

Andhra High Court

Gopalakrishna Surapaneni vs Smt.Anuradha Surapaneni on 26 September, 2014

HONBLE SRI JUSTICE R. SUBHASH REDDY AND HONBLE SRI JUSTICE A. SHANKAR NARAYANA

F.C.A. Nos.16 OF 2007 and batch

26-09-2014

Gopalakrishna Surapaneni..Appellant

Smt.Anuradha Surapaneni...Respondent

Counsel for the appellant: Sri S. Ravindranath Counsel for the respondent:Smt. K. Lalitha <GIST:

>HEAD NOTE:

? CASES REFERRED:

1. (2005) 2 SCC 22
2. (2003) 6 SCC 334
3. (2002) 2 SCC 296
4. (1999) 3 SCC 620
5. AIR 2002 SC 2582
6. (1993) 4 SCC 232
7. 2000 (3) ALT 130 (D.B.)
8. 1995 (3) ALT 207 (D.B.)
9. AIR 1985 Delhi 221 (1)
10. (2007) 4 SCC 511
11. (2013) 5 SCC 226

12. (2012) 7 SCC 288

13. AIR 2011 SC 114

14. 2012 Law Suit (Guj) 195

15. 1982 GLH 977 HONBLE SRI JUSTICE R. SUBHASH REDDY AND HONBLE SRI JUSTICE A. SHANKAR NARAYANA F.C.A. Nos.16 AND 22 OF 2007 COMMON JUDGMENT: (Per Honble Sri Justice A. Shankar Narayana) Both these appeals arise out of a common order, dated 30-11-2006, in O.P. Nos.602 of 2003 and 369 of 2005, passed by the Additional Metropolitan Sessions Judge for the trial of Jubilee Hills Car Bomb Blast Case cum Additional Family Court cum XXIII Additional Chief Judge, Red Hills, Nampally, Hyderabad (for short the Family Court).

2. Former O.P. is filed by the husband seeking dissolution of marriage by grant of decree of divorce on the ground of cruelty under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955 (for short the Act), but he was unsuccessful. Latter O.P. is filed by the wife seeking decree for restitution of conjugal rights under Section 9 of the Act and she became successful. Aggrieved of the same, the husband preferred both these appeal.

3. We intend to refer to the relevant facts for the purpose of disposal of both these appeals.

a) The marriage between the appellant husband and the respondent wife was solemnized on 24-10-1999 in a local function hall at Hyderabad as per Hindu rites and customs. It was an arranged marriage. The proposal was initiated and mediated by one Mr. P.V. Kutumba Rao, a close relative of the father of appellant. The appellant gave consent agreeing to the proposal in the month of July, 1999 to marry the respondent.

b) During the period of settlement of marriage alliance, the respondents father revealed to the parents of the appellant that her earlier alliance was broken due to bad character of the bride-groom. Despite the same, the appellant developed a soft-corner towards the respondent and decided to proceed for marriage. Since he was posted at Botswana at the time of engagement ceremony that took place on 29-08-1999, the engagement ceremony was performed in his absence, thus, the usual formalities were observed and the marriage had taken place after his return from Botswana in the second week of October, 1999.

c) The appellant states that right from the beginning, the respondent exhibited crude behaviour, adamant attitude, arrogance and the cumulative effect of the same led to his mental torture and agony. Since the alleged acts, constituting cruelty, have been narrated as many as in (116) paragraphs, we intend to summarize them as points, which are as under:

i) The respondent asked the appellant to give his money and transfer his property to her which shocked him;

ii) For the Diwali festival that fallen on 07-11-1999, on an invitation from the appellants parents-in-law, they left to his parents- in-laws house, but the respondent did not even inform his parents, and on the other hand, she picked up an argument spoiling his festive mood accusing him that he was responsible for forcing wasteful expenditure on the respondents parents during marriage.

iii) When they visited Vijayawada on 11-11-1999 to attend the marriage of respondents brother, since his father intended to visit an Ashram near Vijayawada located about 60 KMs. away and seek blessings of a Guruji, his father when informed his father-in-law, a Jeep was arranged by his father-in-law, but the respondent reluctantly got into the Jeep as she was not willing to have the blessings of the Guruji, and when his parents got down at Benz Circle, she hurled abusive phrases against his parents accusing him that he did not deserve to be married and that he should have taken Sanyas.

iv) On 23-12-1999, when his parents went to Saibaba Tample at BHEL, Ramachandrapuram on Datta Jayanthi Celebrations at 7.00 P.M., he expressed his intention to wait till his parents return, to take dinner with them, but she got wild and slept in the bed-room.

v) On 25-12-1999, when his parents asked him to take them to his sisters house at Motinagar in Hyderabad, he requested the respondent to join them, but she refused and did not take dinner on that night and break-fast on 26-12-1999 and without informing him she got arranged a car through her parents and at 10.00 A.M., she left them without informing his parents even, locking the bed room and taking away the keys with her.

vi) In December, 1999, when they visited the house of one Mr. Subhash, a friend of the appellant, for dinner, he (Mr. Subhash) had shown some of his honeymoon photographs to them and, after they returned home, she has ridiculed him and abused for not taking her to honeymoon trip. He explained her that they can have a nice time as they would be going to United States of America (USA) soon, but she degraded his status by saying that Mr. Subhash is a better person when compared to him.

vii) In December, 2000, his mother-in-law invited her daughter (respondent) to attend a fare-well party of a friend of his father-in-law, who retired on that day, but he returned at 8.00 P.M. from his office, and since it takes one hours journey to reach the party venue and also he was not invited, he refused to take her, on which, she shouted at him and did not take dinner in protest.

viii) During January and February, 2000, before proceeding to USA, the appellant intended to visit Shirdi and his relatives places, which he has expressed during general discussions, but since the respondent did not express any interest, he purchased tickets for himself only, and the said fact when learnt by her, she questioned him, on which, he told her that it was too late and that he would buy tickets for her also, but she shouted at him stating that she would have come had he originally bought the tickets for her also and, thus, she did not like to come.

ix) In January, 2000, when the wife of respondents brother left her brother, she informed the appellant about bad character of her sister-in-law, but he ignored it. But, during April, 2000, one of his relatives told his parents that they (his parents) were not treating the respondent properly and not allowing the appellant to spend time with her, on which, they got upset and stopped speaking to the respondent. He also felt bad and reduced his interactions with the respondent.

x) When the appellant had to make trip to Kuwait, he did not inform the respondent about it and started packing for the trip in April, 2000, since none of them were talking to her, she became anxious and asked him that they were not talking to her, on which, when he revealed the reason, she got wild and shouted at him and commented at his parents. She has also abused him for not informing about his trip to Kuwait and reminded that in earlier discussions when he informed her that his Company would be sending him to Middle East Asia, she used to tell him that she did not like to travel to Middle East Asia and that is why, he was making the trip alone. Having heard the said shouts as it was a small neighbour-hood, even the neighbours came out of the houses to see what was happening in their house, thus, he was deeply hurt and embarrassed and left for Kuwait.

xi) For her birthday, when the appellant called her on 20-04-2000, to greet her, she started abusing him, because of non-intimation of Flight schedule and not calling her immediately after reaching the Kuwait, though, he thought that she would apologise for the incidents that took place, instead, she shouted at him and, therefore, according to him, she was very adamant and unpleasant in her behaviour and he decided not to talk to her and did not call her until he returned to India on 1st July, 2000 for a break of two weeks.

xii) When the appellant took the respondent to Ramoji Film City for a holiday trip, since there was separation for two and half months between them, and that could bring some positive change in her behaviour, still, she started shouting at him and abusing him, commenting at her parents that they were creating differences between them and responsible for all the problems, on which, he warned her not to speak a word against his parents saying that his parents were more sympathetic towards her.

xiii) On 10-07-2000, four days before his departure to Kuwait, he met with an accident and had some stitches on his leg and he was advised to take two weeks bed rest, during which time, the respondent was staying at her parents house and she came to see only once, and that instead of sympathizing with him, she told that God had punished him for not taking her along with him to Kuwait.

xiv) On 27-07-2000, when he called the respondent and gave his departure schedule, she did not turn up at the Air-port to see him off.

xv) On 24-08-2000, though, he gave his arrival schedule, the respondent did not come to receive him. The appellant also states that they called the mediator, Mr. Kutumba Rao, and his father-in-law and when they were informed about the incidents that took place at his house, his father-in-law got shocked and promised that he would censure his daughter and bring her to his (appellant) house. Next day, when he (father-in-law) brought the respondent, and when he

(appellant) asked him whether he has censured his daughter, to his surprise, he shouted back at him saying that he should not have married his daughter if he did not know how to take care of her, and if he did not like her, he could have left her and she could have lived her life independently, on which, they were shocked and he decided to go to USA alone without the respondent. Later, discussions went on among themselves and late in that night, his father-in-law told him that parents would be happy only if the children are happy and asked them to forget all the past issues and start a fresh life in USA. He also states that they left for USA on 09-09-2000 and for one year they lived happily and he took the respondent to the tourists places, such as Disney Land, Niagara Falls and lot of visits to Temples etc. xvi) He states that during February, 2001, his parents informed him that his sister was pregnant, but the respondent did not react positively when the good news was conveyed to her, and on the other hand, expressed that his parents and his sister should have informed her about the good news. Thus, she developed wanton animosity against his sister.

xvii) In between January and June, 2001, one of his friends, Mr. Srinivas, an extrovert, used to be very friendly and close with all the Non-Indian Families in Stamford and, during parties and get-togethers, he used to crack jokes and make fun of couples by making general comments, such as Mrs. X is angry now, and so Mr. X is not getting any food today. Similarly, he cracked jokes against the appellant and respondent. The respondent took advantage of the said comments and accused the appellant saying that he was discussing his personal problems with his friends and continued a negative attitude. A year later, when her mother had come to their house in USA, she raised the same issues several times and derided and debased him by telling her mother that he was a characterless person and that he had no shame in discussing personal issues with his friends.

xviii) Certain similar issues were also mentioned in paragraph Nos.27 and 28 of the petition.

xix) In the last week of November, 2001, he made a telephonic call to his parents and before ending the call, he asked his mother as to whether she would like to speak with the respondent, but her mother refused to speak with the respondent. When the same was noticed by the respondent, she increased her animosity towards his parents and started making sarcastic comments against them. She had also derided her in-laws for not inviting her parents to the 21st day ceremony of his sisters son. He tried to persuade her stating that it may take some time to reconcile the differences between the two families and re-build the relationship, but she ridiculed him shouting against her in-laws. When he asked his mother as to why she refused to speak with respondent, she (his mother) then reminded him as to how the respondent had shouted at her and abused her in full view of the neighbours and asked him how she could speak to the respondent when she did not respect them.

xx) In the first week of December, 2001, the respondent commented that it was the responsibility of the appellant and his parents to take care of her, but his parents have not sent anything and that she was ashamed of accepting jewellery from her parents. In the first week of January, 2002, they visited New York City to see some of his family friends, Mr. and Mrs. Venkateswara Rao, and from their house, they went to the house of Mr. and Mrs. M.S. Rao and their daughters family. Mr. and Mrs. M.S. Rao have just returned from India along with their daughter, son-in-law and grand-daughter. When they visited his parents in India, they recorded them on their camcorder and also recorded his sister and sisters son and it was played on the Television during their visit. He was

excited to see his parents, his sister and her newly born son, but the respondent did not see the recording and stayed away in another room; though, all of them called her to see the recording, she adamantly stayed away in another room and openly disregarded her parents in front of them.

xxi) The appellant took the respondent to a general medical practitioner, Dr. Shanti Devaraj and two gynaecologists, Dr. Julia Gray and Dr. Francis Ginsberg, as the respondent did not get her periods regularly between the months of April and October, 2001. They also visited Stamford Hospital in August, 2001 on the recommendation of Dr. Shanti Devaraj to get an ultrasound scan of respondents uterus. The report showed the presence of poly-ovarian cyst. The Gynaecologists told them that the cysts are a general phenomenon and melt away on their own, but only in some cases they are cancerous. After the respondent had her period in October, 2001, Dr. Julia Gray did tissue culture on 02-11-2001 and told them that it was not cancerous. Dr. Francis Ginsberg did an ultrasound scan on 07-11-2001 and told them that there was no trace of cyst after the period and told the respondent that her cycles would become normal again, but as more than eight weeks elapsed since her last period in October, 2001, she became suspicious to take an appointment with Dr. Julia Gray. Since Dr. Julia Gray was on vacation in December, 2001, they could get appointment only in the first week of January, 2002. Dr. Julia Gray did a pregnancy test on the respondent in the first week of January, 2002 and told them that the test came out with negative result. She prescribed a five-day course of medroxy- progeterone (provera) pills to induce periods in her. He was against the usage of pills and asked her to wait till it happens naturally, but she did not listen and took those pills from 13-01-2002 to 17-01-2002, but there was no effect till 27-01-2002, so they approached Dr. Julia Gray, who told them that she could not think of anything and asked them to contact Dr. Francis Ginsberg. When they called Dr. Francis Ginsberg on 28-01-2002, she asked the respondent to take a pregnancy test and call her back with the result of pregnancy test. The respondent had undergone pregnancy test on the morning of 29-01- 2002, and the test came out positive. The respondent started crying and thought that the pills might have affected the embryo and was worried about the condition of the embryo. She immediately called her mother and narrated everything, and his mother-in-law told the respondent that he might have bribed Dr. Julia Gray and might have influenced the doctor to give a wrong prescription to affect the respondents health and pregnancy, on which, he was shocked, as the respondent also began to accept her mothers notion that he might have influenced Dr. Julia Gray in giving her a wrong prescription. When both of them were worried about the embryos condition, his mother-in-law accused him of trying to prevent the pregnancy by influencing the doctor to give a wrong prescription, the respondent asked him to take legal action against Dr. Julia Gray, but he asked his wife to wait till they get medical reports about the condition of the embryo and told her that he would take legal action if the medical reports indicate the damage about the embryo due to the pills. The subsequent tests and ultrasound scan indicated a normal condition of the baby and no abnormalities were discovered. Despite the same, she went on persuading him to take legal action against Dr. Julia Gray. He told her that firstly, no damage could be established due to the pills, secondly, there was a 0.3% scope for failure of the pregnancy test conducted by Dr. Julia Gray, and thirdly, they were new to USA and have very little savings and they would not be able to bear any adverse outcome of the legal action, but she was not convinced.

xxii) Since he did not show any interest and tried to evade the respondent, she then started making statements that her mother was right in accusing him of conspiring with the doctor to effect the respondent and their baby and she even made comparisons between him and others stating that any other person, in his situation, would have definitely taken legal action against the doctor, and that he was feared of taking legal action, but he feared that he might be indicted in bribing the doctors. He was deeply hurt and he was not allowed to be happy about the new addition to his life and since he wanted the respondent to be peaceful and happy to facilitate healthy growth of baby, he did not want to argue and silently tolerated the insults. The appellant states that he was working for Satyam Computer Services in USA at the client location of General Electric Capital Services, and since his contract with the client was due to expire on 31-03-2002, the Client Manager asked him in February, 2002 to look for other opportunities by telling him that there would not be any extension of contract beyond 30-04-2002, and he immediately informed his reporting Manager in Satyam about it and asked him to consider for new requirements and the reporting manager assured him that he would start looking for new opportunities but cautioned him that the chances of finding new opportunities were very bleak. Since he did not get any new opportunities in the following few weeks, he told the respondent in the second week of March, 2002, that his contract would be ending on 30-04-2002 and they may have to relocate to India in the first week of May, 2002, on which, she immediately wrote on a piece of paper that he wanted to kill her baby on which, he was devastated and could not express the pain that he felt when he read the paper. He tried his best to convince her, but she was not in a position to listen to him, thus, the relationship between them was strained.

xxiii) In the third week of April, 2002, both of them approached Dr. Irene Komaransky, a Obstetrician/Gynaecologist, who did a detailed ultrasound scan of respondents womb and showed them various parts of the babys body on a monitor and explained about the growth and development of the baby and gave them measurements of babys limbs, head etc. He was excited and after returning home, he called his parents and started telling them about the ultrasound scan, and while he was talking to them, the respondent banged the doors and left the home angrily, on which, he felt dejected and disappointed at her behaviour. He completed the call and waited for his wifes return to home, and after she returned home, when he asked about her behaviour, she abused him for explaining the details of ultrasound scan to his parents and shouted at him that he should never tell anything about the baby to his parents, though he told her that they were all part of the family and it was their responsibility to share the good news with parents and making them happy, she shouted that she does not belong to the family and that his parents did not have any right to know about her and the baby, as they have not called and spoken to her after she became pregnant. He was upset and dejected, but he did not want to prolong the discussion, he left to his office.

xxiv) As per recommended precautions, he bought a bath-mat for usage in the bath tub to prevent slipping in the bath tub, the respondent asked him not to lay the bath-mat as dirt might get accumulated in the grooves, making it difficult to clean the bath-mat, on which, he packed the bath mat and kept it in a closet. In May, 2002, the respondent asked him to clean the bath room, as some small soap pieces got stuck on a corner of the bath tub, when he told that he would clean bath room, but he could not clean it in the following few days, as he was busy at his office, she called him at his office and told that she slipped and almost fell in the bath room, he immediately took an appointment with the doctors and rushed to him and took her to the doctor. On scanning, the doctor

told them that there was nothing to be concerned about, but after returning home, she accused him that he had purposefully planned to kill baby by sticking soap pieces on the bath tub, and that he had purposefully avoided cleaning the bath tub. He tried to remind her that they had been using the bath room for around two years and that on many previous occasions when the soap became very thin, it used to break into pieces and fall down in the tub and on all those occasions, most of the small soap pieces got washed away, but one or two pieces stuck to the bath tub. He told her that same thing had happened now and then and it was his mistake in not cleaning the tub and immediately cleaned the tub. She raised these issues several times and hurt him by saying that he had planned to kill the baby by purposefully sticking the soap pieces on the bath tub and raised the said issue even in her mothers presence in September, 2002, October, 2002 and November, 2002. He even told the Obstetrician/Gynaecologist Dr.Irene Komaransky in October, 2002 that he had purposefully stuck the soap pieces in the bath tub, and when he told the doctor that he had purchased the bath mat to prevent his wife from slipping, and that his wife only did not want to use the bath mat, she lied to the doctor saying that he had never bought any mat and that he was lying. He was devastated and could not understand as to why the respondent was lying and trying to project a negative picture on him. The doctor having understood that they were not getting along, asked them to consult and take counselling from a family psychiatrist.

xxv) The appellant states that in June, 2002, he was shocked and annoyed when he saw his wifes maiden name on the book instead of his surname and states that she wanted to disassociate herself and the baby from him.

xxvi) The appellant refers to such instances mostly touching manifestation of differences in their domestic life attributing something or other to her in the direction of such acts constituting cruelty.

xxvii) The appellant alleges that after delivering a baby on 02-09-2002, the respondent told the doctor and the hospital staff in the operation theatre that her daughters name would be Udayasri for which he was shocked as she never mentioned that name to him before.

xxviii) On the 5th day after delivery i.e., 06-09-2002 (Friday), his wife was discharged from the hospital along with baby. On the after-noon of 7th September, 2002 at around 3.00 P.M, the respondent having noticed blood in the babys mouth, immediately started shouting at him attributing that he had cut the babys tongue on which he was shocked and dumbfounded, and, though, he expected that his mother-in-law to intervene and pacify the respondent, but she did not intervene. Later, the on-call doctor explained that the blood could have resulted from any of the two causes:

i) Presence of some residual blood in the baby, from the mothers womb. This happens when blood is not completely sucked from the babys mouth during the delivery process.

ii) In most cases, nipples crack during the feeding process and babies suck blood from these cracks and spit out later.

And that issue was consistently raised by the respondent during the months of September, October, November and December, 2002 which hurt him.

xxix) The appellant states that he had purchased a Video Camera to record his baby and since the baby was sleeping for most of the time in the hospital, he used to wait patiently for the baby to open eyes and then record her, and on the date of discharge from the hospital, first he recorded the hospital room in which they stayed, and while they were approaching the Car, he recorded the baby along with the nurse who was holding their baby on which, the respondent and his mother-in-law insulted and abused him on at least ten occasions during the months of September to December, 2002 and January, 2003 for recording the nurse.

xxx) He states that he did not like the babys given name and wanted to give his baby a pet name of Geetha and whenever he began calling Geetha in September, 2002, the respondent and his mother-in-law used to laugh loudly and ridicule the name by saying Geetha, Peetha and Pitchi Geetha.

xxxi) The appellant alleges that after the delivery he took the respondent to Gynaecologist for two post-natal visits, and during the first visit (around 15th October, 2002), he also accompanied the respondent into the doctors consulting room. As the respondent was weak, the doctor did some tests and told her that physically her body was normal and asked her if she was having any mental depression, on which, the respondent replied that she was having mental depression because of him, and that he was not feeding her properly and not taking proper care of her and the baby, on which he was shocked and explained the doctor, that these were just illusions coming out of the respondents negative thinking and attitude. The appellant states that he explained to the doctor about how the respondent accused him of cutting his babys tongue and how she accused him of bribing a doctor to give the respondent a wrong medicine and how the respondent refused to use a bath room mat that he bought for her protection during pregnancy. The Gynaecologist advised them to visit and take counselling from a family Psychiatrist and gave them the contact numbers of an Indian Psychiatrist, and after returning home, he called the psychiatrist for an appointment and informed the respondent about it, on which, she shouted at him saying that she did not have any mental problems and that she would not visit any psychiatrist and also shouted at him saying that he alone had mental problems and he alone should go and visit psychiatrist, which resulted in cancelling the appointment. Thereafter, he referred to certain other instances which are not that significant to advert to herein.

xxxii) After referring to sundry domestic disputes, he alleges that he took a leave of 10 working days to drop his mother-in-law in India and arrived at Hyderabad on 26-02-2003, but neither his mother- in-law nor his father-in-law had the courtesy of thinking him for coming all the way from USA to drop his mother-in-law and, though, he stayed in India till 08-03-2003, they did not even call him during his nine days stay in India, nor did they invite him to their house.

xxxiii) The appellant alleges that on the night of 17-03-2003 (Sunday), he was watching Television in living room and his wife was playing with the baby in the bed room and after playing for some time, she left the baby on the bed and went to the bath room, during which time, the baby suddenly

rolled over from the bed and fell on the carpet and started crying, on which he rushed from the living room to pick up the baby and the respondent also rushed from the bath room and picked up the baby and started shouting at him that he was responsible for the babys fall by not taking a bigger home and that he should have stayed back in India and not returned to USA, and even she did not like him to touch the baby and continued to abuse him. He also states that she picked a baby bouncer seat to throw at him and he rushed towards her to stop her from throwing the bouncer but she swung the bouncer at him. He also tried to hold the baby bouncer and stop her, but her hand struck his neck and her bangles broke resulting in a small scratch on his neck. He states that the respondent locked herself in the bed room along with the baby and shouted that she was a widow and her husband died and the baby has no father and she repeated these words at least ten times. He also states that when he landed in India, his wife removed her Mangalsutra and dressed like a widow.

xxxiv) In paragraph 102, he referred to comments alleged to have made at him by the respondent.

xxxv) The appellant states that during April and May, 2003, whenever his friends came to his house or whenever the respondent made or received any telephone calls from his friends, she used to tell the friends that he (appellant) had no regard for her and her babys health and that he had purposefully planned to take her and the baby back to India to cause health problems to them.

xxxvi) The appellant then referred to the acts of the respondent in not allowing him to take the baby and, thus, she hurt him.

xxxvii) The appellant alleges that they left USA on 31-05-2003 and reached Hyderabad on 02-06-2003. His parents and the family friends have come to the Airport to receive them. His father-in-law and brother-in-law also came to the Air-port. When they (appellant and respondent) stepped out of the Airport, his parents invited the respondent to come to their house, on which, she said that she spent three years without seeing her mother and would like to go to her fathers house to see her mother first. Even, his parents requested her to come to their house and stay for two to three days and then go back to her parents house, but there is no response from her. His parents kept on asking her for about 15 minutes and went to the extent of asking her to spend just a few hours at their house and then return back to her parents house on the same day and in the same taxi. The respondent then called her mother on a mobile telephone and after speaking to her for a few minutes, went to a car brought by her father and sat in the car. He states that he has not let his parents know about the miserable time that he spent in USA, and they knew nothing about the insults and mental torture that he was subjected to. His parents came to the Airport hoping to receive them as a single family and take them home, but they were disappointed. His father-in-law also did not try to persuade the respondent and he just took the baby daughter and the respondent with him without informing him and without taking his permission and, till the date of filing of the petition, they have not even called the appellant and his parents and, thus, his in-laws separated him from his daughter for more than three months.

xxxviii) In paragraph 115, he has given certain details of valuable items that were said to have given to the respondent and her family members since the time of marriage and while at Abroad also. He,

therefore, sought dissolution of marriage by grant of decree of divorce.

4. The respondent filed counter resisting the request. She has answered the allegations levelled by the appellant in each paragraph of the petition. The answers are specific denials on her part. We, therefore, inclined to refer to the relevant allegations to which the respondent replied specifically.

5. Concerning the allegations averred in paragraph No.33 of the petition, respondent admits approaching General Medical Practitioner Dr. Shanti Devaraj, Dr. Julia Gray and Dr. Francis Ginsberg, when she did not get her periods between April, 2001 and October, 2001. She even admits visiting Stamford Hospital in August, 2001, and Dr. Shanti Devarajs recommendation to get an ultrasound scan of her uterus and the report showed a poly-ovarian cyst. She admits other facts mentioned by the appellant in his petition. Thus, she admits the averments up to the pregnancy test coming out positively, but on the rest of the facts claims that they are untrue and required the petitioner to prove them with strict proof.

6. She admitted the allegations contained in paragraph No.58 of the petition to the extent that she had delivered a baby on the morning of 2nd September, 2002 and it was a cesarian delivery and discharged along with baby from the Stamford Hospital in Connecticut State of U.S.A. on the 5th day after delivery on 6th September 2002. She admitted even preparing a list of baby items that have to be purchased and one of the list items are diaper disposal can, but denied rest of the allegations. She admitted the appellant purchasing a Video Camera to record the baby and recording the baby along with the Nurse while they were approaching the car, but denied rest of the allegations as to video-graphing Nurse and other incidental facts. She admits the appellant taking her for two post natal visits and during the first visit, the appellant also accompanying her into the doctors consulting room and since she was weak, Doctor did some tests and told that physically her body was normal and asked her whether she had any mental depressions, but she replied the Doctor that she had no such sort of problems. Thus, she denied the rest of the allegations as to her comments at the appellant as narrated in the above. Even she denied the allegations levelled in paragraph No.84 of the petition completely.

7. She denied the allegation that their baby developed rash on account of the appellant kissing the baby and other incidental facts.

8. According to her, the appellant has invented the allegations for the purpose of only to show that she is of negative attitude. Having denied the allegations including the description of articles said to have been given to the respondent and her parents by the appellant, she has raised further pleas setting out her case.

9. She states that the appellant suffers from an acute skin disease and he does not take proper care for treatment and he also passes urine in the bed and she used to persuade him to see the doctor and to undergo medical treatment and also to consume the medicines prescribed by the doctors. She states that the appellant used to become wild and behave abnormally sometimes when she used to persuade him to consume the medicines and the appellant developed a strong inferiority complex on account of these two diseases and he used to subject her to serious mental and physical cruelty. She

also states that the appellant never bothered about her basic necessities and used to behave miserly to such an unbearable extent that he used to make minute calculations about the value of basic necessities provided to her like food, clothing, travelling etc., and used to scold her.

10. She states that right from the date of marriage, the appellant started scolding and used to express his dissatisfaction about the gifts given by her father and whenever they went to wedding ceremonies, he used to insult her by degrading her parents and the gifts given by them and used to harass her by calculating and describing to her that he would have got more handsome dowry and gifts had he married another woman. The appellant used to travel overseas on account of exigencies in his service and whenever she requested him to take her along with him, he used to scold that the food and shelter being given to her itself were more than enough and that he would never incur other expenses on her and that if he alone travels, he would save lot of money. She states that the appellant used to deliberately insult her without any reason and used to derive pleasure out of his conduct. She states that she had menstrual problems on some occasions and on those occasions, the appellant refused to provide even medical aid to her and he used to abuse her in filthy language. She states that when she was admitted in a hospital for delivery of child, the appellant subjected her to untold miseries by not providing any food at all and she could not consume American food provided by the hospital authorities except the chicken pieces and the doctors pointed out to the appellant that she became weak on account of lack of food and she required home food and though, she pestered the appellant to provide Indian food, he did not provide the same on the ground that it cost additional money. She states that she suffered humiliation in the presence of her mother on account of appellants behaviour and he used to put her to lot of embarrassment before her mother by suspecting that they were always talking only about him though, they did not. She states that on account of attitude of the appellant, she was half starving even after delivery and in spite of requests of her mother to get provisions for cooking food, the appellant used to avoid brining the provisions and her mother had to cut short her trip to USA on account of miserly attitude of the appellant. She states that the appellant used to misbehave indecently with other women even in her presence and she had to suffer humiliation on account of such behaviour of the appellant with other woman. He used to physically misbehave with the other woman and even with the lady doctor attending her at the time of delivery and in fact the lady doctor at USA got annoyed by the behaviour of the petitioner and asked him to sit in his place. She states that she suffered and tolerated the grave mentality and physical torture meted out to her, but despite the same, the appellant has filed the present petition with absolute false allegations. She states that the appellant had a pre-plan to desert her and has packed his own belongings separately before leaving USA and left her and stopped talking to her. She states that the appellant has packed her belongings separately while leaving USA with the address of her father and he has also given the same address to the banks and when she questioned the same, he refused to answer. He states that she was in a state of confusion as to what was the intention of the appellant, particularly, on account of his refusal to talk to her. She states that the appellant used to send e-mails to her though, they were living under the same roof and what all she wanted to know from the appellant, it was only through e-mails and also enquired him through e-mails as to whether they were coming back to U.S.A., when the appellant was packing his belongings, and belongings of their child, separately. But the appellant gave an evasive reply and, thus, the appellant has mentally and physically deserted her even before coming to India. She states that her friends in USA before leaving to India made efforts to pursue both of them to settle the

differences, if any, amicably and after continuous persuasions, the appellant replied to her that he wanted to stay separately on account of project work and with a view to obtain H-1 visa or to get an alternative employment in Wipro. She further submits that after arriving at Hyderabad Airport, the appellant loaded his own package only in a separate vehicle and her parents also kept the belongings of herself and her child in the vehicle, but the appellant kept his package requesting the appellant to take her child and herself with him. She, still, further states that she broke down in the airport after seeing her parents after a long gap and the appellant took advantage of the same and asked her parents to take her and her child along with them saying that she was missing her parents very badly. She states that thus, she was compelled to go with her parents. She, therefore, sought to dismiss the petition with exemplary costs.

11. In the petition filed by the respondent wife, under Section 9 of the Hindu Marriage Act, in which, the appellant has filed counter, the very same allegations and counter allegations have been made and we, therefore, feel that it is unnecessary to narrate the pleadings in the said petition.

12. The Court below taken up both the O.Ps. for disposal by way of common order recording the evidence in O.P. No.602 of 2003 treating it as leading O.P.

13. During enquiry, the appellant examined himself as PW.1 besides examining the mediator Sri P.V. Kutumbarao as PW.2, his mother Smt. S. Varalakshmi as PW.3, and a neighbour S.M. Bandar as PW.4 and their family friend one M.S. Rao as PW.5 and marked Exs.P-1 to P-52 to substantiate his case for seeking dissolution of marriage by grant of decree of divorce, whereas, the respondent examined herself as RW.1 and her father S. Ranga Rao as RW.2 and marked Exs.R-1 to R-10 to prove her stand.

14. The Court below, on appraisal of evidence, let in by both sides, both oral and documentary, recorded its findings that the alleged acts complained by the appellant are in the nature of ware and tare of a family life and other common and usual family bickerings and trifling differences by itself cannot be construed as an act of cruelty and discarding the evidence of PWs.2 and 5, on the ground that their evidence is not helpful to prove that the respondent has committed the acts alleged and disbelieving the evidence of PW.5 by thorough appraisal of his evidence in the light of the probabilities and finding that the appellant has made a deliberate effort ingeniously to project the usual and common trifling differences between any spouse in the common family bickerings and misunderstandings in the domestic affairs with a magnifying glass to create the said incidents as an act of mental cruelty, rejected the request of the appellant for grant of decree of divorce and believing the evidence of the respondent and basing on the probabilities, granted decree of restitution of conjugal rights directing the appellant to take back the appellant and resume his conjugal life with her within one month from the date of decree, however, directing both the parties to bear their own costs. It is that common order which is impugned in the instant appeals by the appellant husband, contending in the grounds of appeal that the Court below did not properly appreciate the evidence on record, and despite each and every act, the cumulative effect of which accounted for causing cruelty to the appellant, was brushed aside, though, there were just denials without any substantiation by the respondent.

i) It is stated that the Court below, somehow, deviated in appreciating the factual aspect substantiated by the appellant by letting in evidence in abundance, but the Court below, somehow, just by stating that it was attempted by the appellant to exaggerate and magnifying common and minute incidents, scored them out without any justification. The Court below did not take into consideration the admissions made by respondent in her cross-examination which by themselves are sufficient enough to entitle the appellant for dissolution of marriage by grant of decree of divorce.

ii) It is also stated that the finding of the Court below that usual bickerings and some incompatibility have led them to the stage of separate living, is without any justification. It is also stated that the finding of the Court below that the appellant has taken hasty decision without showing any endurance to save his marriage is not based on proper appreciation of evidence on record, since the appellant endured cruelty beyond his tolerance limit as narrated in 116 paragraphs of the petition.

iii) It is also stated that the Court below did not appreciate the ratio laid down by various High Courts including the Honble Supreme Court that in case of mental cruelty the matrimonial duties and obligations of the wife are to be examined. It is stated that the common order under challenge is bereft of any legal or factual foundation and is liable to be dismissed and, hence, sought to set aside the common order and decree.

15. Similar grounds have been agitated by the appellant in the grounds of appeal in F.C.A. No.16 of 2007 preferred against the order and decree in O.P. No.369 of 2005 filed by the respondent wife for restitution of conjugal rights and, therefore, we are of the view, it is unnecessary to refer to them again.

16. The factual aspect has been narrated in extenso while referring to the pleadings put forth by both the parties in the above.

17. At the outset, we would like to mention that each and every act alleged by the appellant against the respondent need not be adverted to, since, in our view, they are in the nature of sundry bickerings that takes place between the spouses in a domestic life. We intend to refer to some of the allegations of some importance levelled by the appellant in the direction of seeking dissolution of marriage and so also the allegations levelled by the respondent in seeking restitution of conjugal life.

18. Before dwelling on factual aspect with reference to the proof of allegations thereof, through the evidence let in by both parties, we would like to refer to the decisions relied on by the respective parties.

i) The learned counsel for appellant, to substantiate his case, relied on the following decisions:

a) In Jayachandra v. Aneel Kaur , the Honble Supreme Court dealt with the expression cruelty in the context in which the said expression has been raised in relation to human conduct or human behaviour. The requisite ingredients for constituting cruelty have been mentioned in paragraph Nos.10 and 11 thus:

10. The expression cruelty has not been defined in the Act. Cruelty can be physical or mental.

Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger.

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, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately 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 this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not be at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

11. The expression 'cruelty' has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in 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. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or 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 (See *Shobha Rani v. Madhukar Reddi* AIR 1988 SC 121).

b) Learned counsel relied on the decision in *Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate*, for the proposition that proof of cruelty does not depend upon any particular period or number of incidents of cruel treatment or continuous course of conduct but depends upon intensity, gravity and stigmatic impact of it when meted out even once, and the allegations, aspersions and

reproaches which are per se cruel in nature, deliberately made against wife and placed on record through written statement filed in Court by husband, have deleterious effect on mental attitude of the wife which cannot be wiped out by amendment of the written statement unilaterally withdrawing those allegations.

c) the learned counsel relied on the decision in *G.V.N. Kameswara Rao v. G. Jabilli* , for the proposition that the Court has to come to a conclusion whether the acts committed by the counter-petitioner amount to cruelty, and it is to be assessed having regard to the status of the parties in social life, their customs, traditions and other similar circumstances. Concerning the factual aspect to suit the allegations levelled by the appellant that the respondent herein has removed the Mangalsutra, the learned counsel relied on paragraph No.14, wherein the Honble Supreme Court while referring to the earlier decision in *S. Hanumantha Rao v. S.Ramani* , since in the said case, the respondent wife explained that she removed the Mangalsutra in privacy and handed over the same to the appellant on his own request, the Honble Supreme Court held that removal of Mangalsutra would not constitute cruelty within the meaning of Section 13(1) (i-a).

d) In *Praveen Mehta v. Inderjit Mehta* , the Honble Supreme Court explaining the term mental cruelty occurring in Section 13 (1) (i-a), observed thus:

"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".

e) The decision relied on by the learned counsel in *Chanderkala Trivedi (SMT) v. Dr.S.P. Trivedi* , is unnecessary to refer to, as it entirely differs from the fact scenario occurring in the instant case.

f) The decision in *Lokeshwari v. Srinivas Rao* of this Court, again differs with fact-situation occurring in the instant case and, therefore, we are of the view that it is unnecessary to refer to the observations therein.

g) The learned counsel placed reliance on the decision of this Court in *Jayakrishna Panigrahi v. Smt. Surekha Panigrahi* , for the proposition that conduct which inflicts upon other party, such mental pain and suffering which make it difficult for other party to live with the other amounts to mental cruelty, and such cruelty need not be proved to be such as to cause injury to the health of the

petitioner, and what is cruelty in one case may not amount to cruelty in another case, and each case has to be decided on the facts and circumstances of that case.

h) Learned counsel relied on the decision in Smt. Kamini Gupta v. Mukesh Kumar Gupta , for the proposition that in respect of the incidents and quarrels between the spouses, they must be weighed from the point of view of impact of the personality and conduct of one spouse on the other, and Judges do and should read the minds of the parties.

i) In Samar Ghosh v. Jaya Ghosh , in the context of meaning of mental cruelty, the Honble Supreme Court held in paragraph Nos.98, 99, 100 and 101 thus:

98. On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. 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 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 strait-jacket 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 while taking aforementioned factors in consideration.

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 sterilization 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.

j) The decision in *K. Srinivas Rao v. D.A. Deepa* , is relied on for the proposition that staying together under the same roof is not a precondition for mental cruelty.

k) In *Vishwanath Agrawal v. Sarla Vishwanath Agrawal* , the Honble Supreme Court held that in a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose, and family members and sometimes the relatives, friends and neighbours are the most natural witnesses, and the veracity of their testimony is to be tested on objective parameters and not to be thrown overboard on ground that witnesses are related to either spouse.

ii) Adverting to the decisions relied on by the learned counsel for the respondent:

a) The decision in *Gurbux Singh v. Harinder Kaur* , relied on for the proposition that it is essential for a spouse, who claims relief, to prove that a particular part of conduct or behaviour resulted in cruelty to him, and no prior assumptions can be made in such matters.

b) In *Subhash Parshuram Seth v. Madhu Mancharsingh Bhandari* , a Division Bench of the High Court of Gujarat while answering to a question whether suggestions in cross-examination constituting evidence, referred to its observations in earlier case in *Shri Khimji Kurjibhai v. The State of Gujarat* , which dealt with regarding the effect of only giving suggestion in cross-examination to the opponent without giving any evidence in support of any denial thus:

"Suggestions in cross-examination are no evidence. This proposition of law is good both in the case of the prosecution and the defence. Mere hurling of some suggestions, which are denied, can hardly take the place of proof or evidence. The law of evidence is alike both for the prosecution and for the defence. If the accused wants to establish a certain fact, he has to lead evidence on that score. Such suspicions cannot have any place in the realm of appreciation of evidence. A suggestion denied by a witness remains only a suggestion and has no evidentiary value at all."

c) In *Dr.(Mrs.) Malathi Ravi, M.D. v. Dr.B.V. Ravi, M.D.* (in Civil Appeal No. of 2014 arising out of S.L.P.(C) No.17 of 2010), the Honble Supreme Court explained the concept of marriage based on the fact scenario occurring in that particular case and, therefore, we are of the view, that it is unnecessary to refer to the observations therein.

19. Reverting to the allegations on the basis on which the appellant seeking dissolution of marriage by grant of decree of divorce, we would intend to project nine (nine) of the allegations out of several allegations, the rest, in our view, needs no deliberation as they are of insignificance in deciding the controversy, and even assuming that they did really take place, still, the cumulative effect thereof is of no assistance to the appellant for the reasons we would like to mention on each of the nine allegations while arriving at the conclusion whether or not the appellant is able to prove the cruelty as required under Section 13 (1) (i-a) of the Act.

20. The first allegation of the nine allegations which we have chosen are of some significance, relates to the respondent herein asking the appellant to give his money and transfer his property to her just immediately after the marriage, which according to the appellant, shocked him. Whether this allegation is substantiated or not, as per the evidentiary rule, we would like to refer to the answers given by him, in his cross-examination, besides the probabilities, which we would like to discuss the same. In his cross-examination, when he was confronted with the said allegation, he answers thus:

At the time of my marriage I have no other properties except the bank account opened by my employer Satyam computers. It is not true to suggest that on the second day after the marriage respondent never demanded me to transfer my properties in her name. Then I have stated to her there is no properties in my name even if I have any properties there is no need to transfer my properties in her name as I am paying tax regularly.

This one admission is sufficient to not only belie the said allegation which stands first one mentioned in paragraph Nos.1 to 116. This apart, the probability that favours the respondent and stands adverse to the case of the appellant is, the Gift Settlement Deed, gifting of Flat No.203 in second floor, admeasuring 857 square feet along with 40 square yards of undivided share of land, situated at Ahmed Nagar, Masab Tank, Hyderabad, by her father, who is examined as RW.2, in her favour marked as Ex.R-1. The said gift was made just immediately after the marriage that was on 23-05-2000. When the evidence of RW.2 is perused, it is evident that, to create security, he has gifted that flat to the respondent by way of execution of the said Gift Settlement Deed. In such an event, certainly, the instant allegation that the respondent demanded him to transfer his entire properties on her name, gets completely condemned giving an inference that this allegation is set up by the appellant deliberately with a view to obtain decree of divorce.

21. The second allegation relates to, that the respondent, on one occasion, in the context of her brothers wife leaving the house of his brother, commented about bad character of her brothers wife, which the appellant has ignored. According to him, in the said context, he alleged that one of his relatives told his parents that they were not treating the respondent well and had not allowed the appellant to spend time with her, on which, they got upset and stopped talking to the respondent and he also felt bad and reduced his interactions with the respondent.

i) When the evidence of appellant as PW.1 is scrutinized, except making a bald statement, nothing-else is forthcoming in that direction. We would like to observe that in case, such a situation did really arise, the prudence of an ordinary man would be to enquire into such comment as to the truth or otherwise therein and then only to act according to the situation. In the instant case, levelling such an allegation that his parents stopped talking to the respondent and he too started reducing his interactions with her, would, in fact, amount to imposing punishment on the respondent rather substantiating his stand in seeking the relief of dissolution of marriage by grant of decree of divorce. This apart, the said allegation exposes the artificial nature and suffers from want of cogent proof, and it further substantiates the plea of respondent that the appellant employed ingenious skill in an attempt to desert her by obtaining decree of divorce. Therefore, we do not find any truth in the said allegation, and it is so set up only to seek divorce.

22. The third allegation relates to the appellants visit to Kuwait. In this connection, the appellant alleged that he faced lot of humiliation and embarrassment on the night after he left for Kuwait, and when he returned later, despite giving his arrival schedule, the respondent did not receive him at the Airport by staying at her parents house. He alleged that the respondent abused him when he reached Kuwait when called her immediately after reaching Kuwait. According to him, prior to his leaving for Kuwait, though, she learnt from the discussion between himself and his parents about the proposed official duty, she exhibited unpleasant behaviour. The respondent has completely denied the said allegation.

i) In his cross-examination, the appellant answers to a question that he went to Kuwait within three or four days after the intimation by the Company, but he informed about his trip immediately to the respondent. The Company told him they can only send him to Kuwait, and he has not taken any steps to take the respondent to Kuwait along with him. He refers to the shouting of the respondent on the previous night of his leaving to Kuwait which was witnessed by Suryanarayana, Panduranga rao with their family members. He admits that he has not informed about the said incident to her parents. When the allegation in the petition is seen, the appellant states that she only hurt when he was talking to his parents as to his proposed visit to Kuwait, whereas in his cross-examination, he states that he has informed immediately about his trip to the respondent, which, thus, runs contra to the pleadings made in the petition. Even, the fact that the Company told him that they can only send him to Kuwait was not pleaded in the petition, besides not informing the respondent about the said trip. Thus, though, there is absolutely nothing in that allegation to cull out any cruelty to the appellant, still, avers the said allegation in the direction of establishing cruelty, which exposes the artificial nature of such an allegation. Though, PW.4 is examined to prove the shouting of respondent but his categorical admission that he does not know the nature of shouting and the language, makes us to disbelieve his evidence.

23. The fourth allegation relates to the pregnancy test undergone by the respondent at USA. We have already adverted to in the above while narrating the plea put-forth by the appellant there-for, in the petition with relevant details. He denied the suggestion that he has concocted about the insistence of the respondent upon him to initiate legal proceedings against the doctor. He admits, in his cross- examination, that there was one Human Resource cell in Satyam Computers in USA, but later it was transferred to India. He expresses his ignorance as to whether HR Cell will conciliate between the wife and husband for matrimonial disputes, and the duty of HR cell is to give orientation to the fresh candidates about the environment in USA, and he never asked for transfer from USA to some other place on the ground of strained relationship with his wife, and that he was not having the piece of paper mentioned in paragraph 35 stating that he might have been lost. The piece of paper relates to the allegation that his wife has written that he wanted to kill her baby. The facts set out in relation to that paper, appear to be not convincing enough because of the fact that he has not produced such a paper at all. Thus, it exposes the artificiality in the said allegation giving rise to an inference that it is so set out in an attempt to constitute as one of the acts accounting for cruelty, to seek the relief of dissolution of marriage by grant of decree of divorce.

24. The fifth allegation levelled by the appellant relates to, the respondent alleging that the appellant has cut the babys tongue as on one occasion, that was on the 6th day after delivery, it was found that

blood was oozing from the tongue of the baby child, and admittedly, they got treated the same by approaching the doctor. The relevant details have been mentioned in the above while narrating the pleadings put-forth by the appellant.

i) In this context, we intend to refer to Ex.P-15. The relevant details are mentioned in Ex.P-15 which is copy of babys medical report dated 09-09-2002. There is nothing to substantiate that allegation of the appellant, except the observation that blood was coming from the babys mouth. In fact, if such a serious allegation is really made by the respondent, the appellant would not have kept quiet and would have at least intimated his parents or his sister who was residing at USA itself about it. It is specifically asserted by him that he did not divulge the bickerings or the acts now alleged against the respondent while they were staying at USA to his parents, which gives rise to an inference adverse to the said acts now attributed to the respondent causing cruelty to him.

25. The sixth allegation relates to the alleged mental depression of the respondent, as sought to be projected by the appellant. We have given the narration in the above, touching the acts alleged by the appellant in that regard. The respondent has specifically denied it contending that the appellant deliberately designed it in an attempt to obtain decree of divorce, which, in fact, accounts for a vital aspect of the controversy between the parties. Of course, there has been complete denial when suggestions were made to the appellant, in his cross-examination, on that aspect of the case. We would like to refer to Exs.R-4 and R-6, which is also marked as Ex.P-18 by the appellant, which resolves the controversy between the parties bringing out the truth in that allegation.

i) The purport of Ex.R-4 is that, the respondent has come out with when she was persistently asked by the doctor whether she was experiencing any abuse at home, answered that she was experiencing verbal abuse at times, and that the respondent stated that there was one or two incidents where there was mild physical abuse, but nothing else. The Gynaecologist discussed extensively things with her about the domestic violence, and the need for a safety plan, and given a phone number for a domestic violence hotline, but the respondent refused to take up the follow up action stating that she was leaving for India in the near future. Since it constitutes vital piece of documentary evidence, we intend to extract the entire report which reads thus:

STAMFORD HOSPITAL EMERGENCY DEPT REPORT Surapaneni, Anuradha
0313700199 457946 ADMITTED: 05/17/2003 DISCHARGED: 05/17/2003 CHIEF
COMPLAINT: This is a 30-year-old female without significant past medical history.
She presents stating that she is 8 months postpartum, status post C-section, and she
had her period start yesterday, and she has had heavy vaginal bleeding with some
weakness, and she states that she has gone through six pads a day.

Denies any abdominal pain. Says she had some occasional vomiting for the past month. Denies any other symptoms. No abdominal pain.

REVIEW OF SYSTEMS: In all 8 systems reviewed. All negative, with the exception of the above-mentioned findings.

Please refer to the Emergency Medical Physician Record for the remainder of the physician documentation. PHYSICAL EXAMINATION: Reveals a 30-year-old female who appears stated age, in no apparent distress. Vital signs stable. She is not tachycardic. Pupils equal, round, and reactive bilaterally. In fact and full extraocular movements. No conjunctival injection. Mucous membranes moist. Neck is supple. Chest reveals good air entry bilaterally, no wheezing, rales, or rhonchi. Heart regular rate and rhythm, S1, S2. Abdomen is soft, no tenderness, no rebound, no guarding, normal bowel sounds. GYN exam: No external lesions on the vulva. Internal exam: No lesion noted, no adnexal masses or tenderness, no uterine masses or tenderness. No CMT. There is some blood oozing from the cervical os. So, this feels like a first menses. Urine pregnancy test negative. CBC is normal. Haemoglobin, hematocrit is 13.89. Basic chemistries are normal. GYN was just called down to evaluate the patient. She does have a GYN doctor from here. It is Dr. Komarynsky, and GYN did come down and evaluate the patient, and they found no abnormalities on exam. They believe its a first menses. However, on talking with the patient, he asked her if she was experiencing any abuse at home, and she was. She was experiencing verbal abuse at times. She said there was one or two incidents where there was mild physical abuse, but nothing else, and GYN discussed extensively things with her about domestic violence, the need for a safety plan. Given a phone number for a domestic violence hotline. She is leaving for India in the near future, and she will follow with Dr. Komarynsky before that. This was also discussed with social services and with her, and (_____) Dr.Goldpin, and she recites understanding of all of this. So, she was discharged home.

DIAGNOSIS: Menses and domestic violence. She apparently states that she is not ready to leave her husband, so she was discharged home. However, the OB house staff did suggest to her that she could say, and this was in front of her husband, that since she has been feeling weak lately, that there should be someone else around the house to help her out, and this was a very good suggestion because she is going to try to do this. However, she wishes to go back home with her husband.

26. In the same context, we also refer to Ex.R-6, which is a copy of Ex.P-18. We only intend to express our opinion on this document, that it reflects the depressed state of the respondent, but does not help the appellant in proving the alleged cruelty, more particularly, in the face of Ex.R-4 contents touching domestic abuse.

27. Ex.R-4 is dated 17-05-2003, on which day, the respondent was admitted and discharged, whereas, Ex.P-18 relates to dated 18-09-2002. We would like to observe that when read conjunctively the effect of these two documents is that, there was some sort of domestic violence faced by the respondent in the hands of appellant, as there is nothing brought out in her cross-examination disproving the contents of these two documents. No doubt, in the petition itself, the appellant has come out attributing depressed mental status to the respondent for expressing such a view with doctor, but, they would make abundantly clear that in fact, it is the respondent, who suffered in the hands of the appellant, but not the appellant being harassed by the respondent as contended by him.

28. The seventh allegation relates to hurling of baby bouncer at the appellant by the respondent. The details have already been narrated in the above. The respondent has completely denied the said

allegation. No doubt, he made an assertion in affidavit in chief- examination, but it is difficult to hold that there is truth in the said allegation when viewed in the context of the conduct of the appellant as borne out from the discussion on the sixth allegation made in the previous paragraphs.

29. The eighth allegation relates to removal of mangalasutra and dressing like a widow alleged by the appellant. The facts touching that allegation were narrated and even the denial made by the respondent thereon is also narrated while adverting to the pleadings of both the parties. In his cross-examination, when it was suggested to him that the contents in paragraph Nos.99, 100 and 101 are false, he denied the said suggestion stating that the respondent removed mangalasutra and bindi from 17-03-2003, but the answer given to a question put to him in the next sentence to the effect that he does not have any hostile relationship as on that date is sufficient enough to disbelieve that version. The further answer that while they were returning to India in the flight, he carried the child, but he has not noticed whether the respondent wore mangalasutra and mettalu in flight, but she did not have bindi, is sufficient enough to reject the plea put-forth, which accounts for a serious allegation levelled against the respondent, hailing from Hindu religion. Since the consistent stand of the appellant being that the respondent has thrown away mangalasutra and started wearing white saree as a widow.

30. Learned counsel for the appellant, no doubt, relied on the decision in S. Hanumantha Raos Case (Supra 4), which was referred to in the above, which, in our view, is not of any assistance to substantiate the stand of the appellant, in view of the answer given by him in his cross-examination.

31. The ninth allegation relates to the respondent and her parents not inviting the appellant after they came down to this country at any time and he has seen his daughter only at the Court premises in divorce petition when the respondent made appearance. He made a definite admission in his cross-examination that he never made an attempt to see the child in the house of the respondents parents and he never made any attempts to get his child, to his house; these admissions are sufficient enough to discard the said comment made in the direction of constituting an act of cruelty against him on the part of the respondent.

32. Respondents stand is that the appellant was very conservative and even he would not provide money for meeting the domestic expenses in that direction, the e-mails exchanged between the appellant and the respondent were also exhibited, which are Exs.P-5, P-9, P-10, P-11 and P-33. A thorough scanning of the e-mails would in fact reflect the attitude of the appellant. On account of such attitude of the appellant, only about a week prior to their travel to India there was no direct communication between them. As an example, we refer to Ex.P-33 instead of referring to each e-mail. Through Ex.A-33, the respondent made a request to use Sony Card in order to purchase medicines and that she has an appointment with doctor and she asked the appellants permission to use that card. The next day, he replies stating that he has cancelled American Express and Discovery Credit Card and asked her not to use them. That has been the extent to which things went on account of the attitude of the appellant, but not on account of the respondent at all. We also would like to mention the probability of vital significance in the present context, that despite domestic violence complained by the respondent before the doctor, that too only when she was enquired by a doctor in that direction, but, still, not going to the extent of filing a case under Section 498-A IPC,

after their return to in this country as the order of the day is to invariably resort to such course of action or complaining to the authorities concerned while they were in States and even giving up such a course open to her though, advised by the doctors, as seen from the medical reports referred to in the above would all only favour the respondent strongly condemning the acts of cruelty alleged by the appellant in the hands of the respondent. Even the probability, the very fact that since some time prior to their departure to India, giving evasive answers through e-mails in regard to packing the respective articles separately and even stopping to communicate with the respondent directly by the appellant would substantiate the stand taken by the respondent that deliberately he resorted to such conduct with a view to desert her and seek dissolution of marriage which proved to be true in filing the petition for dissolution of marriage under Sections 13(1)(i-a) of the Hindu Marriage Act. The evidence of PWs.2, 3 and 5 on a thorough appraisal, would not aid the appellant in substantiating the alleged acts of cruelty.

33. We also would like to mention that the principles laid down by the Honble Supreme Court and Gujarat and Delhi High Courts, would not assist the appellant in obtaining decree for divorce.

34. The Court below rightly observed that the acts complained by the appellant are usual bickerings on account of differences between the spouses and common in the domestic life and not of such serious nature to entitle the appellant for dissolution of marriage by grant of decree of divorce. Therefore, the order under challenge does not at all warrant interference as it does not suffer from any illegality. The mere fact that the Court below did not discuss in detail touching each act of alleged cruelty referred to in paragraph Nos.2 to 116, is no ground to set aside the impugned common order and decrees.

35. We are, therefore, convinced that there is no legally acceptable evidence in substantiating the allegation of cruelty complained by the appellant and consequently we are inclined to dismiss both appeals as we find no merit at all.

36. Accordingly, both the appeals are dismissed confirming the common order passed by the Court below. We make no order as to costs.

37. As a sequel thereto, Miscellaneous Applications, if any, pending in these appeals stand disposed of.

----- R . S U B H A S H R E D D Y , J
A. SHANKAR NARAYANA, J September 26, 2014.