

Calcutta High Court

Debjani Sinha vs Bikash Chandra Sinha on 13 February, 2006

Equivalent citations: 2006 (2) CHN 235

Author: B Bhattacharya

Bench: B Bhattacharya, P N Sinha

JUDGMENT Bhaskar Bhattacharya, J.

1. This first appeal is at the instance of a wife in proceedings for divorce and is directed against the judgment and decree dated 28th March, 2003 passed by the Additional District Judge, 9th Court, Alipore, in Matrimonial Suit No. 71 of 1997 thereby passing a decree for divorce in favour of the husband on the sole ground that the marriage between parties has irretrievably broken down.

2. The facts giving rise to filing of this appeal may be summed up thus:

The parties were married according to the Hindu rites and Customs on 11th December, 1967 and after the marriage, the parties proceeded to United Kingdom. A daughter, namely, Tania, was born in the wedlock on 19th August, 1974.

In the year 1976, the parties came back to India and started living in the city of Bombay. The husband is a scientist and was employed in the Government Service; the wife also took a job in Bombay and on July 7, 1979, a son, namely, Amartya, was born.

In the year 1984, the husband got promotion in service and was transferred to Calcutta and a few months thereafter, the wife also came back to Calcutta with the children and took a new job. The daughter was, however, sent to Himachal Pradesh in the year 1987 for proceeding with her studies.

Ultimately, the present proceedings commenced on 19th August, 1997 before the learned District Judge at Alipore on the sole ground of cruelty.

3. The case made out by the husband in the petition for divorce may be epitomised thus:

(a) The husband hailed from the famous Paikpara Raj family. He was graduated from the Presidency College at Calcutta with honours in Physics (first class) in the year 1964 and soon thereafter, left India for higher studies at Christ's College, Cambridge and joined Tripos, a three years Degree course in Science at Cambridge.

(b) The husband, in the month of January, 1966, rushed back to Calcutta to see his ailing father and after the untimely death of his father, he had a serious set back in his mind and health; nevertheless, he returned to Cambridge to continue his studies in the month of September, 1966. During his stay at Calcutta between January and September, 1966, he met the appellant who was then a student of the Presidency College and in no time, became enamoured of her. The appellant graduated with Honours in English in 1966 from Calcutta University.

(c) After return from England in 1967, negotiation of marriage between the appellant and respondent took place and ultimately, they were married on 11th December, 1967, according to the Hindu rites in the maternal uncle's house of the appellant situated within the jurisdiction of the Trial Court.

(d) After completion of the Triplos, the husband obtained a job of research-scholar in the King's College at London and two months after his marriage, the respondent left for England with the understanding that the appellant would later on join him. The respondent obtained a flat in Golders Green, London and his family members at Calcutta helped the wife in obtaining the passport and arranged her passage-fare for the trip to London. The appellant joined the respondent in London in early 1968.

(e) The respondent obtained his Ph.D. Degree in 1970 and qualified himself as a Fellow of the Royal Society, Copenhagen, Denmark. He was also working as a Lecturer in the King's College for the research-students for the Ph.D. Degree. During her stay in London, the appellant also took a job in a private organisation but her earnings were not sufficient to maintain herself.

(f) Although the appellant herein stayed in London till 1976, she never cooked any dish either for the lunch or the dinner and she was reluctant to be involved in any domestic work. Even after the hard days of work, the respondent after returning home had to clean his apartment and do all the household works. From the very beginning till the date of presentation of the application for divorce the appellant did not look after the upkeep and welfare of the children.

(g) The respondent worked in the Bhaba Atomic Research Centre at Bombay from 1976 till 1984 and then he returned to Calcutta. He became the Director at Variable Energy Cyclotron Centre under the Department of Atomic Energy, Government of India, Salt Lake City, in the year 1987 and concurrently, became the Director of Sana Institute of Nuclear Physics in 1992.

(h) In Bombay, the appellant joined as a Journalist in the "Business India" where she worked up to late 1984 and/or beginning of 1985. In Bombay, the respondent acquired a flat of about 1000 (one thousand) sq. ft. of area on the 19th floor of the Rewa Apartments together with a car parking space on the ground floor.

(i) After returning to Calcutta, the appellant joined the Ananda Bazar Patrika Group and worked in its "Business World" Publication and later on, in the "Sunday Magazine" from the year 1989-90 till she was dismissed in May, 1997 by her employer.

(j) The appellant treated the respondent with mental cruelty from as early as the year 1970 and such cruelty aggravated gradually when the spouses started residing permanently in India from the year 1976 and onwards. The cruelty manifested its extreme form after the respondent came to Calcutta and started residing in his family dwelling house. In addition to ill treatment, the appellant used to physically assault the children and sometimes, even did not exempt the respondent from her fury.

4. The following instances were given in the application for divorce divulging the alleged cruel acts of the appellant:

(i) The appellant was very much conscious about her health, dresses and welfare despite the fact that the respondent had little income as a teacher.

(ii) It was noticed that the appellant was not satisfied with the financial status of the respondent and from then, slowly started drifting away from him. Such behaviour had caused unhappiness in the mind of the respondent and undoubtedly, it was the appellant who was responsible for the failure of the spouses to convert their "dwelling place" into a "conjugal abode".

(iii) After two or three years of stay at London, the appellant used to return home late in the evening. When asked, the appellant refused to answer and even though answered, she answered in the negative and told the respondent that she went to see a picture with one of her colleagues. After the birth of the female child, the appellant started changing her character and refused to look after even the upkeep and welfare of the child. On one particular day at about 8-00 to 8-30 p.m. when the respondent came back after college-hours, he found that the daughter was sleeping alone in the dark room of the apartment. The respondent was shocked to find that the child was left alone by her mother and on that day the appellant did not return home in the night. On the following day, the respondent made enquiry in her office about her when the appellant got annoyed receiving the telephone call in her office. After returning home in the evening, she told the respondent that she was feeling disgusted and lonely for which she left her apartment and stayed in a nearby guest-house.

(iv) In the year 1974-1976, the respondent travelled by air with his wife and the female child throughout the Europe, sometimes on official visit and rarely, on pleasure trips with the hope that the appellant would rectify and amend herself.

(v) The respondent is the only child of his parents and after his father's death, the widowed mother of the respondent became very lonely. The mother of the respondent, who died on 27th June, 1997, was very much fond of her son and always tried to contact her son at London either through telephone or through letters which made the appellant very much angry and annoyed from the very date of marriage till the death of the mother-in-law. The appellant disliked her and never accepted her as a mother-in-law.

(vi) After coming to Bombay, the respondent's mother sent a whole-time domestic helper from her native village at Murshidabad considering the comfort of her son, daughter-in-law and grandchildren. The appellant did not carry out any domestic work in Bombay and always kept herself busy with her own affairs and never cared for the welfare of the daughter who used to go to school with her father. The daughter was dressed up by her father who despite his busy schedule used to look after her food and upkeep in her day-to-day life. The appellant gradually addicted herself to drinking and she started mixing with her office-colleagues and used to return home late in the evening, sometimes, in drunken condition. In the year 1978, the appellant once returned home late in the evening and informed the respondent that she would leave for Europe on the next day for

her official work and it was learnt that one fellow-journalist, her so-called editor, accompanied her on the way to Europe and the said gentleman stayed with the appellant in Europe for about a week or more. This had caused frustration and unhappiness in the mind of the respondent.

(vii) The respondent discovered that the appellant was a run-away and faithless wife and was a woman of imperious temperament and nagging habits. She always picked up quarrels with the respondent and with the domestic helper on petty matters and lost her cool without any valid reason. In Bombay, the appellant used to beat her son and daughter mercilessly, sometimes in the presence of the respondent. When the respondent retaliated, the same caused anguish and dismay in the mind of the appellant and she lost her temper and even slapped the respondent on his face. This happened in the presence of the domestic helper also.

(viii) In the middle of 1984, the employer of the respondent offered him for his transfer at Calcutta, which he readily accepted, but the appellant refused to accompany the respondent to live permanently in Calcutta. When asked, she declared openly that in case the petitioner was transferred to Calcutta, he would have to arrange for separate alternative accommodation far away from the family dwelling house. Between the months of October and December, 1984, the respondent realised with great pain and shock that the appellant was reluctant to share the company of her mother-in-law and insisted on a separate accommodation at Calcutta leaving the family dwelling house at Sarat Bose Road. The respondent persuaded the appellant to consider that it was not possible to have separate establishment at Calcutta because of his limited income at that time and secondly, the paternal aunt and the mother who were much closed to him resided there. This had caused wrath in the mind of the appellant who rebuked the respondent in the presence of the children and the domestic servant.

(ix) After persuasion, the respondent came to Calcutta in early 1985 accompanied by the children and she managed to join in Ananda Bazar Group of Publication as a journalist. It was learnt that the appellant started drinking regularly and became a prey of alcohol. In spite of her sufficient emoluments from the Ananda Bazar Group of Publication, she was supplied with a chauffeur-driven car, the best of the clothings, costumes and other items, but she demanded further financial assistance in the middle of every month on the plea that her salary was exhausted by that time.

(x) The appellant used to return home late in the evening in inebriated condition and she had to be assisted by the servants to climb stairs and to reach her bedroom. The mother-in-law of the appellant and the paternal aunt who stayed nearby were very much displeased and extremely distressed by the conduct of the appellant.

(xi) In Calcutta, the appellant became very much responsive with her own parents, brothers and other relatives and the mother of the appellant regularly phoned up her daughter and instigated her against her mother-in-law. Without any cause, the appellant picked up quarrels with her mother-in-law and abused her with filthy languages. Except quarrelling with her mother-in-law, the appellant from 1985 onwards till the death of her mother-in-law in June, 1997 never gave a glass of water or medicine to her.

(xii) The appellant also ill-treated her son and daughter and from the very birth of the daughter she could not tolerate her and as such, the respondent had no other alternative but to admit her daughter in a boarding school in Himachal Pradesh. On most of the occasions, when the daughter used to return home from her boarding school, the mother in order to avoid her left the house for about ten to fifteen days ignoring the protest of the respondent. Due to constant intimidation by the appellant, the respondent was forced to build an upper storey on the dwelling house at Sarat Bose Road and the appellant had separate kitchen and menial staff for housekeeping and domestic work on the second floor apartment where the spouses started residing leaving the children and mother-in-law on the first floor.

(xiii) After sometime, the appellant also picked up quarrel with the menial staff and with the son and mother-in-law and the domestic helpers of the second floor apartment were often shown the door and accordingly, in their absence, the domestic staff of the first floor were asked to do the additional domestic work of the second floor. The appellant presumed herself as a society-lady and attended parties and dressed herself with fashionable dresses. The appellant on routine basis used to pick up quarrel with the respondent in the late at night after the hard days of work and as a result, the respondent had to spend many a sleepless night during the period from 1994 to early 1996.

(xiv) Throughout the aforesaid period, the appellant threatened the respondent that she would commit suicide and leave suicidal note accusing him and in particular, his mother, so that they would be taken to custody. She was found in intoxicated condition walking on the parapet of the family dwelling house. On hearing hue and cry from the Durwan and the Security-Staff asking their Memshab to behave properly, she came down and went inside the room.

(xv) In between the years 1994-1996 and in early part of 1997, the appellant attacked her in-laws sometimes with heavy articles and assaulted them. On few occasions they had to seek medical assistance. The mother of the respondent could not bear the continuous torture of her daughter-in-law and she had a serious break down of myocardial infection in early June, 1997 and was admitted to Bellevue Nursing Home where she died on 26th June, 1997.

(xvi) Due to ill-treatment of his wife from the early part of 1996 the respondent was residing on the ground floor and the appellant was supplied as usual with chauffeur-driven car, monthly allowance, food and clothings with all other fringe benefits. When she felt, she used to visit the Calcutta Club and the Bengal Club and consumed alcohol more than copiously at the cost of respondent who is also a member of these Clubs. The appellant being the wife of the respondent had the signing power on behalf of the respondent in those Clubs. The appellant also behaved very badly with the Senior Staff Members of the Clubs and for the last eight months had started lodging bogus complaints to the local Police Station, women organisation and other social institutions against the respondent and his son and daughter. Even the Women's Cell asked the respondent to meet them without hearing him.

(xvii) The local police visited the dwelling house of the respondent and the matter was explained to the police clearly. The police, however, understood the actual state of affairs prevailing there and on making enquiry left. On the 'Sradh' ceremony of the mother of the respondent on 5th July, 1997, the

appellant made a scene by shouting and crying in order to humiliate the respondent.

(xviii) On 27th July, 1997, the appellant picked up quarrel in the morning with the menial staff and she assaulted her son and broke valuable crockery and other articles in the presence of the elder members of the family and packed up her valuable clothing and ornaments including other things in three big sized suitcase and took cash from the almirah from the room in the downstairs and directed the Durawan to put those in her car and she left the house permanently and threatened that all the members of the family would be killed soon.

(xix) The appellant lost her cool on 25th June, 1996 and started throwing the utensils and various other articles causing disturbance in front of her children and other domestic helpers.

(xx) After the appellant had left the family dwelling house, she again came to the family dwelling house. On one occasion, she accompanied by some antisocials threw some brickbats on the outer door of the house. The respondent and his Durwans somehow managed to defuse subversive acts of the hooligans.

5. The aforesaid suit was contested by the wife-appellant by filing written statement and additional written statement and her defence may be concisely stated thus:

1. As the fund available to the parties at the time of stay at UK was meagre, namely, 500 pounds a year, the appellant had to take a job for a decent living of the spouses. In London, while the respondent was studying, initially a flat was taken on rent at Golders Green, London and thereafter at Humpstead, North London and subsequently, an apartment was taken in Putney in South London which was purchased through Bank loan. The Bank was repaid out of the sale-proceeds of the said flat when the appellant came back to India along with the respondent and the daughter. The maintenance of the flat was at the expenses of the appellant as the fund in the hands of the respondent did not permit maintenance of a separate flat, as a result, the appellant had to work in a situation not befitting her education and status and such step was taken to enable the respondent to complete his Doctorate degree. The appellant's first job at the legal department of the Royal Automobile Club was a lowly one requiring serving of meals, tea and coffee for the Executives which were incongruous for a person who was a graduate with English Honours from the Presidency College at Calcutta.

2. While in England, the entire household was run by the appellant, the expenses were also met by the appellant. The respondent did not know and even does not know how to prepare a cup of tea or coffee. At no point of time during such stay the respondent could or did employ any maid or any helping hand to assist the appellant. Both the cooking and the cleaning were done by the appellant. The respondent used to take pride in the fact he was from the famous Paikpara Raj family where household work or cooking was unknown to the male members.

3. During the stay in London, the financial crisis was so acute that any contribution made by the appellant was more than welcome. The appellant had to work in various capacities in many organisations. The appellant worked with Illustrated London News then, as an Executive of London

Borough of Camden in its Public Relation Department and finally, as an Executive with Alien Campbell Johnson who was Lord Mountbatten's Press Attache in India.

4. The appellant had a childhood-dream of becoming a Barrister and for achieving such goal, not only was she working full time but also studying at night for the Bar Examination for which the appellant had to rely on the notes of the other people. The parties being the only married couple among the friends of the respondent, those friends used to frequent them and even stay at the flat for which the appellant had to cook.

5. Besides working and studying, the appellant had to look after Mr. Adish Sinha who at that point of time was studying at Imperial College in London. The said Adish Sinha was a juvenile diabetic patient and having Hypoglycaemia for which the appellant had to get up in the mid of the night and sustain him with sugar. In the year 1974, Mr. Adish Sinha's kidney failed and the appellant used to go to the Hospital to attend him at the end of the day as also at the lunchtime. The mother of Adish Sinha had to fly to London as his health deteriorated and the mother stayed with the appellant in London and the appellant used to look after her needs and had to cook separately for her, as she was a widow.

6. While in London, a female child was born to the parties on 19th August, 1974 and during the period of pregnancy of the appellant, Mr. Adish Sinha was critically ill and was admitted in a London Hospital. Even at that stage, the appellant had to work and visit the Hospital twice a day, cook special meal for him and look after his mother's needs. At no point of time was any complaint ever made against the appellant. Even after the birth of the daughter, the appellant had not failed to carry out any direction, household work or cooking and for the first time, wild allegations had been made in the plaint.

7. Under the English Law a child cannot be kept alone in the house and as such, the appellant or respondent always used to be with the child or otherwise, the appellant used to carry the child when she went out for the household work or to buy grocery and in no case the child could be left alone at home without anybody attending her. In the cold winter, the appellant had to carry the baby to the shops and laundry since there was no helping hand.

8. In the year 1976, the respondent with her family returned Bombay where a son was born to them on July 7, 1979. The relationship between the parties was absolutely normal as would be evident from the birth of the child. Even in Bombay, initially there was no household help and she used to look after the newborn child and the elder daughter in addition to all household works, cooking and washing.

9. The respondent was very fond of entertaining guests and used to bring people for dinner. Those persons had to be looked after for which a considerable time was spent. The respondent being a male member of Sinha family never looked after the children or household affairs including the cooking and the respondent used to declare that it was beneath the dignity of the male members to look after either the children or the household affairs.

10. After return to Bombay, there was financial constraint of the respondent as two separate establishments had to be run one in Bombay and one in Calcutta. As a result, the appellant had to work in different organisations from time to time. Initially, the appellant started as a correspondent in the "Business India". During that period, she had to look after the infant son and the daughter and accordingly, she had a flexible time arrangement with the employer so that she would come back home after the daughter's school was over. The mother of the appellant had arranged for some domestic help from Calcutta and for the first time, the appellant had the benefit of a maid to assist in the household work.

11. From 1976 to 1984 the parties along with the children stayed in Bombay and the entire household affairs in Bombay were looked after by the appellant. Since 1985, the parties have been staying in Calcutta where, of course, the domestic helps were available and the defendant did not cook but had to look after the children.

12. In Calcutta, the appellant was not allowed to run the household or the kitchen or to maintain the house in her own way. The appellant continued to work with the "Business World" in the Ananda Bazar Partika group as Assistant Editor. Here also, the appellant made flexible time arrangement with the employer so that she could be available to meet the need of the children.

13. The daughter, viz. Tanya, had not been brought up in the way the appellant would have liked. The daughter was imbued with the family traits of Sinha family and was a highly impulsive girl who got into fits of rage at the slightest difference of opinion and abused persons who were twice her age or more. The appellant had to face the rage of the daughter on more than one occasion and the outbursts were with the consent and concurrence of the respondent. The appellant had suffered bruises on more than one instance after the daughter had attained the age of 14. On flimsy pretexts the daughter used to rake up quarrel with the appellant and on many occasions the daughter slapped the mother in presence of the respondents and other elders, from which one can reasonably infer that the actions were with the concurrence and approval of the respondent. On one occasion, the daughter hit the appellant with her shoes causing bruises on the body of the appellant but as she was the daughter of the appellant, no complaint had made about it and the appellant considered it to be a disgrace to speak about the daughter in public.

14. The action of the daughter had been the main source of difference between the parties. As the daughter grew up, gradually she became violent and used to assault the appellant with the aid and assistance of the respondent. She was protected by the respondent and on occasions, the daughter also went against the father.

15. The daughter was unhappy in her school, namely, the Modern High School at Calcutta and she applied for entrance examination of a boarding school and got admission in the Lawrence School for her studies and she remained there during the period 1987-88 to 1992. She completed her schooling in Himachal Pradesh. Whenever any occasion arose which might lead to conflict with the daughter, the appellant used to go out of the house for avoiding the disagreement. The appellant had otherwise cordial relationship with the mother-in-law and the son and also the respondent and the appellant had no dispute or difference with the mother-in-law or the son or the appellant except on



account of the daughter.

16. As the respondent did not wish that the appellant should work any further, the appellant gave up the job at the request of the respondent on the assurance that the respondent would pay a sum of Rs. 7,500/-a month to the appellant as personal expenses. Such payment had been made only for the month of May, 1997. Thereafter, no payment had been received by the appellant from the respondent.

17. During the period of stay in Calcutta from 1985 until 14th August, 1997, the appellant stayed at the family dwelling house at Sarat Bose Road, Calcutta and the appellant never asked for any separate accommodation at any point of time. Although the respondent initially encouraged the appellant in her job as a journalist, gradually, as she gained recognition in the field, he became adverse to the idea of the appellant's continuing with the job and only to satisfy the ego of the respondent that the appellant had to give up her permanent job with the Ananda Bazar Publication since April, 1997.

18. While in service, the appellant had to go out of Calcutta on different assignments as the appellant was also associated with many non-government organizations in different capacities. The appellant left for Delhi on July 22, 1997 and from Delhi went to Ahmedabad on 26th July, 1997 for a Board meeting of the Consumer Education and Research as a Trustee. The appellant came to Bombay from Ahmedabad on July 28, 1997 where the appellant stayed till 13th August, 1997 and then came to the matrimonial home at Sarat Bose Road, Calcutta.

19. On August 14, 1997 at about 8 to 8-30 p.m. when the appellant was about to enter the family dwelling house, on the instruction of the respondent, the appellant was prevented from entering the family dwelling house and the main gate of the premises was kept closed and locked. The Durwan at the gate as also the private security posted there did not allow . the appellant to enter the house. It was disclosed by the Durwan that on the basis of an order passed by the Court the appellant had been prevented from entering the house. Later on, the appellant came to know that an application was filed under Section 144(2) of the Code of Criminal Procedure before the Executive Magistrate, Alipore on which an order had been passed on 13th August, 1997 directing the Officer-in-Charge, Ballygunge Police Station to enquire and report and direction was issued to see that no breach of peace took place. On August 19, 1997 the appellant moved the Criminal Court when an order was passed restraining the respondent from interfering with her peaceful living in the matrimonial home.

6. By filing additional written statement the appellant has given detailed incidents of their married life right from beginning till the filing of the present suit justifying her stance that she all along helped the husband in building up his carrier by sacrificing her life and the daughter being overindulged by her father and grandmother became wayward and the endeavour of the appellant to discipline the daughter for bringing her back to normal trail did not find favour with the respondent resulting in filing of the present suit.

7. At the time of hearing of the suit, the son, the daughter and the husband of the appellant gave evidence in support of the application for divorce while the appellant herself, a Lawyer in whose house the appellant had suffered cerebral stroke during the pendency of the proceedings and nine other persons gave evidence in support of the defence of the appellant.

8. The learned Trial Judge by the judgment and decree impugned herein specifically came to the conclusion that the husband failed to prove cruelty as alleged by the husband but in spite of such specific finding, granted a decree for divorce on the sole ground that the marriage between the parties had irretrievably broken down.

9. Being dissatisfied, the wife has come up with the present appeal.

10. It may not be out of place to mention here that although this appeal was filed well within the time-limit prescribed by law and the husband lodged a caveat in this appeal and was all along renewing the caveat at the expiry of every three months, he married during the pendency of the appeal taking the plea that he was not aware of the pendency of the appeal and that the wife did not make any effort to communicate to him that such an appeal had been filed.

11. Mr. Biswajit Basu, the learned Advocate appearing on behalf of the appellant, at the very outset, contended before us that the learned Trial Judge in the absence of any finding that the acts of cruelty alleged by the husband were proved, erred in law in granting a decree for divorce on the ground that the marriage between the parties had irreversibly broken down. Mr. Basu contends that mere finding of a Court that the marriage had been finally broken down cannot enable a party to the marriage to get a decree for divorce unless such party can prove the existence of any of the grounds mentioned in Section 13 of the Hindu Marriage Act. According to Mr. Basu, the husband cannot take advantage of his own wrong as he himself was responsible for the situation. He, therefore, prayed for setting aside the decree passed by the learned Trial Judge.

12. Mr. Dasgupta, the learned Senior Advocate appearing on behalf of the husband, at the first instance tried to support the finding of the learned Trial Judge that even if the alleged cruelty is not proved, a decree for divorce can be granted on the ground that the marriage has utterly broken down; Mr. Das-gupta, however, also prayed before us for reconsidering the issue of cruelty by applying the principle laid down under Order 41 Rules 22 and 24 of the Code of Civil Procedure. Mr. Dasgupta contends that the suit having been fully decreed in favour of his client, there was no scope of preferring any appeal or cross-objection and as such, he proposed to support the ultimate decree passed by the learned Trial Judge on the ground that in the facts of the present case, it was the duty of the learned Trial Judge to decide the issue of "cruelty" in favour of his client and to pass the decree on that ground.

13. As the suit was decreed in full in favour of the husband, we had permitted Mr. Dasgupta to make submission on the issue of cruelty for the purpose of ascertaining whether the decree of the Trial Court can be justified on the ground of cruelty on the basis of the materials on record.

14. In course of hearing of this appeal, the husband-respondent has filed an application under Order 41 Rule 27 of the Code of Civil Procedure for taking into consideration five different documents filed by the wife herself in support of her defence which were not marked exhibits as those were not proved in accordance with law. The appellant also prayed for taking into consideration a letter alleged to have been written by the husband to the Commissioner of Police, Kolkata. So far the said letter purportedly written by the husband is concerned we did not allow such prayer because the husband did not produce any other material showing that such letter was really tendered before the Office of the Commissioner of Police, Kolkata. We have, however, allowed the prayer of the husband for taking into consideration those five pieces of documentary evidence produced by the wife which could not be marked as exhibits at the instance of the wife as the husband accepted those documents and wanted to rely upon those. Apart from those documents, the husband, however, did not want to adduce any further evidence and as the wife herself filed those documents, no question of giving opportunity of adducing any further evidence of rebuttal to the wife arose.

15. After hearing the learned Counsel for the parties and after going through the present position of law we are convinced that unless the husband is able to prove existence of any of the grounds mentioned in Section 13 of the Hindu Marriage Act, he cannot be favoured with a decree for divorce merely because it appears from the materials on record that the marriage between the parties has once and for all broken down. It is true that the Supreme Court in some of the cases passed decree for divorce on the aforesaid ground but we cannot lose sight of the fact that the Apex Court in those cases passed such decree for doing complete justice between the parties by taking aid of Article 142 of the Constitution of India. Such power is not available either to the District Court or this Court and as such, there is no scope of exercising such power at this stage. Even in one of its decisions, namely, *Savitri Pandey v. Prem Chandra Pandey*, the Supreme Court in paragraph 17 thereof itself pronounced that the fact that the marriage had irretrievably broken down by itself could not be a ground for divorce. We, therefore, find substance in the contention of Mr. Basu that unless the ground of cruelty alleged by husband in this case is proved he is not entitled to get a decree for divorce. We, therefore, find that the learned Trial Judge erred in law in passing a decree for divorce merely on the ground that the marriage of the parties had for all time broken down even if the husband failed to prove cruelty alleged in the application for divorce.

16. But as indicated above, we propose to consider whether from the materials on record before us, the husband has been able to prove the alleged cruelty against wife in the facts and circumstances of the present case.

17. After hearing the learned Counsel for the parties and after going through the materials on record we find that the husband in the application for divorce has alleged cruelty on the part of the wife right from 1970 till the date of presentation of the application for divorce. The entire married life of the parties from the year 1967 till the presentation of the petition for divorce in the year 1997 can be divided into three different phases. The first phase was the one from the year 1968 till 1976 when they stayed together in London. The next one was from the year 1976 till 1984 when the parties lived in Bombay and the third stage started from the year 1985 till the month of August 1997, the month of filing of the matrimonial suit when the parties stayed in Calcutta.

18. In the petition for divorce, the husband has given an impression that from the year 1970 the wife treated him with cruelty and the sum and substance of the allegations was that she was very much cautious about her health and dress and was not satisfied with the financial wherewithal of the husband as a result she slowly drifted away from him. The further allegation was that she was careless about the upkeep of the daughter and one day in late 1974, the wife left the child alone, keeping her in a dark room. On that night, the petition continued, she did not return home and on the next day when the husband made enquiry in her office, she was annoyed. Further allegation of the husband was that wife did not even cook for a single day in those London-days. The wife has denied all those aforesaid allegations and has specifically asserted that she not only did all the household works but also had to take a job for making both the ends meet as the husband was dependant upon a meagre amount of foreign money available to him at that point of time.

19. In support of those allegations, husband, however, has not brought any witness who was their common friend in those days although he had huge number of friends and in his own evidence, he has only mentioned about the allegation of keeping the child in the dark room. We find from the evidence of the husband himself that they did not have any helping hand in their flat in London. He has also admitted that the wife used to look after his child in London. It appears from various letters written by husband to his mother-in-law or the father-in-law which were marked exhibits on admission that there was no indication of any unhappiness or allegation of any cruelty against the wife; on the other hand, from those letters it was evident that they were leading a happy conjugal life. It further appears from those letters that the parents of the wife made arrangement for sending them money through friends for the purpose of overcoming the paucity of foreign-money suffered by the parties in those days. The husband has in various letters thanked the mother-in-law for various presentations given to them during those days. The husband has also admitted that the wife used to do jobs during those days while they were in London.

20. From the aforesaid materials it is clear that unfounded allegations have been made against the wife as regards her alleged cruel treatment in the first phase of their matrimonial life. We find that at the relevant point of time the income of the husband was meagre and for the above reason, the wife had to take various jobs. It further appears that at that point of time the cousin-brother of the husband who was also in London had fallen ill and the wife had to take trouble of attending him in the hospital. The said gentleman is still available but for the reasons best known to the husband he was not brought into the witness-box to deny the allegations of the wife and to corroborate the allegations of the husband. It appears from various letters written by wife to her parents in those days (thirty years ago she surely did not make out her defence anticipating a future matrimonial suit) that she used to do all the household works as there was no helping hand in their fiat. The husband has not even claimed that he used to cook his three-meals-a-day in those days. Over and above, it is the admission of the husband that during the first phase of their matrimonial life they together went to the various countries of the Europe not only on official tours but also on pleasure trips. From the aforesaid facts it is clear that they had a very happy married life in those days.

21. As regards the second phase, i.e., the period during which the parties stayed at Bombay from 1976 till 1984, it appears that husband joined the "Bhaba Atomic Research Institute", Bombay as Scientific Officer and stayed there till 1984. The husband had also purchased a flat in Bombay and

he used to go to his office at 8.30 in the morning and return at 6.30 in the evening. The son was born in Bombay and during that period, the wife also took a job. The allegation against the wife during this period is that the wife was careless about their children and their education and it was the husband who used to look after the education and welfare of the children. The husband alleged that he used to dress up the daughter and take her to school despite his busy schedule and the wife was busy with her own job. Further allegation of the husband is that she developed the habit of consuming alcohol and used to return home in inebriated condition. The further serious allegation against the wife is that in 1978 she went to Europe with one "so-called editor" and stayed with him and at that time, the husband discovered that the wife was an unfaithful wife. Further accusation was that she always picked up quarrel with the husband and with domestic helper in petty matters and that she used to beat the children mercilessly and even slapped the husband in presence of the maid-servant.

22. Curiously enough, the husband in his evidence only alleged that his wife did not look after the children at Bombay and apart from the aforesaid statement the husband did not utter a single word about the allegations of infidelity pleaded in the petition for divorce. The husband had admitted that his office was "40 minutes run" by bus from his apartment in Bombay. According to his version he used to leave for his office at about 8.30 a.m. and come back at 5.00 to 5.30 p.m. and during his stay at Bombay he had to go to the United States twice alone. The son was born on 7th July, 1979 and the husband admitted that "on mutual desire of the parties" both the children were born. From the aforesaid evidence on record we are left with no other alternative but to conclude that husband failed to prove that wife did not perform her duties as mother; on the other hand we do not find any reason to disbelieve the evidence of the wife that it was she who looked after the children and maintained the household work. It further appears that the allegations by the husband that wife became a disloyal wife was a baseless allegation and was devoid of any substance and the husband even did not lead any evidence in support of such allegation.

23. As regards the third phase of the matrimonial life, we find that the first and the foremost allegation is that due to constant pressure and humiliation, husband had to take transfer to Calcutta and an impression had been created that he took such transfer to look after his mother. It, however, appears from the evidence of the husband that he was a Scientific Officer of Grade-E in Bombay and came to Calcutta on transfer as a Joint Director. From the aforesaid fact it can be reasonably inferred that he came to Calcutta not on his own application for transfer but on promotion. We also do not find any substance in the contention of the husband that the wife was reluctant to come to Calcutta as it appears that the husband came in the month of October, 1984 whereas the wife came in the early part of 1985 with the children. The husband has further admitted that children were in Bombay for first few months and from such admission it is apparent that they waited till the completion of their school session as pleaded by the wife. As regards the allegation that in this phase, the wife used to beat the children mercilessly, we find that the wife in her additional written statement has clearly indicated that the daughter started disliking the mother because of the fact that the mother tried to control her. The definite allegation of the wife is that the father and the grandmother had pampered the daughter as a result, she became unruly. The mother has specifically asserted that the daughter used to even slap her in the presence of elderly persons and the father did not protest. On one occasion, even the daughter slapped her with shoes. The four

letters written by wife to the Police Authorities which were marked additional exhibits before this Court at the instance of the husband justify the pleading and the oral evidence of the wife in this connection and substantiate such allegations. It appears from the evidence of the daughter that she herself admitted that she used to visit "Disco Parties", though immediately thereafter she rectified by saying that she visited such parties only once. That the daughter was arrogant and ill-tempered will appear from her own deposition. In open Court she proudly declared that she did not call the appellant as "mother" but she preferred to describe her mother by naming her as "Debjani". Further, it is absurd to believe her statement before the Court that she did not know even the educational qualification of her mother although both of them graduated with Honours in English. From the aforesaid deposition we find substance in the allegation of the mother that she was irascible, disobedient and an errant daughter and because the appellant tried to discipline her, she unruly behaved with her mother at the instance of the father and the grandmother. We find that the allegation of the wife that a motor car was always kept for the daughter at the instance of husband is well proved although the daughter has denied such fact. We are surprised to find that although the husband has in his evidence stated that his financial position did not permit staying up in separate residence in Calcutta, yet, the children were given separate car for their use as admitted by the son in cross-examination as PW-1. The said son admitted in his evidence that he had a car for his personal use but he did not know who the registered owner of the car was. If a separate car is kept for the use of the son, we do not find any reason to disbelieve the allegation of the wife that a separate car was also kept for the daughter.

24. The husband is admittedly a member of the Calcutta Club, the Bengal Club and the Saturday Club, the three Clubs sauntered by the persons who generally do not detest or abhor the idea of consuming alcohol and as it appears from the evidence of the son himself that his father used to take whiskey in the residence. The husband has further stated in his evidence that as a result of holding his official position he had to attend some cocktail parties with his wife on invitation and both of them used to take "hot drinks" within limit. We are, however, not aware of any compulsion on the part of a scientist working in the service of the Union of India to attend cocktail parties with his wife "on account of holding his official position" when the directive principles of the State policy mentioned in our Constitution directs the State to bring about prohibition of consumption of intoxicating drinks except for medicinal purposes.

25. Be that as it may, in this case, the respondent who himself is habituated to alcohol has alleged that his wife was addicted to the same causing mental cruelty and she has been further projected as a habitually drunken person. We find from the admission of the husband himself that before her marriage the wife was a teetotaller. From the evidence on record we find that the husband is a member of affluent Zamindar family. He was sent to England immediately after completion of graduation and he was also fond of parties. From the evidence it further appears that there were number of parties in the house of the husband. The husband has, as indicated above, not concealed that he is habituated to drinks. If the environment of the family permits free drinking, it will be too late for the husband after showing the wife the way to ruin to lament that his wife had become addicted to drinks. Mere addiction to drink of a spouse in the facts of this case cannot be a ground for dissolving the marriage by a decree of divorce unless rampant excess by the erring spouse amounting to disgrace of the other spouse is proved. No independent witness has come forward

alleging any abnormal behaviour of the wife under the influence of alcohol. Although allegation was made that the wife was sacked by the Ananda Bazar Group of Publication for such excess drinking, the husband could not lead any evidence on that point notwithstanding the fact that according to husband the owner of such Group, namely, Mr. Avik Sarkar was his friend and due to such friendship, the wife got the job in Ananda Bazar Group as suggested to the wife in cross-examination. He could easily bring Mr. Avik Sarkar to prove his allegation when according to him his wife was sacked from Ananda Bazar Group of Publication for excess dependence on alcohol. The wife on the other hand has stated that on the request of the husband she had to resign from Ananda Bazar Group of Publication in the month of May, 1997 as the husband assured that every month he would give a sum of Rs. 7,500/- as monthly expenses of the wife.

26. As regards the allegation that wife used to threaten the husband that she would commit suicide by keeping suicidal note we find that no such suicidal note has been produced in support of such allegation. In pleading, the husband alleged that during 1994-1996 the wife on a day walked on the parapet of the roof threatening to commit suicide whereas the time of such incident has been differently stated by the son, appearing as a witness to be in the month of May, 1997 and the husband has in his evidence mentioned such time to be in the month of July, 1997. No servant or the Durwan of the house who according to the husband raised a hue and cry on such incident was examined. It is needless to mention that wife had totally denied such incident. The husband in his evidence alleged that the disorderly behaviour of the wife such as, walking on the parapet, assault on the mother-in-law, the children and the husband and making terrible noise were all known to the neighbours around the house at Sarat Bose Road, such as, the families of Dalmia, Parekh and Malani who lodged complaint against the wife and that the husband was in excellent terms with those neighbours but none of them was examined to corroborate his allegations and in answer to the question in cross-examination whether they would be examined, he said that after consulting with lawyers he would say whether those neighbours would be examined.

27. Mr. Dasgupta in this connection heavily relied upon various bills signed by wife indicating that even during the pendency of the proceedings she had taken alcoholic drinks from the restaurant maintained by the Calcutta Club and the Saturday Club. It appears that the wife signed those bills, but the amount of food and drinks mentioned in the bills shows that those cannot be meant for consumption of a single person particularly a lady who had recently suffered a cerebral stroke resulting in partial disablement. No evidence was adduced on behalf of the husband as regards consumption of the aforesaid food and drinks which occurred during pendency of the proceedings. In our view, by merely proving the signature of the wife on those documents the husband cannot prove the fact that those were actually consumed by the wife alone. It appears from evidence of the son that he used to visit the mother even during the pendency of the suit and they had gone together for dining in various restaurants on many occasions and also on "number of occasions even recently". In the absence of specific evidence adduced by the husband that the wife alone consumed the foods and drinks mentioned therein we are unable to come to the conclusion that the wife alone consumed those foods. In answer to the question put to the wife in this connection, she had stated that even after her illness she visited the Club on number of occasions together with her friends and children. No suggestion was given to her that the children did not accompany her on those occasions. All that has been proved by production of those documents in the cross-examination of

the wife is that the wife requisitioned those items during the pendency of the suit for entertaining her children and friends. Be that as it may, the aforesaid post-litigation incident cannot afford a ground of divorce on the ground of cruelty.

28. If we now look into the additional evidence taken during the pendency of the appeal at the instance of the husband, those will, however, justify the conclusion that the allegation of the wife that daughter was misbehaving with her at the instance of the husband has been duly corroborated. The husband having relied upon those documents cannot say that we should not believe the contents but should only believe that those were given to the Police Authorities without just reason. We further find that in the month of July, 1997 just before institution of the suit, the wife was in Delhi and Ahmedabad for her official duty as a trustee and on her return the husband instituted the proceedings under Section 144 of the Code of Criminal Procedure for the purpose of preventing her entry. Such restraint order was, however, withdrawn on the application of the wife. In the petition for divorce the husband, however, alleged that she left with bag and baggages in the month of July, 1997 though it actually appears from the record that she really left for Ahmedabad and on her return she was prevented from entering the house. The letters written by wife to the Police Authority demonstrate the actual state of affairs and those cannot be said to be unfounded; on the other hand, it is the husband who in order to over adulate the daughter took abnormal steps against the wife preventing her entry in the residential house. We find from the depositions of the various witnesses who appeared on behalf of the wife that they found the wife quite caring and motherly towards her children and even used to look after the mother-in-law during the parties thrown by the respondent. We do not find any reason to discard the evidence adduced by those outsiders. We have pointed out that apart from the son and the daughter, no other person has to come forward to support the respondent husband. In our view, it is rightly argued by Mr. Basu appearing on behalf of the appellant that the daughter being the root of trouble, her evidence against her mother was discarded by the learned Trial Judge for justified reason. Mr. Basu was also right in his contention that the son was at the relevant time all set for going to London at the expenses of his father and in such a situation, he obliged his father, though in cross-examination he expressed his soft corner for his mother and even admitted his good relation with mother and that due to her cerebral attack she was unable to use her left hand compelling her to walk with orthopaedic stick but in spite of such fact, at the time of his Higher Secondary Examination, she came to see him outside the examination hall with the help of two girls.

29. We, thus, find that from the aforesaid materials it is clear that the husband has made out a deliberate false case making allegation of cruelty against his wife from 1970 till 1997. We have found from evidence that the parties had gone to different places in India during holidays even during 1994. If a person really spent sleepless night in the ground floor of his house during the period from 1994 to early 1996 it is not expected that he will travel to various places in India during holidays and will stay in hotels with the wife and children. If, according to the husband, so much ill-treatment was inflicted towards his mother by his wife, we fail to appreciate why no such suit was filed during the lifetime of mother. The evidence adduced by the two children that they were looked after and brought up by their grandmother during their childhood is a monumental lie and cannot be believed. We find that grandmother never stayed with them till 1985. They came in contact with their grandmother only in 1985 when the daughter had passed through her childhood and the son



was a school-going boy. Although no allegation of physical assault on mother-in-law was alleged in the petition for divorce, suggestion to such effect was given to the wife at the cross-examination. Such fact indicates that the husband was prepared to go to any extent and even to take to falsehood without any compunction for the purpose of getting a decree of divorce by hook or crook.

30. We are, therefore, from the materials before us, unable to believe the statements made by the husband in the application for divorce and on the contrary, we find that the husband did not hesitate to make unfounded allegation of infidelity against the wife although he even did not dare to utter a single word or to bring any evidence to that effect. The real dispute, in our view, had started in early nineties when the husband made no effort to chastise the daughter and supported the unruly daughter in her inhuman treatment towards her mother and that culminated in filing the present suit for divorce at the instance of the daughter.

31. From the aforesaid facts we are of the view that the husband miserably failed to substantiate the allegations made in the application for divorce and there is no scope of answering the issue of cruelty in favour of the husband.

32. We now propose to deal with the decisions cited by Mr. Dasgupta.

33. In the case of *Parveen Mehta v. Inderjit Mehta*, the Apex Court held that the cruelty for the purpose of Section 13(1)(ia) of the Act is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it would not be safe for him or her to continue the matrimonial relationship with the former. According to the said decision, the mental cruelty is a state of mind and feeling of one of the spouses due to behaviour or behavioural pattern by the other. It is, necessarily, a matter of inference to be drawn from the facts and circumstances of the case and a feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other, the Supreme Court proceeded, can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life had been living. According to the Supreme Court, the inference has to be drawn from the attending facts and circumstances taken cumulatively and in case of mental cruelty it would not be a correct approach to take a particular instance of misbehaviour in isolation and then pose the question whether such behaviour was sufficient by itself to cause mental cruelty.

34. After laying down such proposition of law, the Supreme Court discussed the fact of the said case and observed that the spouses stayed together at the matrimonial home for a short period of about six months and the respondent had been trying to persuade the appellant and her parents to agree to go for proper medical treatment to improve her health so that the parties might lead a normal sexual life. All such attempts proved futile and the appellant even refused to subject herself to medical tests as advised by the doctor. In the said case, the wife stayed away from the matrimonial home and respondent was deprived of her company and in such circumstances, the respondent who was enjoying normal health was likely to feel a sense of anguish and frustration in being deprived of normal cohabitation that every married person expected to enjoy. The Supreme Court further pointed out that the conduct of the appellant in approaching the police complaining against her husband and his parents and in not accepting the advice of the superior judicial officer and taking a

false plea in the case that she had conceived but unfortunately there was a miscarriage, are bound to cause a sense of mental depression in the mind of the respondent leading to social embarrassment and thus, approved the decree for divorce.

35. The proposition laid down by the Supreme Court in the said case is, it is needless to mention, a sound one but, if we apply the said principle to the fact of the present case it will not benefit the husband in any way. We have already pointed out that this is a case where parties had normal relation up to the early 1990's from the year 1967 and only the disorderly behaviour of the adolescent daughter created all the complications. Whatever the allegations husband made against the wife in the petition for divorce were found to be false and false to knowledge of the husband and as such, the wife cannot be held to be guilty merely because she had bad relation with her daughter in the process of disciplining her. The said decision, thus, cannot help Mr, Dasgupta's client in any way.

36. In the case of Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate , the Supreme Court held that the act of levelling disgusting accusations of unchastity and indecent familiarity with a person outside the wedlock and allegations of extramarital relationship constituted grave assault on the character, honour, reputation, status as well as the health of other spouse. Such aspersions of perfidiousness attributed to the wife viewed in the context of an educated Indian person and justified by the Indian conditions and standards, would amount to a worst form of insult and cruelty which is sufficient by itself to substantiate cruelty in law, warranting the claim of a party being granted divorce. By relying upon the aforesaid decision, Mr. Dasgupta wanted to contend before us that in the written statement the wife made allegations that the husband used to dance with a foreign girl in the Club and also gave an impression that he had affairs with one Prity Roy but failed to prove such fact. According to Mr. Dasgupta, even if the allegations made in the application for divorce are not proved, on the basis of those averments made in the written statement, his client was entitled to get a decree for divorce.

37. Before dealing with the aforesaid allegations, it would be profitable to refer to the exact statements of the wife in the additional written statements. The wife, immediately after getting knowledge of the filing of the suit for divorce had a serious cerebral attack and was hospitalised and from that period, is not in a position to walk except with the help of an orthopaedic stick. While narrating her condition after such cerebral attack, she in paragraph 24 of the additional written statement made the following averments:

Later almost after a year on a wheelchair in an ambulance accompanied by two savikas, I started attending meetings of NGOs to keep my mind alive. I was then made a member of the West Bengal State Heritage Commission-I attended meetings on the wheelchair. I started freelance writing, slowly, haltingly, it took hours, I could not focus that I had to try to keep my mind alive, working. My husband was in the meantime was seen regularly in various clubs, parties. On New Year's Eve he was dancing with the young Irish beauty queen in Bengal Club. She was a guest in my brother in law Adish's house. He was frequently seen in the company of an elderly widow. She i.e. Prity Roy would come to my brother-in-law Adish's house almost everyday. Bikash would be summoned. He also visited her house two/three times a month in the evening said my son. She lives along with her

elderly mother who encouraged the happenings.

38. We have already pointed out that it was the husband who in the petition for divorce made baseless allegations against the wife as regards her moral character but did not even dare to lead evidence to substantiate such allegations. In the additional written statement wife has simply stated that husband was found to be dancing with a foreign lady in a Club on the New Year's evening and that she was a guest in the house of her brother-in-law. She further stated that the husband was frequently seen in the company of an elderly widow who used to come to her brother-in-law's house almost everyday and the husband also used to go to her house two/three times a month as told to her by her son. The son appearing as PW-1 did not dispute the fact that he conveyed the fact of visit of his father to that lady's house and in cross-examination he admitted that he knew that lady who was their family friend. The husband appearing as PW-2, in spite of knowledge of such allegations, did not dispute such fact in his examination-in-chief and as such, the wife did not place further material in support of such case.

39. In our view, it cannot be said that the aforesaid allegation was baseless. If the husband had denied in his evidence that he ever danced with the said girl, it would have been a duty of the wife to lead substantive evidence in support of such allegation. Moreover, such allegation of dancing with a girl in a Club, or mixing with an elderly lady who happens to be a family friend, in our view, is not that serious allegation enabling the husband to get a decree for divorce when he himself made much more serious allegation involving the chastity of the wife though no evidence could be adduced in support of his allegation. The wife by making such allegation merely wanted to highlight the fact that while she was moving in a wheelchair after the cerebral attack, the husband had no concern for her, and on the other hand, he found enough time to attend clubs, parties and meeting and gossiping with the said elderly lady. We, thus, find that the allegation made in the additional written statements did not amount to cruelty and consequently, the said decision is of no avail to Mr. Dasgupta's client.

40. Mr. Dasgupta in this connection by relying upon the decision of a Division Bench of this Court in the case of *A.E.G Carapiet v. A. Y. Derderian*, contended that even if nothing was stated by the son and the husband in their examination-in-chief, it was the duty of the wife to give suggestion as regards the aforesaid allegation in their cross-examination and for not giving any such suggestion the allegation should be held to be false. We are afraid we are unable to accept such submission. In this case when in the pleading of the wife such allegation was definitely made the same was within the knowledge of the husband and the son. If in spite of such knowledge they decide not to deny such fact in their examination-in-chief, the wife is under no obligation to put any suggestion of her defence to them in cross-examination. Position, however, would have been different if they in their examination-in-chief denied such fact and in such situation, it would have been the duty of the wife not only to give suggestion to the contrary but also to lead her own evidence in support of such defence version. In the case of *A.E.G Carapiet (supra)*, all that has been laid down is that whenever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony could not be disputed at all. But if the witness does not assert any thing against the specific case concerning that very witness taken in the pleading of the other side, there is no duty cast upon the other side to give any

suggestion to such witness as regards the said version because the statement in examination-in-chief will not affect the case of the other side and it should be rather presumed that the witness in spite of knowledge of the pleading of the other side is not disputing the same. Moreover, in this case the plaintiff/husband during the evidence never exercised his option to lead further evidence in rebuttal in terms of Order 18 Rule 3 of the Code of Civil Procedure and thus, the wife cannot be blamed for non-production of any positive evidence on the defence version when such fact was not denied by the husband and his witnesses.

40a. Moreover, it is now settled law that in order to get a decree for divorce on the ground of making baseless allegation made in the written statement of a party, it must be clearly established that such allegation was really a baseless one. Mere fact that the party filing written statement could not prove such fact will not be a ground for divorce; on the other hand, if it is established from the evidence that such allegation was evidently false, a Court can pass a decree on the basis of such false allegations in the written statements. It is preposterous to suggest that although the inability of a party to prove the cruelty alleged in the plaint will result in dismissal of the claim of divorce, the failure of a defendant to prove the counter-allegation in the written statement for want of sufficient evidence will automatically confer right upon the applicant to get a decree for divorce notwithstanding the fact that such plaintiff failed to prove the case made out in the plaint.

41. Although Mr. Dasgupta strenuously contended before us that writing of a letter to the Prime Minister praying for withdrawing the Padmashree Award of the husband amounted to cruelty, we are not at all impressed by such submission. It appears that such letter was written by an organisation drawing attention of the Prime Minister that the husband, a Padmashree holder, obtained an order of the Court restraining his lawful wife from entering the matrimonial house and requesting that such a person should not be awarded Padmashree award. We have already pointed out that the husband really obtained such order from a Criminal Court by taking aid of Section 144(2) of the Code of Criminal Procedure and on the application of the wife, the Court revoked such order. We have also arrived at the conclusion that in the fact of the present case there was no just reason for restraining the wife from entering the house and it was the husband who without just cause filed frivolous application before Court on false pretext that the wife had already left the house with the bag and baggages though in fact she went to Ahmedabad for her official duty as a trustee of an organisation and the husband in cross-examination was constrained to admit that most probably the wife went out of Calcutta in the month of July, 1997 (page 96 of the paper book). Moreover, it has not been proved that such letter was written at the instigation of the wife. If an organisation had made such allegation on the basis of its own information which is otherwise correct, the wife cannot suffer for the act of such organisation unless it is proved that such allegation was made at the instance of the wife and that such allegation was false to the knowledge of the wife. Similarly, the allegation that the Women Cell intervened in the domestic affairs of the parties cannot be said to be cruelty on the part of wife as pointed out by the Supreme Court in the case of *S. Hanumantha Rao v. S. Ramani* relied on by Mr. Basu the learned Advocate appearing for the wife. One of the functions of Women Protection Cell is to bring about reconciliation between the estranged spouses and unless there is any evidence on record to show that either the husband or any member of his family were harassed by the Cell, such act cannot amount to cruelty. Therefore, if the wife invited the husband and the daughter to effect reconciliation through the intervention of a women's cell that cannot

amount to cruelty on the part of the wife.

42. In the case of *V. Bhagat v. D. Bhagat*, in a divorce petition filed by the husband, an advocate, on the ground of adultery, averments were made by the wife in the written statement alleging the husband and his family members were lunatics or suffering from mental imbalance. The husband was subjected to cross-examine on that aspect and in such a situation, the Supreme Court granted a decree on the ground of pleading of the parties in the written statement. In paragraph 21 of the judgment the Supreme Court, however, hastened to add on the following amplification:

Before parting with this case we think it is necessary to append a clarification. Merely because there are allegations and counter-allegations, a decree for divorce cannot follow. Nor is mere delay in disposal of the divorce proceedings by itself a ground. There must be really some extraordinary features to warrant grant of divorce on the basis of pleadings (and other admitted material) without a full trial. Irretrievable breakdown of the marriage is not a ground by itself. But while scrutinising the evidence on record to determine whether the ground(s) alleged is/are made out and in determining the relief to be granted, the said circumstances can certainly be borne in mind. The unusual step as the one taken by us herein can be resorted to only to clear up an insoluble mess, when the Court finds it in the interest of both the parties.

43. In the case before us, we find that parties were married in 1967, had two children and they were happy till 1994 when they had been found to be travelling not only throughout the India but also in various parts of the World on holidays but the scientist husband after thirty years of conjugal life, at the age of 53, had invented deliberate false allegations of cruelty against the wife, which according to him, started from 1970 and did not even hesitate to make out unfounded allegation of infidelity of the wife. We have already held that none of the allegations contained in the application for divorce was proved as found by the learned Trial Judge also. Therefore, the said decision cannot help the present respondent-husband to get a decree for divorce.

44. In the case of *G.V.N. Kamaeswara Rao v. Jabilli*, the Apex Court was considering a case where the wife made allegations of physical assault by the husband and the mother-in-law before the police. According to the husband such act on the part of the wife amounted to cruelty. The High Court did not accept such contention of the husband holding that the wife had just reasons for lodging such complaint. The Supreme Court in appeal by the husband came to the conclusion that the "respondent's allegation that she was physically assaulted by the appellant and his mother was not very convincing" and after such finding, came to the conclusion that such act on the part of the wife amounted to cruelty. In the case before us, we have come to the conclusion that there was just reason for making complaints before the police alleging abnormal behaviour of the daughter towards the mother with the active support of the father and it does not appear from the materials on record that on the basis of such allegations, any criminal case was initiated against them. We have seen those complaints admitted as additional evidence before this-Court and we find that the language used in those complaints was most temperate in nature and she merely expressed her helpless condition in facing the indecent behaviour of the daughter without having any co-operation from her husband. That the writing of those letters before the Police making allegations against the daughter and the husband was quite justified will appear from the fact that the daughter and the

father abused the process of law to prevent the appellant from entering the matrimonial home by making bogus allegations and have even gone to the extent of filing the present suit for destroying an otherwise successful matrimonial bond of thirty years on the basis of sheer false accusations. Therefore, the decision of the Supreme Court in the case of G.V.N. Kameswara Rao (supra), is of no assistance to the respondent before us.

45. In the case of Krishna Sarbadhikary v. Alope Ranjan Sarbadhikary reported in AIR 1984 Cal 431, a Division Bench of this Court approved a decree for divorce granted by the Trial Court on the ground of cruelty after arriving at the findings that by reason of the fact that the wife frequently departed from the matrimonial home without permission and stayed in her paternal house for a long spell, the husband felt socially humiliated and was in constant fear and anxiety resulting in loss of mental peace and consequently, his health suffered. The wife was a highly impulsive emotional lady who lacked balance and had suspicious nature. Once she lodged a false complaint against the husband and used to write offensive and insulting letters to her husband in his office address making false accusations and she also assaulted the husband in the presence of his mother and sister. In such a situation, the Division Bench came to the conclusion that having regard to the ages of the parties, environments, their standard of culture and status of life, it should be held that the series of acts committed by the wife amounted to cruelty.

46. In the case before us, the husband failed to prove the allegations made in the petition for divorce and at the same time, we have found that the wife had no other alternative but to approach the Police when the daughter started assaulting her with the tacit support of the husband and ultimately, the husband on false pretext moved the Criminal Court under Section 144 of the Code of Criminal Procedure against the wife on the false allegations. The decisions cited by Mr. Dasgupta are, thus, of no avail to his client.

47. Lastly, we find that the husband during the pendency of this appeal has again married. Although the learned Advocate appearing on behalf of the husband tried to convince us that he had no knowledge of the pendency of the appeal, we are not at all impressed by such submission. We have already pointed out that the appeal was filed within the period of limitation and the husband was all along renewing his application for caveat before this Court with the help of a learned advocate of this Court. It is absurd to believe that the husband repeatedly renewed the application for caveat but did not ascertain whether any appeal had at all been filed before this Court. In the form of caveat prescribed by this Court, there is a column to be filled up by the applicant whether any appeal has been preferred against the order against which the party proposes to lodge the caveat. It appears that husband did not deliberately fill up that column, though after the expiry of every three months, he had been renewing the caveat.

48. Be that as it may, if a party after getting a divorce by a Trial Court intends to remarry, it is the duty of such party to ascertain on the date of marriage whether any appeal has been preferred in the meantime by the other spouse. Regarding the position of second marriage during the pendency of an appeal against a decree for divorce, the law is now settled as pointed out by the Supreme Court in the case of Savitri Pandey v. Prem Chandra Pandey that by remarriage, the divorced person undertakes a risk by entering into such remarriage and its validity is entirely dependent on the

outcome of the pending appeal.

49. Since, we propose to set aside the judgment and decree for divorce passed by the learned Trial Judge on the ground that mere finding that the marriage had broken down irretrievably cannot confer upon the Court the authority to grant a decree for divorce and at the same time we have specifically found that the husband has not only failed to prove the cruelty alleged in the petition but the subsequent pleading of the wife has also not given rise to any act of cruelty, the marriage contracted by the husband must be held to be invalid from this moment. We are not at all impressed by the submission of Mr. Dasgupta that to save the second marriage of the husband we should not interfere with the decree for divorce. An innocent wife should not be penalised for no fault on her part at the cost of the misdeed of the husband. The husband cannot take advantage of his own wrong.

50. On consideration of the entire materials on record, we, therefore, set aside the judgment and the decree passed by the learned Trial Judge and accordingly, allow the appeal. The petition for divorce filed by the husband is dismissed with costs which we assess at Rs. 10,000/- (Ten thousand only).

Pravendu Narayan Sinha, J.

51. I agree.