

Delhi High Court

Shri Amar Lal Arora vs Smt. Shashi Bala on 15 July, 2011

Author: Kailash Gambhir

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 31.03.2011

Judgment delivered on: 15.07.2011

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FAO 159/2001

Shri Amar Lal Arora

.....Appellant.

Through: Mr.P.S.Kem, Advocate.

Vs.

Smt.Shashi Bala

.....Respondent

Through: Mr.K.P.Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may

be allowed to see the judgment?

Yes

2. To be referred to Reporter or not?

Yes

3. Whether the judgment should be reported

Yes

in the Digest?

KAILASH GAMBHIR, J.

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1. By this appeal filed under Section 28 of the Hindu Marriage Act, 1955 the appellant husband seeks to challenge the judgment and decree dated 05.02.2001 passed by the learned trial court whereby the divorce petition filed by the appellant herein under Section 13 (1) (ia) & (ib) of the Hindu Marriage Act was dismissed.

2. Brief facts of the case relevant for deciding the present appeal are that the marriage between the parties was solemnized on 13.02.1987 according to Hindu rites and ceremonies and a daughter 'Gudia' was born from the wedlock on 5.1.1988 . The case set up by the appellant in the divorce

petition was that the respondent was under the influence of her parents right from the beginning of the marriage and her parents interfered in their affairs. It was also alleged that the respondent never showed happiness in residing with the appellant and never fulfilled her matrimonial obligations. It was also the case of the appellant that the respondent avoided normal sexual life with the appellant and thereby caused mental agony to him. It was also stated that the respondent left for her parental home on 13.12.1987 on the pretext of attending a marriage of some relation and when the appellant went to bring her back to the matrimonial home on 20.12.1987 her parents refused to send her back with him. The appellant again went to bring back the respondent on 23.12.1987 and also on 25.12.1987 along with his father, maternal uncle and two other relations and requested the parents of the respondent to send her but they refused. It was also alleged that the respondent herself also insulted and ill treated them. According to the appellant, when the daughter was born, he was not allowed to see her and was threatened to be killed. The appellant wrote letters dated 12.3.88, 16.3.88 and 25.3.88 requesting the respondent to re-join the matrimonial home but she refused. The appellant, therefore, filed a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of their conjugal rights and a compromise was arrived at between the parties and the respondent re-joined the matrimonial home on 27.7.89 but the respondent did not mend her behaviour and that she became more cruel and violent and started insulting and humiliating him frequently and also did not take interest in the household affairs and finally left the matrimonial home on 30.9.89. The appellant has also alleged that he was threatened of dire consequences to his life as well as that of his relations on various dates i.e. on 1.10.89, 6.4.91 and in fact was implicated in a criminal case under Section 498-A/406 IPC. It has also been alleged by the appellant that the police did not take any action against the respondent and her family members on his complaint and the respondent failed to join the matrimonial home despite his repeated requests and in this manner she willfully ill-treated him and finally deserted him. The appellant thus filed a petition for divorce on the ground of cruelty and desertion which vide judgment and decree dated 5.2.01 was dismissed and feeling aggrieved with the same, the appellant has preferred the present petition.

3. The petition was contested by the respondent wife and she claimed that just after about one and half month of marriage, the appellant and his parents started raising demands for colour T.V, scooter and cash of Rs.20,000/- and as her parents could not meet the said demands ,therefore the appellant and his family members started ill-treating her, beat her and threatened her of dire consequences and made her life hell. As per the respondent, she wrote to her parents about her miserable condition vide letters dated 2.6.87 and 11.6.87 and 13.6.87. It was further claimed by the respondent that she was severely beaten and thrown out of the matrimonial home on 29.6.87 and that efforts for compromise/reconciliation were made and in December, 1997 a 'Biradari' meeting was held in which it was settled that the appellant would take her to the matrimonial home after 40 days of delivery. The respondent further alleged that the appellant did not take her back to the matrimonial home even after 40 days of delivery of the child on 5.1.88 and that the family members of the appellant demanded that her entire salary be accounted for the period she stayed at her parental home. It was also alleged that the appellant and his family members did not come to see her and the baby child even after due intimation. It was also alleged by the respondent that it was the meanness and greediness of the appellant's family which made her life hell and she was not allowed to enter the matrimonial home after being kicked out on 29.6.87. The respondent also alleged that after 2 days of her rejoining the matrimonial home she was beaten and humiliated and

was pushed out of the matrimonial home with the allegations that she was not capable of giving birth to male child.

4. Based on the above pleadings of the parties, the learned trial court framed the following issues:-

"(i) Whether the respondent treated the appellant with cruelty? OPP

(ii) Whether the respondent has deserted the appellant for a continuous period of two years before filing the petition? OPP

(iii) Whether the appellant is entitled to the relief prayed for? OPP In support of his case, the appellant examined himself as PW-

1 besides examining his friend Shri Chander Shekhar Bhatia as PW-2. The respondent, on the other hand, examined only herself as RW-1 in support of her case.

5. The learned trial court on both the abovesaid issues returned findings against the appellant and in support of the respondent. On issue no.1 the learned trial court found that the appellant alone had been ill-treating, harassing and beating the respondent and threw her out of the matrimonial home. The trial court also found that the appellant had taken a false stand in the petition as well as in his evidence claiming that the respondent had left the matrimonial home on 30.9.89. The learned trial court further found that the letter written by the respondent and proved on record as Ex.PW1/1 instead of helping the case of the appellant supports the defence of the respondent who claimed that she was ready to join the appellant in her matrimonial home and she had wanted the appellant to visit her to take her back to the matrimonial home. The learned trial court further found that the statement and the undertaking given by the appellant in the proceedings filed by him under Section 9 of the Hindu Marriage Act clearly proved that his behaviour was not proper otherwise he would not have given such an undertaking before the Court to keep the respondent happy and to maintain a congenial atmosphere in the home. The trial court also found the stand of the appellant claiming desertion of matrimonial home by the respondent on 13.12.87 as false and believed the version of the respondent of being thrown out of her matrimonial home on 24.9.89 and that the appellant treated the respondent with cruelty.

6. On Issue no. 2, the learned trial court from the record found that it is clear that the respondent never intended to leave the matrimonial home and she always wanted to stay with the appellant but only wanted to protect her self respect and to be treated well in her matrimonial home. The trial court also found that the appellant did not make any efforts to improve the atmosphere in the matrimonial home despite his undertaking given by him in the proceedings under Section 9 of the Hindu Marriage Act, which made it clear that the intention of the appellant was to bring cohabitation permanently to an end. It observed that the respondent had reasonable cause for not returning to the matrimonial home and thus decided the issue in favour of the respondent.

7. Assailing the said judgment and decree of the learned trial court, Mr. P.S. Kem, learned counsel for the appellant vehemently argued that the appellant had duly proved his case by sufficiently

proving cruelty on the part of the respondent and also the willful act of the respondent of deserting him with an intention to permanently bring cohabitation to an end, but still the learned trial court ignoring the evidence led by the appellant dismissed the divorce petition filed by the appellant. Counsel also argued that it is an admitted case between the parties that the respondent had not shown any interest to join the company of the appellant, since September, 1989 and this by itself is a sufficient ground to dissolve the marriage between the parties as there was no possibility of reunion of the parties after such a long separation of about 22 years. Counsel further argued that the appellant also paid an amount of Rs.3 lacs towards compensation in compliance of the order dated 27.11.2004 passed by the learned sessions court in proceedings under section 406/498A. Counsel further submitted that the respondent had also made a complaint about the conviction of the appellant in the office of the appellant and due to that the appellant was removed from his service w.e.f. April, 2001 by his employer and since then he is unemployed and facing several civil/criminal cases and struggling for employment. Counsel also argued that the respondent was under the tremendous influence of her parents who frequently caused interference in the matrimonial home to create a wedge between them. Counsel further submitted that the respondent left the matrimonial home on 30.9.89 after she had left for her office and did not return back without disclosing any reasons. Counsel further argued that the appellant made all efforts earlier on 20.12.87 and 23.12.87 and then on 25.12.87 so as to bring the respondent to the matrimonial home but all in vain. Counsel also placed reliance on the letter written by the respondent proved on record as Ex.PW1/1 before the trial court, wherein she had duly admitted at least one visit of the appellant to her parental house to bring her back. Counsel further argued that the respondent had used abusive language in the said letter and had even admitted causing insult to the maternal uncle and the father of the appellant. Counsel also relied upon the various complaints made by the appellant with the local police from time to time against the respondent and her family members which were placed on record before the trial court (marked as Mark A to P) to demonstrate the cruel behaviour of the respondent. Counsel also took exception to the agonizing remarks made by the respondent attributing impotency and lack of sexual strength to satisfy the respondent in para 26 of her written statement. Counsel also argued that in fact the respondent had impliedly agreed to the grant of divorce by referring to para 40 of the written statement and prayed that the marriage between the parties be dissolved. Counsel also took exception to the disparaging remarks made by the respondent in her two letters dated 4.8.89 and 21.8.89, disrespecting the judiciary and the legal fraternity. Counsel further argued that the animus deserendi on the part of the respondent can alone be established by the fact that she had made a single complaint to the police on 12.12.89, whereafter she had not responded to the attempts made by the local police on the various complaints made by the appellant. The counsel also submitted that the learned trial court has arrived at contradictory findings as on one hand it has held that the relations between the parties were not cordial at all and on the other hand holding that no cruelty was committed by the respondent against the appellant, which is against the facts and circumstances of the case. Based on the above submissions, counsel submitted that the judgment passed by the learned trial court is based on surmises and conjectures and the same is not sustainable in the eyes of law.

8. Mr.K.P.Gupta, learned counsel for the respondent, on the other hand, supported the findings given by the learned trial court and submitted that no infirmity, illegality or perversity can be found in the said findings arrived at by the learned trial court and the appeal filed by the appellant is liable

to be dismissed. Counsel further argued that the appellant and his family members started ill treating the respondent from the very inception of the marriage on account of her bringing insufficient dowry and also because of persistent demands made by them for colour T.V., scooter and cash amount of Rs.20,000/-. Counsel further submitted that the respondent vide her letters dated 2.6.87, 11.6.87 and 13.6.87 duly apprised her parents of the pathetic and painful conditions under which she was living at the matrimonial home. Counsel also submitted that the respondent was thrown out of the matrimonial home on 29.6.87 after she was severely beaten. Counsel also argued that the female child was born out of the wedlock on 5.1.88, but despite the decision taken in the meeting of the Biradari, the appellant did not take the respondent back to the matrimonial home after expiry of 40 days from the date of the delivery as was agreed by him. Counsel further argued that the respondent had joined the matrimonial home on 27.7.88 after the appellant had given an undertaking to improve his behaviour before the matrimonial court in the proceedings under Section 9 of the Hindu Marriage Act but again the respondent was treated very rudely and the dowry demands were raised by the appellant and his family members and ultimately the respondent was again thrown out of the matrimonial home on 24.9.89. Counsel further submitted that because of the said ill treatment meted out to the respondent by the appellant and his family members, the respondent was compelled to lodge a complaint with the Crime Against Women Cell, which ultimately led to registration of an FIR bearing No. 202/90. Counsel also submitted that the appellant was convicted for the offences punishable under Section 498A and 406 IPC and even his mother, brother and maternal uncle were convicted. Counsel also submitted that in fact the appellant had already married another women with the name of Smt. Madhu Bala, on 22.5.93, and even a son named Anurag was born out of the said wedlock of the appellant with the said woman on 10.10.95. Counsel also submitted that the respondent has also filed a complaint under Section 494 IPC and the appellant is facing trial before the concerned Metropolitan Magistrate. Counsel further submitted that the respondent had never refused to join the company of the appellant but could not do so because of the ill treatment meted out to her by the appellant and his parents. Counsel thus submitted that the learned trial court has rightly given the findings and the impugned judgment and decree deserves to be upheld.

9. I have heard learned counsel for the parties at considerable length and given my serious consideration to the pleas raised by them.

10. The appellant had filed a petition to seek divorce on the grounds of both cruelty as well as desertion and on both the said grounds the learned trial court has given the findings against the appellant and in favour of the respondent, ultimately dismissing his petition. The appellant has filed detailed written submissions but surprisingly the appellant has failed to point out as to how the findings given by the learned trial court on both the issues can be faulted with.

11. On the Issue no.1, dealing with the ground of cruelty, learned trial court found that it was the case of the appellant that his relationship with the respondent remained cordial up to 13.12.87, then how come in his complaint dated 6.10.89, made by him to the Deputy Commissioner of Police, he could allege that he had to face mental agony caused by the behaviour and perpetual threats of dire consequences during the stay of the respondent at the matrimonial home from the day of his marriage with the respondent till she left the house on 13.12.87. The trial court thus found that the

relationship between the parties was not cordial at all as opposed to what was claimed by the appellant. The trial court found that the ill treatment of the respondent at the hands of the appellant and his family members was well reflected through the letters dated 2.6.87, 11.6.87 and 13.6.87 sent by the respondent to her parents and in the background of these letters, the trial court also believed the version of the respondent wherein she stated that she was beaten and thrown out of the matrimonial home on 29.6.87. The trial court also took note of the suggestion given by the appellant himself to the respondent in her cross-examination suggesting that she did not remain in the matrimonial home from 29.6.87 to July, 1989. The trial court further placed reliance on the contents of the letter addressed by the respondent to the appellant which was placed on record by the appellant himself and proved as Ex.PW1/1, to which the trial court referred in detail and then came to the conclusion that from the said letter it is clear that the respondent was always willing and ready to join the appellant at the matrimonial home but she had only wanted that the appellant should come and take her back to the matrimonial home. It is evident that the appellant has not given any explanation to rebut the contents of the said letter or the truthfulness of the same either before the trial court or before this court and a bare perusal of the said letter clearly shows that the appellant even lacked courage to tell his mother that he had gone to the parental house of the respondent so as to bring her back to the matrimonial home. The letter also clearly reflects the greedy nature of the mother of the appellant who wanted the respondent to give her complete account for the salary received by her during the said period of eight months, besides raising a demand of Rs.80,000/- from the respondent.

12. The trial court further placed reliance on the statement given by the appellant in Section 9 HMA proceedings wherein he undertook that he shall behave properly and keep the respondent happy and maintain a congenial atmosphere in the matrimonial home. This court does not find fault in the observation of the trial court that had the behaviour of the appellant been good, then he would not have given such an undertaking before the court. The trial court also found that the appellant has taken a false stand with regard to the actual date on which the respondent had finally left the matrimonial home. In the petition the appellant claimed the date of the respondent leaving the matrimonial home to be of 30.9.89 and then in his statement he gave two dates i.e. 24.9.89 and 30.9.89. The appellant also had also on occasion stated that the respondent was residing in the matrimonial home till 30.9.1989, till the time she left to attend the marriage of some relative and that it is only after that she had left the matrimonial home.

13. Now, testing the allegations of appellant on the parameters of cruelty as required by the Act. The concept of 'cruelty' has not been defined in it but has been discussed in a plethora of judgments given by the Hon'ble Apex Court and also by the various High Courts, but no precise or one comprehensive definition of cruelty can be laid down as the incidents complained of as amounting to 'cruelty' in one case may not be so in other case. Primarily, it is the social, economic, cultural and educational background of the parties that plays a role in determining if the conduct complained of amounts to cruelty, besides the temperamental behaviour, greed and inflated egos of the parties which also more often than not contribute to a large extent to aggravate mental tension between the parties. It would be relevant here to discuss some landmark judicial pronouncements in this regard. The Hon'ble Apex Court has dealt with the said concept of cruelty in great detail in the case of Samar Ghosh Vs. Jaya Ghosh (2007)4SCC511 and after gauging the judicial trend of various countries has

given a treatise on the subject and enumerated some of the instances of human behaviour which can be considered as amounting to cruelty. The same is reproduced as under:

"74. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior 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, discomode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behavior 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 behavior 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."

The incidents as enumerated above are not exhaustive. The legal position starting from the celebrated pronouncement of *Dastane vs Dastane* AIR 1975SC1534 to *V Bhagat vs D Bhagat* AIR 1994 SC710, the position that emerged was that mental cruelty can be defined broadly as the conduct that inflicts upon the other party such mental pain and suffering as would make it impossible for parties to live with each other. The position was further clarified by the time of *A Jayachandra vs. Aneel Kaur* AIR 2005SC534, where the court held that the conduct should be judged with regard to the upbringing, educational and social background of the parties. It would be relevant to reproduce the extract of the said judgment here:

"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 willful 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 his 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 delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a 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 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 behavior. 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."

The Supreme court thus with the passage of time developed the factors that have to be considered while granting a decree of divorce on the ground of cruelty. In another landmark judgment of Naveen Kohli vs. Neelu Kohli AIR2006SC1675 , the court held that the conduct complained of should be grave and weighty and should touch a certain pitch of severity. It should be something much more than the ordinary wear and tear of married life. It would be pertinent to reproduce the relevant para of the said judgment here:

"56. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

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

In a recent case of Gurbax Singh Vs. Harminder Kaur, AIR 2011 SC 114 the Apex Court held that the matrimonial life should be assessed as a whole and few isolated instances over a period of time cannot be said to be amounting cruelty. It thus held that :

"11. A Hindu marriage solemnized under the Act can only be dissolved on any of the grounds specified therein. We have already pointed out that in the petition for dissolution of marriage, the appellant has merely mentioned Section 13 of the Act and in the body of the petition he highlighted certain instances amounting to cruelty by the respondent-wife. Cruelty has not been defined under the Act. It is quite possible that a particular conduct may amount to cruelty in one case but the same conduct necessarily may not amount to cruelty due to change of various factors, in different set of circumstances. Therefore, it is essential for the appellant, who claims relief, to prove that a particular/part of conduct or behaviour resulted in cruelty to him. No prior assumptions can be made in such matters. Meaning thereby that it cannot be assumed that a particular conduct will, under all circumstances, amount to cruelty, vis-a-vis the other party. The aggrieved party has to make a specific case that the conduct of which exception is taken amounts to cruelty. It is true that even a single act of violence which is of grievous and inexcusable nature satisfies the test of cruelty. Persistence in inordinate sexual demands or malpractices by either spouse can be cruelty if it injures the other spouse. There is no such complaint by the appellant. In the case on hand, as stated earlier, the appellant has projected few instances in which, according to him, the respondent abused his parents. We have verified all the averments in the petitions, reply statement, written submissions as well as the evidence of both parties. We are satisfied that on the basis of such instances, marriage cannot be dissolved.

12. The married life should be assessed as a whole and a few isolated instances over certain period will not amount to cruelty. The ill-conduct must be precedent for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, one party finds it extremely difficult to live with the other party no longer may amount to mental cruelty. Making certain statements on the spur of the moment and expressing certain displeasure about the

behaviour of elders may not be characterized as cruelty. Mere trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would not be adequate for grant of divorce on the ground of cruelty. Sustained unjustifiable and reprehensible conduct affecting physical and mental health of the other spouse may lead to mental cruelty."

As would be seen from the import of the said judgments, no specific parameters or straight jacket formula can be laid down to determine as to what acts of an offending spouse would constitute cruelty to the other spouse in a given case.

14. It is also an elementary principle of law that the petitioner approaching the court has to establish his/her case through documentary or oral evidence so as to satisfy the conscience of the Court to believe his/her case for the grant of claimed decree. It is also again a settled legal position that in matrimonial proceedings, the petitioner is not required to establish the case beyond reasonable doubt like in criminal trials but is based on the preponderance of probabilities. (*Dastane vs.Dastane* (supra))

15. Applying the aforesaid principles of law to the facts of the case at hand, this court does not find that the appellant has succeeded in establishing any act of mental cruelty committed by the respondent which could entitle the appellant to grant of a divorce as envisaged under Section 13(1) (ia) of the Hindu Marriage Act. The appellant has also not produced any evidence to support his case except producing his friend i.e. Chander Singh as PW-2 who because of his disputing even the basic facts which were otherwise admitted by the parties ,with regard to the date of marriage, etc was found to be most unreliable and untrustworthy by the learned trial court and even otherwise the said witness has not testified any fact which could strengthen the case of the appellant for the grant of decree of divorce on the ground of cruelty. The plea of the counsel for the appellant that the decree of divorce should be granted in favour of the appellant since he has already paid an amount of Rs.3 lacs as compensation to the respondent deserves outright rejection as the said payment by the appellant has no relation with the said divorce case filed by the appellant on independent grounds. The decree of divorce can also not be granted in favour of the appellant simply because the parties have been living separately for a period of 22 years as the legislature has yet to introduce the ground of irretrievable break down of marriage in the Hindu Marriage Act for the grant of divorce and in the absence of the same the decree of divorce cannot be granted merely on account of separation of the parties for such a long period. The appellant in his written submissions has also introduced some new grounds that is of respondent using abusive and vulgar language against the mother of the appellant in her letter Ex.PW 1/1 and also stigmatizing the appellant with the allegation of impotency in para 26 of the written submission but the same cannot be appreciated as the appellant in his evidence has not made any deposition to complain them as acts of mental cruelty caused by the respondent. So far the grievance raised by the counsel for the appellant that the respondent has caused slur upon the judiciary as well as on the legal fraternity in her two said letters also cannot help the case of the appellant, although this court deprecates the intemperate language used by the respondent in her said two letters against the concerned judge and also against the counsel for the appellant. The appellant has also not been able to impeach or discredit the contents of letters dated 2.6.87, 11.6.87 and 13.6.87 written by the respondent to her parents and

there is no reason to disbelieve the contents of the said letters as they appear to have been written in the normal course that too when the respondent was at the matrimonial home. Further the contents of the letter Ex. PW1/1 also goes against the appellant as the same clearly shows that the appellant was under the influence of his parents especially his mother and he did not have even the courage to tell his mother that he had gone to the parental house of the respondent to bring her back to the matrimonial home. So far the allegation of the appellant that he made due efforts on 20.12.87, 23.12.87 and 15.12.87 to bring the respondent back to the matrimonial home it would be suffice to mention that the respondent was at her advance stage of pregnancy and therefore there was nothing wrong on the part of the respondent if she did not return to join the matrimonial home at that stage. The undertaking given by the appellant in Section 9 proceedings further proves the fact that the behaviour of the appellant towards the respondent was not proper during the period she had stayed at her matrimonial home.

16. Based on the above discussion, this court does not find any illegality or perversity in the findings given by the learned trial court on the Issue no.1.

17. Coming to Issue no.2, in the case of desertion, the petitioner has to establish as far as the deserting spouse is concerned, two things. One is the factum of separation and secondly the animus deserendi, that is the intention of the deserting spouse to bring the cohabitation permanently to end. With regard to the deserted spouse, it has to be proved that there was absence of consent and that there was absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention to bring the cohabitation to end permanently. It is a settled legal position that desertion is a matter of inference to be drawn from the facts and circumstance of each case and the conditions in the section that the deserting spouse should have deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition have to be fulfilled. The explanation attached to the said section states that the spouse should desert the petitioner without reasonable cause and includes the willful neglect of the petitioner by the other party to the marriage.

18. Adverting to the facts of the case at hand, the petitioner appellant has not been able to prove the animus deserendi on the part of the respondent wife. There is nothing proved on record to state that the respondent wife did not want to join the company of the appellant. Rather from the letter of the respondent proved on record it can be inferred that the respondent was willing to join the matrimonial home if the appellant had gone to get her back, and this has also been held by the learned trial court. The appellant has also not proved that there was no consent on his part and that his conduct was without blemish so as to compel the respondent wife to leave the matrimonial home. The respondent has put certain allegations with regard to demand for dowry and that the attitude of the family of the appellant, more so of the mother of the appellant, such that she was not interested that the petitioner stays in the matrimonial home. The learned trial court also observed that the petitioner lacked the courage to bring back the respondent wife to the matrimonial home due to the fear of his mother and rightly so as this is the minimum which can be expected of the husband and the family members of the husband is to give due respect to the wife who enters in a new atmosphere in her matrimonial home. It cannot be forgotten that a girl leaves behind her parents, home, hearth, loved ones, friends and memories to come to a new house with new people

and atmosphere to begin a different phase of life with her better half .There may be difference in life styles, values and educational and social background of the new house and it is the solemn duty of the in-laws to give a friendly, amiable, affable and harmonious environment to give the daughter in law time and space to be able to adjust and become a part of her new family. The girl leaving the cocoon of her parental house should be welcomed with open arms instead of putting up a hostile front and treating her like an outsider.

19. The learned trial court has held that the appellant has failed to satisfy that the appellant had made any efforts to bring the respondent back to her matrimonial home after she had left the matrimonial home on 24.9.89 or even on 30.9.89. There is nothing wrong in the observation of the learned trial court that the appellant did not take any steps to improve the atmosphere in the matrimonial home despite the undertaking given by him in the petition under Section 9 of the Hindu Marriage Act. It is also a settled legal position that under Section 23 of the Hindu Marriage Act, the petitioner approaching the court cannot take advantage of his/her own wrongs to claim a decree of divorce. The petitioner alleging desertion on the other party and seeking divorce on that ground cannot himself have blameworthy conduct and leave the spouse, throw her out of the house or compel her to leave the house due to the conduct of his family and then claim that that the deserting spouse has withdrawn from the society of the petitioner. It would be relevant here to reproduce an except from the judgment in the case of Savitri Pandey vs. Prem Chandra Pandey (2002)2SCC 73 here:

"In any proceedings under the Act whether defended or not the court would decline to grant relief to the petitioner if it is found that the petitioner was taking advantage of his or her own wrong or disability for the purposes of the reliefs contemplated under Section 23(1) of the Act. No party can be permitted to carve out the ground for destroying the family which is the basic unit of the society. The foundation of the family rests on the institution of a legal and valid marriage. Approach of the court should be to preserve the matrimonial home and be reluctant to dissolve the marriage on the asking of one of the parties."

Hence, in the light of the foregoing, this court does not find any illegality or perversity in the findings of the learned trial court on the Issue no.2 as well.

20. There is no merit in the present appeal,
accordingly the same is hereby dismissed.

July 15, 2011
dc/mg

KAILASH GAMBHIR, J

