Rajasthan High Court
Vandana (Smt.) vs Suresh Charan on 24 January, 2005
Equivalent citations: AIR 2005 Raj 193, RLW 2005 (3) Raj 1517, 2005 (2) WLC 137
Author: P Tatia
Bench: P Tatia
JUDGMENT Prakash Tatia, J.

1. This appeal is by the appellant-defendant, wife of respondent-plaintiff, to challenge the divorce decree dated 21.1.2004 granted by the Trial Court against the appellant- defendant. The Trial Court granted the divorce decree under Section 13(1)(iii) of the Hindu Marriage Act, 1955.

2. Brief facts of the case are that marriage of the plaintiff- respondent and the defendant-appellant was solemnized on 6.12.1994 at village Loonkaransar in accordance with the Hindu rites. The plaintiff alleged that even at the time of Saptpadi, the defendant-appellant had no control over her body and she was not in position to take Saptpadi. The defendant's sister gave one tablet to the defendant and she told the plaintiff that the defendant is sick. Just after Saptpadi, when photos were taken, the defendant's brother again gave one tablet to the defendant. The marriage was not consummated between the parties despite efforts of the plaintiff on the first night of the marriage or in four days after the marriage. After four days, on 11.12.1994, the appellant's brother took the appellant-defendant to her parent's house. During this short period of four days, whenever the plaintiff-respondent tried to talk with the defendant-appellant, she gave irrelevant answers. The plaintiff-respondent got an impression that the defendant-appellant is not mentally developed lady. From 11.12.1994, the defendant-appellant remained at her parents' house and whenever the plaintiff tried to contract with his wife-appellant, her parents successfully avoided any talks between the appellant and the respondent by saying that she is suffering from some injury or she is sick. During this period of nine months, no efforts were made by the defendant-appellant to come to the plaintiff-respondent's residence. According to the plaintiff, when the plaintiff brought the defendant-appellant at Jodhpur, she avoided to live with the plaintiff and she always insisted for going to her parent's house and gave threat that in case she will not be sent back, she will burn herself and will commit suicide. During this short period also, the plaintiff found that she is talking absolutely irrelevant. The plaintiff shocked when he found that the defendant used to urinate and ease-out, out side the bathroom and latrine. In total three years' period, the defendant lived with the plaintiff only 5 to 6 days but avoided consummation of the marriage. Ultimately, she again left for her parents.

3. On 13.10.2000, the defendant's brother Rajendra brought the defendant-appellant at plaintiff's village and at that time, the defendant started using abusive language in the presence of number of persons and people of entire village came to know that the defendant is suffering from some mental disorder. The plaintiff's grand-father and grand-mother strongly protested to the defendant's brother Rajendra for their giving a mad girl to the plaintiff. The defendant's brother Rajendra, on 14.10.2000, told the family members of the plaintiff that the defendant is suffering from mental disease and she was given treatment at Bikaner. He took the defendant with him and assured that after treatment, he will try to send the defendant to the plaintiff. By this way, the defendant-wife of the plaintiff-respondent remained with the plaintiff for 5 to 6 days only in six years, that too without

consummation of the marriage.

4. On these pleadings, the plaintiff-respondent sought decree for divorce under Sub-clause (iii) of Sub-section (1) of Section 13 of the Hindu Marriage Act.

5. The defendant submitted written statement and denied all the allegations leveled by the plaintiff. In addition to denial of the allegations, the defendant submitted that the plaintiff's maternal aunt was residing at Bikaner and the plaintiff used to come to Bikaner to meet with his maternal aunt. It is also submitted that, at the time of marriage the plaintiff was not in employment and he was preparing for competitive test only therefore, plaintiff and his family members kept the defendant in her parent's home so that plaintiff may prepare for his exams. When plaintiff passed the Rajasthan Administrative Services Examination he started disliking for defendant and wished to marry more beautiful girl and, therefore, he leveled allegations against the defendant. It is also alleged that the plaintiff used to make sarcastic remarks as the defendant did not bring more dowry.

6. The plaintiff-respondent submitted an application for amending the divorce petition so as to include ground to challenge the marriage itself. The plaintiff alleged that marriage of plaintiff and the defendant is void because the defendant was mad before and at the time of marriage and this fact was suppressed by the defendant's parents and by suppressing this material fact, obtained the consent of the plaintiff for marriage. The plaintiff sought declaration that marriage of the plaintiff and defendant may be declared null and void under Section 12 of the Hindu Marriage Act, 1955. However, the decree was not granted on the said ground because of the fact that the petition for declaration under Section 12 could have been filed within a period of one year from the date of marriage but present petition was filed after about more than six years. Therefore, the divorce petition remained for consideration for grant of decree for divorce under Section 13(1)(iii) of the Hindu Marriage Act, 1955.

7. Issues were framed and plaintiff himself appeared in the witness-box and gave his statement and he was cross-examined by the defendant. The plaintiff in his evidence produced; P.W.2- Karan Singh, his brother, P.W.3-Dalpat Singh, his village neighbour. Plaintiff also produced doctors P.W.4-Dr. L.N. Gupta, P.W.5 Dr. Ashok Kumar Singhal and P.W.6-Dr. K.K. Verma, to prove defendant's unsoundness of mind. To rebut the allegations the defendant produced her father D.W. 1-Laxman Dan and her brother D.W.2-Rajendra Singh in evidence. The defendant did not give her statement nor produced any doctor to prove her mental condition.

8. During trial, the plaintiff submitted an application for medical examination of the defendant by the Medical Board. Initially the defendant tried to avoid but ultimately she presented herself for her medical examination. The Medical Board opined that the appellant is mentally sick as she is suffering from schizophrenia.

9. The Trial Court considered the evidence available on record and the facts of the case and held that the appellant is suffering from mental disorder and the marriage was not consummated between the parties even in long period of more than six years. The defendant as well as her parents have not shown their willingness to send the defendant, wife of the plaintiff to plaintiff-respondent. The Trial

Court also drew adverse inference against the defendant as she did not appear to rebut any allegation. The Trial Court also relied upon the opinion of the Medical Board and after considering the documents relating to the treatment of the defendant, held that the plaintiff is not expected to live with defendant who is suffering from such a mental disorder.

10. The learned counsel for the appellant vehemently submitted that the divorce petition of the petitioner should have been dismissed at initial stage itself as there are no sufficient pleadings so as to make out a case for filing the divorce petition against the appellant-defendant. It is submitted that the plaintiff did not plead that the defendant-appellant is suffering from any mental disease which is incurable or the defendant-appellant is suffering from any mental disorder which is of such kind and is of such extent that the plaintiff cannot live with the defendant because of that disorder. It is submitted that in view of the judgment of the Hon'ble Apex Court delivered in the case of Ram Narain Gupta v. Smt. Rameshwari Gupta (Supra), mere branding of spouse as schizophrenic is not sufficient. It is for the plaintiff to plead and prove the degree of mental disorder of the spouse, also in addition to pleading that the defendant is suffering from mental disorder. Not only this put it is for the plaintiff to further plead and prove that because of defendant's mental condition, the plaintiff cannot live or expected to live with the defendant. The learned counsel for the appellant further submitted that the expression "incurably unsound mind" cannot be interpreted so as to cover the feeble- minded persons or persons of dull intellect, as held by the Gujarat High Court in the case of Ajitrai Shivprasad Mehta v. Bai Vasumati (AIR 1969 Guj. 48). Any state of mind which falls short of lunacy or idiocy cannot be allowed to be a ground for annulment of a marriage, as held by the Division Bench of the Allahabad High Court in the case of Mt. Titli v. Alfred Robert Jones (AIR 1934 All. 273). According to the learned counsel for the appellant-defendant, the plaintiff-respondent was preparing for his M.A. Examination and, thereafter, he started preparation for competitive test and, therefore, the plaintiff-respondent himself avoided to keep the defendant-appellant with him. He was also preparing for the Rajasthan Administrative Services Examination and whenever the defendant tried to come to the house of the plaintiff-respondent, it was avoided by saying that let the plaintiff build his career. When the plaintiff got the success in the Rajasthan Administrative Service Examination, he immediately filed the divorce petition so that he may have a more beautiful wife with good dowry. According to the learned counsel for the appellant, the divorce petition filed by the plaintiff in such situation deserves to be dismissed on the ground of inordinate delay. In support of his argument, the learned counsel for the appellant relied upon the judgment of the Punjab and Haryana High Court delivered in the case of Jasmel Singh v. Smt. Gurnam Kaur (AIR 1975 P & H 225), where prayer for divorce was refused to the applicant on the ground of filing the divorce petition after inordinate delay.

11. On facts, learned counsel for the appellant submitted that the plaintiff-respondent miserably failed to prove that the defendant-appellant is suffering from any mental disorder or she is incurably of unsound mind. According to the learned counsel for the appellant, the heavy burden was upon the plaintiff to prove his case. The plaintiff even did not produce the best witnesses and those witnesses were his own mother and father, therefore, the adverse inference is required to be drawn against the plaintiff. The learned counsel for the appellant relied upon the judgment of the Calcutta High Court delivered in the case of Pramatha Kumar Maity v. Ashima Maity (AIR 1991 Cal. 123) and the Division Bench judgment of the Calcutta High Court delivered in the case of Smt. Rita Roy v.

Sitesh Chandra Bhadra Roy (AIR 1982 Cal. 138). It is also submitted that non-examination of the defendant herself cannot be a ground for passing decree for divorce under Section 13(1)(iii) of the Hindu Marriage Act, 1955. According to learned counsel for the appellant, even if any inference is drawn against the appellant then also it can be up to holding that defendant suffered or suffering from some mental disorder. But no inference can be drawn about extent of her mental disorder. According to learned counsel for the appellant, mere mental disorder or mere undeveloped mind of spouse is not the ground for granting decree for divorce to other. Sub-clause (iii) of Sub-section (1) of Section 13 of the Hindu Marriage Act, 1955 clearly provides that such disorder must be of such kind and extent that the petitioner cannot reasonably be expected to live with the respondent. According to learned counsel for the appellant, the plaintiff is required to prove his case by evidence and cannot rely upon weakness of the defendant.

12. The learned counsel for the appellant further submits that the court below committed serious illegality in relying upon the opinion of the Medical Board. According to the learned counsel for the appellant, the doctors were interested in the plaintiff, is a proved fact from the evidence of the doctors themselves. It is also submitted that if medical report is examined in the light of the statement of the doctors who examined the appellant, it proves nothing against the appellant-defendant; rather, the medical opinion deserves to be discarded as the doctors have proved that they have not examined the defendant thoroughly. The doctors formed opinion only on the basis of answers given by the appellant in one sitting which is not sufficient for opining about mental condition of the appellant. The doctor even did not bother to look into history of the patient. According to the learned counsel for the appellant mere production of medical report is not sufficient but the plaintiff should have produced all material on the basis of which the opinion was formed by the doctors. It is also submitted that even reasons given in the report of the Medical Board (Ex.42) itself are sufficient to hold that the doctors recorded the finding without thoroughly examining the case history of the defendant. Mere a few answers of few questions cannot be a basis for forming opinion about the mental status of the defendant.

13. Whereas, the learned counsel for the respondent supported the judgment of the Trial Court. According to the learned counsel for the respondent, it is clear from the facts of the case that the marriage of the appellant and respondent took place in the year 1994. The divorce petition was filed by the respondent in the year 2001, after almost six years, till then the marriage was not consummated. The appellant tried to explain for non- consummation of the marriage by saying that the respondent avoided to keep the appellant with him. This fact is just contrary to the evidence available on record. Not only this but the facts reveal that the appellant and her father tried to explain reasons for not going of appellant to the respondent, instead of disclosing their any effort for real union of the appellant and respondent. According to the learned counsel for the respondent when the respondent fully believed that the appellant's parents are avoiding meeting of the respondent and the appellant because of mental sickness of the appellant then the respondent filed the petition for divorce. During this period, the respondent was selected in the Rajasthan Administrative Service and this co-incidence is being sought to be encashed by the appellant. The appellant only wants to prejudice the court and because of this reason only, this plea has been taken by the appellant. It is also submitted that only in the year 2000, the respondent-husband of the appellant was told by the appellant's brother Rajendra that the appellant was suffering from some

mental disease. In view of the above facts, long period of more than six years only proved that the appellant is not a lady with whom the respondent can be expected to live as a husband. It is also submitted that the respondent produced the medical prescriptions of the appellant which clearly proved that the appellant was given medicines for treatment of her mental sickness. The appellant did not produce those doctors who treated the appellant-defendant at Bikaner who could have been the best witnesses to not only rebut the plaintiff's allegations but could have disclosed the purpose for which the treatment was given to the appellant. Even the father of the appellant who was in service at relevant time, in his cross-examination, admitted that he took the reimbursement of the medical bills of the appellant. In cross-examination he deliberately avoided to disclose the disease of the appellant. The appellant tried to avoid her medical examination but ultimately she appeared before the medical board. The medical board consisting of team of doctors clearly opined that the appellant is suffering from mental disorder and the said mental disorder is incurable. The appellant did not appear in the witness-box simply because of the reason that the appellant and her family members knew it will that her mental sickness will come to the light. And by the appellant's own evidence the case of the plaintiff-respondent will stand proved. The learned counsel for the respondent further submitted that the learned counsel for the appellant tried to assail the report of the medical board but could not get her medical examination from other doctors and produce any medical report to rebut the opinion of the medical board. The procedure adopted by the medical board cannot be challenged because of the reason that there is no evidence available on record which suggests that the doctors have not examined the appellant as required. So far as non-production of the entire questionnaires by the medical board is concerned, the learned counsel for the respondent submitted that the medical board gave its opinion and the court cannot become the expert over expert and examine the material as expert above expert. The only course available to appellant was that she should have produced the experts on the subject to rebut the medical board's opinion. Therefore, neither the medical board's report can be discarded nor any contention of the appellant can be accepted challenging the medical opinion.

14. The learned counsel for the respondent further submits that the plaintiff-respondent in his divorce petition very specifically, after narrating the mental condition of the appellant-defendant, pleaded that in the above circumstances, it is impossible for the respondent to live with the appellant. The plaintiff-respondent could not get any opportunity to find out actual disease of the appellant. The plaintiff-respondent did not get any opportunity to take the appellant to any doctor because she did not live with the plaintiff-respondent. It is also submitted that the plaintiff-respondent's doubt was confirmed only when the appellant-defendant's brother disclosed the fact of appellant's mental sickness. Thereafter, the fact of appellant's illness proved from the medical evidence which the plaintiff could obtain from Bikaner where appellant was living with her father at relevant time. According to the learned counsel for the respondents, the disease Schizophrenia has been disclosed by the doctors and, therefore, the respondent believes that the appellant is suffering from Schizophrenia. It is also submitted that the decree for divorce can be granted in cases where the other party suffering from mental disorder and it is not that the decree for divorce can be granted only in cases where the other party is suffering from Schizophrenia. The Explanation (a) only provides that the expression "mental disorder" includes Schizophrenia and it nowhere says that Schizophrenia is the only disease which shall count as mental disorder. In the alternative, it was submitted that whatever mental disorder may be, the fact is that the appellant is

suffering from the mental disorder and because of that mental disorder, she cannot discharge her matrimonial obligations and it is not expected from the respondent to live with a lady who cannot discharge matrimonial obligations because of her mental disorder. Sub-clause (iii) of Sub-section (1) of Section 13 of the Hindu Marriage Act, 1955 very clearly provides that the husband or wife may seek decree for divorce on the ground that other party has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder. The respondent has proved incurable disease of the appellant as it has not been cured even in last more than 13 years despite treatment and, therefore, the respondent has proved that now it cannot be expected from the respondent to live with the appellant. By this, the respondent has proved all the requirements for getting the decree of divorce against the appellant.

15. I perused the record and considered the submissions of the learned counsel for the parties.

16. This is certainly an unfortunate litigation. The mental disorder of the appellant if proved is not creation of the any of the parties or their family members. The dispute centers round whether the appellant is suffering from the mental disorder which is incurable or the appellant has been suffering continuously or intermittently from mental disorder and that disorder is of such kind and of such an extent that the respondent cannot reasonably be expected to live with the appellant.

17. It will be just and proper to first examine the law on the point. Sub-clause (iii) of Sub-section (1) of Section 13 of the Hindu Marriage Act,1955 read as under:-

"13(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or (ia) .. ..

(ib) .. ..

(ii) .. ..

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent."

18. Above provision provides that the husband or the wife may seek decree of divorce on the ground that the other party is suffering from mental disorder. The mere mental disorder is not sufficient for the relief of separation. As per Sub-clause (iii), the mental disorder may be; unsoundness of mind or suffering continuously or intermittently from mental disorder. That unsoundness of mind and mental disorder, if is (1) of such kind and (2) to such an extent that (3) the petitioner cannot reasonable be expected to live with the respondent, then and then only the decree for divorce can be granted.

19. The mental disorder has been defined in the explanation (a) appended to Sub-clause (iii) of Sub-section (1) of Section 13 of the Act of 1955, which says that mental disorder means:-

(1) mental illness, or (2) arrested or incomplete development of mind, or (3) psychopathic disorder, or (4) any other disorder or disability of mind, and (5) includes schizophrenia."

20. The Explanation (b) to Sub-clause (iii) of Sub-section (1) of Section 13 defines the expression "psychopathic disorder". Psychopathic disorder means:

"(1) a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment."

21. The learned counsel for the appellant heavily relied upon the judgment of the Hon'ble Supreme Court delivered in the case of Ram Narain Gupta v. Smt. Rameshwari Gupta (AIR 1988 SC 2260), in support of his contention that every disease of Schizophrenia to a spouse cannot be ground for granting the decree for divorce. The facts of the case of Ram Narain Gupta (supra), are that the marriage between the said Ram Narain Gupta and Rameshwari Gupta was solemnized on 17.6.1979. The suit for dissolution of marriage was filed on 14.7.1983 on the allegation that the wife was a Schizophrenic. Facts of the case as given in the judgment of the Allahabad High Court delivered in the case of Smt. Rameshwari Gupta v. Ram Narayan Gupta (1987 All Law Journal 483), the husband plaintiff and the defendant lived together and they gave birth to one child and thereafter, dispute arose between the parties. In the suit, the husband specifically pleaded that his wife is suffering from mental disorder of such a severity as to render the respondent unsociable and given to violent propensities that the wife had been treated by the doctors at the Department of Psychiatry and despite competent professional treatment, the mental condition of the respondent continued to deteriorate to the point of making manifest in her suicidal tendencies and aggressive violent behaviour towards others. Therefore, in above facts, there was specific allegation of a particular disease of the wife of the petitioner-husband and because of that disease schizophrenia, the wife became aggressive and violent, whereas in the present case, there is no allegation in the divorce petition that the appellant is suffering from schizophrenia and her mental disorder made her violent. The Ram Narain Gupta's case cannot be read as authority laying down that petition for divorce can be maintained only in the cases where the respondent is violent and aggressive due to schizophrenia or due to mental disorder or due to unsoundness of his/her mind. The above authority even cannot be read as laying down that violent and/or aggressive conduct of respondent is sin qua non for grant of divorce decree under Sub-clause (iii) of Sub-section (1) of Section 13 of the Hindu Marriage Act, 1955. It will be worthwhile to mention facts of Ram Narain Gupta's case here. In that case plaintiff and the defendant lived together for some time. A child was born to them. Thereafter, it appears that the wife went in some depression. It is alleged by the defendant that she was treated cruelly and she lodged F.I.R. against the plaintiff. The plaintiff, thereafter made efforts to collect all the evidence with the aim of sending the defendant to the mental asylum and filed the suit for dissolution of marriage. The High Court also observed that above evidence were collected in quick succession. Not only this, the High Court further observed that "Cruelty inflicted by the in-laws culminated in the first information report which the defendant lodged in the morning of 1st

July, 1983, for which no convincing evidence has been given by the plaintiff that she said report was false and that was filed by the defendant without any grave provocation." The High Court specifically recorded the finding that the defendant was suffering from mental disorder and further held that the defendant was not suffering from any mental disorder of such a kind and to such an extent that the plaintiff cannot live safely with the defendant. The finding of fact was considered by the Hon'ble Apex Court and the Hon'ble Apex Court considered the evidence of even doctor produced by the plaintiff in that case. The High Court also discarded the medical evidence as absolutely unreliable. Therefore, the facts of the above case are entirely different from the facts of this case. The facts of this case clearly established that plaintiff and the defendant virtually had no occasion to live together in seven years (Four days). It was difficult for the plaintiff to form any definite opinion that the defendant is of unsound mind or suffering from mental sickness. When doubt about developed in the mind of the plaintiff, he did not get any opportunity to assess the kind and extent of the mental disorder of the defendant. He did not get any opportunity to examine the defendant from any doctor to know the name, nature and extent of the disease of the defendant. The plaintiff could form his definite opinion about defendant's mental condition when it was told by her brother and confirmed by medical prescriptions of Bikaner. After passing of long period of six years without defendant, the plaintiff reached to conclusion that he cannot live with the defendant as she cannot discharge any of his matrimonial obligation including consummation of marriage due to mental disorder of the defendant. This is what comes out from the pleadings of the plaintiff and his evidence and that has not been rebutted by the defendant. If non- petitioner is not in position to consummate the marriage at all, due to mental disorder, then in such situation it will be unreasonable to expect from the plaintiff that he can live with the non-petitioner. Such situation may not have been even imagined by the parents of the non-petitioner (who might knew that their son/daughter is not mentally fully developed and may have assumed that marriage may improve or even cure their son/daughter). Therefore, on failing after taking such a chance one cannot have any option but to accept the unfortunate reality.

22. The words "abnormally aggressive or seriously irresponsible conduct" have been used only in Explanation (b) of Sub-clause (iii) and have not been used in the main Clause (iii) of Sub-section (1) of Section 13 or even in Explanation (a) of Sub-clause (iii) of Section 13. In the cases of abnormally aggressive or seriously irresponsible conduct, it is immaterial whether the patient is susceptible to medical treatment or not. Obvious reason for this is that the legislature presumed "abnormally aggressive or seriously irresponsible conduct" as a situation in which one cannot live with that sick person even if such sick person is susceptible to medical treatment. The Explanation (b) appended to Sub-clause (iii) has not been added to limit the scope of main provision which is Sub-clause (iii) of Sub-section (1) of Section 13. If it is held that the decree for divorce can only be granted on proving respondent's "abnormally aggressive or seriously or seriously irresponsible conduct due to incurably unsound mind or due to suffering from mental disorder" then it will exclude possibility of decree for divorce on proving that the respondent is of unsound mind or is suffering form mental disorder of such kind and to such an extent where petitioner cannot live with the respondent. Further, such an interpretation will make the Explanation (a) redundant and purposeless because "mental illness", "incomplete development of mind" and "any other disorder or disability of mind" coupled with situation where it will be "petitioner cannot reasonably be expect to live with the respondent" will not be ground for decree of divorce against the respondent. Such an interpretation

is inconceivable by any reasoning. Result of it will be that even after proving all the ingredients of Sub-clause (iii) of the Sub-section (1) of Section 13 of the Act of 1955, no one will be entitled to decree for divorce and main provision, Sub-clause (iii) will become subordinate clause of its own Explanation clause.

23. This provision, appears to has been framed as it has own purpose. Unsoundness of the mind and mental sickness is not fault of oneself but why other should suffer for that if that unsoundness of mind or mental sickness has created a situation in which it becomes unreasonable to expect from other person to live with such sick person. What are the situations in which one is not expected to live with other depends upon facts of each case. When court finds, after very carefully considering all the facts and all relevant surrounding circumstances of the case with all care and caution, matter has reached to a stage where it is unreasonable to expect from petitioner to live with non-petitioner and cause for the such unfortunate situation is mental sickness of the non-petitioner then as per Section 13(1)(iii), the court is supposed to pass a decree of divorce against the non-petitioner even in the cases where there is no fault of non- petitioner. Extra care and caution of the court is needed to avoid misuse of this provision as there is very chances of its being misused by wrongdoers.

24. In the language used in Sub-clause (iii), the care has been taken by using the word "reasonably" before "expected to live with respondent". The word could have been "difficult" or "impossible" before "expected to live" but have not been used. The petitioner is, therefore, required to prove that as a reasonable person, he cannot live with the non-petitioner because of non-petitioner's mental sickness. If it will be held that decree of divorce can be granted only in the cases where the respondent has aggressive or violent conduct then there was no need for using the words "petitioner cannot reasonable be expected to live with the respondent" in main provision Sub-clause (iii).

25. Again in the case of Ram Narain Gupta (supra), the High Court found and Supreme Court considered the facts of that case and while rejecting the petitioner's case on facts examined what is Schizophrenia, what are its effects and what its categories are. It was because the plaintiff came with a specific case of violent and aggressive conduct of the non-petitioner and it was alleged that it is due to Schizophrenia. Narain Gupta's case is not touching the other aspect of the grounds mentioned in Sub-clause (iii) read with Clause (a) of the Explanation of Section 13 as there was no need for that in the facts of that case.

26. In the case before this Court, the plaintiff-respondent's case as per pleadings of the plaintiff was not under explanation (b) appended to Sub-clause (iii) of Sub-section (b) appended to Sub-clause (iii) of Sub-section (1) of Section 13 of the Act of 1955. The plaintiff did not set up a case that defendant is suffering from psychopathic disorder or her disability or disorder which was resulted in abnormally aggressive or seriously irresponsible conduct of the defendant appellant. The plaintiff's case is that the defendant is of unsound mind or suffering from mental disorder and the plaintiff cannot live with the defendant which is the ground for divorce in all other cases of mental disorder expect in case of psychopathic disorder and may be in case of schizophrenia.

27. Here in this case, the allegations of the plaintiff are that the defendant-appellant was suffering from mental disorder since last 13 years and it is the reason because of which the

plaintiff-respondent had no matrimonial life despite marriage. The consummation between the parties is the most important factor and may be reason for marriage. It is not expected from any husband to live with wife who cannot discharge matrimonial obligations because of mental disorder. Even if one is not suffering from any mental disorder but fails to provide matrimonial relationship without any just cause, the aggrieved person can seek decree on the ground of mental cruelty. Since the plaintiff-respondent has a cause for seeking divorce on the ground of mental cruelty but the defendant-plaintiff may take a defence that because of mental sickness, she cannot have physical relation with the plaintiff-respondent and non-consummation of marriage is due to sufficient cause. That plea of the defendant is not available to the defendant because of Sub-clause (iii) of Section 13 and justification of non-consummation of marriage on the ground of mental disorder stands excluded by the statutory provision. Therefore, the mental disorder is a reason for granting decree for divorce when the husband and wife cannot have matrimonial relations between them due to the mental disorder. The judgments relied upon by the learned counsel for the appellant, therefore, have no application to the controversy involved in this appeal.

28. There may be several diseases and even unknown diseases and disorders affecting the mind of the persons and when they are of such kind and of such extent that the petitioner cannot reasonably be expected to live with that sick person then as per Sub-clause (iii) of Sub-section (1) of Section 13 of the Act of 1955, decree for divorce can be granted.

29. The question now remains is that whether the appellant was suffering from any mental disorder and because of that mental disorder it is not expected from the respondent to live with the appellant despite the fact that there is no allegation of aggressiveness and violent nature of the appellant-defendant.

30. The plaintiff-respondent discharged his burden to prove the facts by oral, documentary and circumstantial evidence, which have been considered by the Trial Court in detail. This court, after going through evidence found that plaintiff gave his own statement before the court below and narrated all the circumstance by which he reached to the conclusion that the defendant is not joining the family life because of her mental disorder. The documents relied upon by the plaintiff are not disputed by the defendant, rather defendant's father admitted that he took reimbursement of medical bills of the defendant. The defendant herself did not even appear to give her statement which was more important looking to the allegations leveled against the defendant. The defendant could have produced doctors who gave treatment to her at Bikaner but she did not produce the doctors for the reasons best known to her. Not only this but appellant failed to give any reasonable and satisfactory explanation for not having the physical relation between her and the defendant in more than six years. There is no satisfactory explanation from the family members of the appellant for such a grave default. The Trial Court was well justified in holding that there was no physical relationship between the plaintiff and the defendant in such a long period of more than six years. The respondent- plaintiff made earnest efforts to bring on record the medical opinion about the mental state of the defendant-appellant. Medical Board opined that it is a case of schizophrenia. The doctor's opinion about mental condition of the appellant supported by oral evidence of the plaintiff fully proves that the appellant was suffering from some mental disease.

31. The contention of the learned counsel for the appellant that non-production of the father and mother of the plaintiff- respondent in evidence by the plaintiff should have been a ground for drawing an adverse inference against the plaintiff- respondent. It is also submitted that the plaintiff should have produced his grand-father and grand-mother who were the actual witnesses of one incident on the basis of which the plaintiff formed his opinion about the mental sickness of the defendant- appellant. I do not find-any force in the above submission of the learned counsel for the appellant. When there is other evidence available on record, it was not necessary for the Trial Court to draw adverse inference against the plaintiff-respondent. The plaintiff proved that the plaintiff cannot live with the defendant-appellant and reason for this is mental condition of the appellant. The grant-father and grandmother were witnesses only of one or two incidents but the plaintiff's case is not that because of those incidents only, he is saying that the appellant is mentally sick. Those may be reasons for having doubt about the mental condition of the appellant but when plaintiff found that the defendant was given treatment for mental disorder for long period and she and her family members are avoiding in sending the appellant to respondent and appellant's brother told that the appellant is taking treatment for mental disorder, then he reached to the conclusion that in such situation, he cannot live with the appellant. It is not the case that by passing of the time, the position has changed in any manner.

32. The Trial Court was fully justified in drawing adverse inference against the appellant as she did not appear in the witness-box. The appellant alone could have state about the physical relationship with the respondent but she could not muster courage to say on oath. She alone could have explained the reason for not going to her in-laws' house. By cross-examination of the appellant, the plaintiff could have proved his case of even mental condition of the appellant to the satisfaction of the court. It will be worthwhile to mention here that in the case of Ram Narain Gupta (supra), the wife herself appeared in the witness-box and she was thoroughly cross-examined. Even during course of arguments, no explanation has been given by the appellant why she did not appear in the witness-box to rebut the evidence leveled against her. It will be worthwhile to mention here that the mental disorder may not be of violent nature or may not make one aggressive but if it makes one absolutely uninterested in discharge of matrimonial obligations and living with his/her spouse then that can also be a ground where it can safely be held that other party is not reasonably expected to live with such sick person. The learned counsel for the appellant was fair enough when he is the alternative submitted that even if adverse inference is drawn against the appellant then that can only prove other some mental sickness or some under development of the appellant's mind but non-appearance of the appellant cannot prove the extent and degree of the mental disorder. I am unable to accept this contention of the learned counsel for the appellant because no one can predict how the appellant would have behaved in the court during her evidence and her cross-examination. Therefore, if the Trial Court in the background of all the facts, drawn adverse inference against the appellant, the Trial Court has not committed any error of fact or law. The appellant's passing her graduation examination, is also not very much important because of the reason that she may have her memory intact. She may behave properly but if she cannot fulfill the requirements of the marriage because of her mental disorder, the plaintiff-respondent is entitled for the separation by decree of divorce.

33. The Division Bench of the Allahabad High Court in the case of Mt. Titli v. Alfred Robert Jones (supra), held that the opinion of an expert by itself may be relevant but would carry little weight with a court unless it is supported by a clear statement of what he noticed and on what he based his opinion. The expert should put before the court all the materials which induced him to come to his conclusion, so that the court although not expert, may form its own judgment on those materials. The mere mention that certain kind of tests known as Binet and Simon tests were applied and certain results were obtained, might be relevant as a piece of evidence but would not be conclusive. In this case, admittedly, the doctors explained why they examined the patient (appellant-defendant). There is no evidence on record to show that some material was withheld and by examining that record, the court could have formed an independent opinion. The evidence of doctors clearly reveals that they put questions to the patient appellant and on the basis of those questions, opined that the appellant-defendant is suffering from mental disorder and the doctors named it as may be schizophrenia. From this word of schizophrenia used by the doctors, the argument of the advocate turned on the subject of schizophrenia, whereas the plaintiff-respondent's case in the divorce petition was that because of mental disorder, the plaintiff cannot live with the defendant-appellant. In this very judgment (Mt. Titli), the Division Bench held that "any stage of mind which falls short of lunacy or idiocy cannot be allowed to be a ground for annulment of a marriage." The said judgment was delivered by the Division Bench of the Allahabad High Court while interpreting the Section 19 of the Divorce Act, 1869. The language used in the Section 13, Sub-clause (iii) read with explanations, makes it clear that the lunacy or idiocy itself is not a ground for annulment of marriage unless and until because of that reason; it becomes unreasonable expectation from some one to live with that sick person. It may be again reiterated at this place that the mental disorder making it unreasonable for other to live with his or her spouse, is a ground for divorce under the provisions of Hindu Marriage Act. Therefore, the view taken in the case of Mt. Titli (supra), also renders no help to the appellant. The Division Bench judgment of the Allahabad High Court was considered by the learned Single Judge of the Gujarat High Court in the case of Ajitrai Shivprasad Mehta v. Bai Vasumati (supra). In A.S. Mehta's case (supra), the court recorded the finding on the basis of the evidence that the respondent was able to manage herself and all her affairs in her own simple way and she would be able to cope with the obligations of a marital life. The lady was even not found seriously sub-normal. In the case of A.S. Mehta, the respondent gave her evidence and the Trial Court made a note how she stood the test of a searching cross-examination. Understood the questions put to her. She did not understand the complicated questions but she gave all proper replies to simple questions. At this stage, it may be again noticed that, in the present case, the appellant herself did not appear in the witness-box because a reasonable adverse inference can be drawn against her due to her mental disorder in case she would have appeared in the witness-box. This Court also feels that that alone is not a ground for granting the decree for divorce to the plaintiff-respondent. The reason for grant of decree for divorce is the mental disorder coupled with the situation created because of the illness which resulted into not living of the appellant-defendant with the plaintiff- respondent for such a long period and, therefore, adverse inference can be drawn that because of mental disorder, the appellant-defendant failed to discharge the matrimonial obligations and created the situation of requirement of their separation as the plaintiff-respondent cannot be expected to live with the lady who cannot discharge the matrimonial obligation because of her mental sickness. It will be worthwhile to mention here that in the case of A.S. Mehta (supra), the Division Bench Judgment of the Allahabad High Court

delivered in the case of Mt. Titli (supra), was considered which was rendered on Section 19 of the Divorce Act, 1969 which provides decree for nullity on the ground when the either party was a lunatic or idiot at the time of marriage. Sub-clause (iii) of Section 19 of the Hindu Marriage Act, 1955 which provides above provision, does not contain that such difficult of lunacy or idiocy must be to the extent of becoming violent and aggressive. Therefore, the judgments relied upon by the learned counsel for the appellant have no application to the facts of this case.

34. There was no reason for the appellant for not appearing in the court to rebut the allegations leveled against her by the plaintiff. The evidence of the father of the appellant-defendant failed to give any explanation for not sending the appellant to the plaintiff's house for such a long period. It appears that the appellant's parents were under impression that since it is the petition filed by the husband, therefore, it is for the husband to prove that he made efforts to take the appellant with him, ignoring the fact that it was the question of home of the appellant also for which it was expected from the parents of the appellant to show that they also made efforts to keep the appellant and respondent's house united. Be it as it may be, the documentary evidence-the letters and telegrams placed on record and proved by the plaintiff only supports the plea of the plaintiff that the appellant's family members avoided to send the appellant to the plaintiff. In absence of any explanation coming from the appellant and her family members for not sending the appellant to the respondent-husband, there appears to be no reason for disbelieving the statement of the plaintiff supported by medical evidence that the appellant was not in fit mental state and because of this mental disorder, she was not in position to discharge the matrimonial obligations destroying the very object of marriage.

35. So far as the allegation of the appellant that the divorce petition has been filed after inordinate delay of six years is concerned, it has no bearing on the fate of the divorce petition because of the reason that it has been proved by the respondent- plaintiff that he had no opportunity to live with the appellant for a long period any time so that he could have formed a definite opinion about the appellant's mental condition. The respondent's case is that the appellant lived with the respondent-husband only for four to six days. The respondent was reasonably expected to wait for some time and to find out the reasons for not coming of the appellant to the respondent and in matrimonial matter, it cannot be expected that instantly one of the contracting parties to the marriage will start doubting the intention of his or her in-laws and will not believe the excuses given by the in-laws.

36. The delay may be fatal in a case where the reason for seeking relief comes to the knowledge of the party and he failed to approach the court in time. Here in this case, there is no evidence available on record by which it can be gathered that the plaintiff could have formed the opinion about the mental condition of the appellant before the year 2000 despite the fact that he might have developed some doubt about the mental condition of the appellant from beginning.

37. Before parting with, this Court feels it proper to observe that the allegations of unsoundness of mind and mental disorder are very serious allegations against the person. The mere feeble mind of the person or person of dull intellect or person falling short of lunacy or idiocy alone should not be treated to be ground for divorce by interpreting this judgment. The courts are required to examine

the totality of the facts of the each case to find out that even when there are allegations of unsoundness of mind and mental disorder; whether the plaintiff has further proved the case that he cannot be expected to live with defendant which the mandatory requirement of Sub-clause (iii) of Section 13 of the Hindu Marriage Act, 1955. The judgment may also not be interpreted to mean that an under-development of mind or development of depression before or after marriage, resulting into not behaving like as person of unsound mind, here and there, or in peculiar circumstances, may not be treated to be just and sufficient ground for granting the decree for divorce. Courts should take every extra care and should see that this provision should not be a tool in the hands of wrongdoer. The sufferer needs sympathy, also, be from all. This Court considered the facts of the cases of Mt. Titli and A.S. Mehta (supra), as well as the facts of the case of Ram Narain (supra). In the case of Ram Narain as well as in the cases of Mt. Titli and A.S. Mehta (supra), the courts recorded the finding that the respondent was not suffering from mental disorder and the respondent might have no high intellect but in all those cases the point as considered in this case, was not came up for consideration in view of the facts of those cases and this Court has considered the effect of the language used in Sub-clause (iii) of Section 13 of the Hindu Marriage Act which provides "the petitioner cannot reasonable be expected to live with the respondent" on account of unsoundness or mental disorder of the respondent. This Court also examined whether for granting decree for divorce itself is sine qua non that the respondent should have developed abnormal, aggressive and seriously irresponsible conduct. This Court also examined in a case whether the appellant-defendant is not aggressive and violent but has mental disorder or unsoundness of mind which prevented the appellant-defendant to discharge matrimonial obligations and consummation of marriage, makes the situation in which the plaintiff-respondent cannot be expected to live with the appellant-defendant. This Court found on facts of this case that the appellant-defendant is of unsound mind and because of this reason it is not expected from the plaintiff-respondent to live with the appellant-defendant. This court also appreciates the way in which both the learned counsels assisted the court and argued case for their parties.

38. In view of the above discussion, the appeal of the appellant deserves to be dismissed and hence dismissed.