the High Court and grant a decree of divorce to the appellant/husband. Their marriage shall stand dissolved.
- G 20. However, considering the fact that the appellant/husband is an employee in Life Insurance Corporation, as we have been informed at the Bar and his present salary is more than Rs.1,00,000/- (One Lakh Rupees) per month, we deem it fit and proper that he gives an amount of Rs.30,00,000/- (Thirty Lakh Rupees) to the respondent/wife as permanent alimony. This amount of Rs.30,00,000/- (Thirty Lakh Rupees) shall be deposited in the name of the respondent, within a period of four weeks
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from today with the Registry of this Court. The decree of divorce shall A
be made effective only from the date of such a deposit. On the event of
such deposit, the Registry after verifying the credentials of the respondent/
wife shall disburse the amount to the respondent/wife without further
reference to this Court.

With the aforesaid directions, the appeal stands allowed. B

Nidhi Jain
(Assisted by : Adiraj Bali, LCRA)

Appeal allowed.