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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 22.12.2021

% Judgment delivered on: 02.05.2022

\+ MAT.APP. (F.C.) No. 116/2021

SUNIL KUMAR SHARMA ..... Appellant

Through: Md. Azam Ansari, Advocate with Mr. Ashfaque Ansari, Advs.

Versus

PREETI SHARMA ..... Respondent

Through: Mr. Gaurav Goswami with Mr. Tarun Goomber and Mr. Pankaj Mendiratta, Advs.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

VIPIN SANGHI, ACJ.

1. The appellant/husband preferred this appeal under Section 19 of Family Courts Act, 1984 to quash and set aside the judgment dated 10.08.2021 passed by learned Principal Judge, Family Court, South District, Saket Courts, Delhi in HMA No. 388 of 2011 titled as ***Smt. Preeti Sharma Vs Sh. Sunil Kumar Sharma***. The Family Court granted divorce by the impugned judgment in favour of the respondent/wife under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter referred as HMA).

2. The necessary facts giving rise to the present appeal are that the marriage between the appellant and the respondent was solemnized on

22.05.1997 as per the Hindu rites and ceremonies at respondent's father's house in New Delhi. The parties cohabited as husband and wife, and two daughters were born out of the wedlock.

3. Soon after the marriage, the relationship between the couple turned sour. Marital differences cropped up between the parties and the divorce petition was preferred by the respondent on grounds of continuous acts of cruelty inflicted by the appellant upon the respondent. The Family Court allowed the divorce petition against the appellant by the impugned judgment.

4. The appellant in the present appeal alleges that the Family Court has erred in striking out the defence of the appellant, and not allowing the appellant to lead his defence evidence, and granted divorce by relying on the allegations of the respondent, which are contrary to submissions on record.

5. The issues which require adjudication in this case are as follows:

(i) Whether the Family Court was right in striking off the defence of the appellant?

(ii) Whether the respondent/wife was able to prove the charge of cruelty with cogent evidence against the appellant/husband before the Family Court?

6. The appellant and the respondent appeared before us, and we interacted with them, with a view to explore the possibility of reconciliation. The parties agreed to appear before the Delhi High Court Mediation and Conciliation Centre to settle their dispute with regard to the alimony and maintenance for both the daughters. However, the parties could not reach to a settlement, and the matter was referred back to the court. Accordingly, we heard the submissions of the parties on merits and reserved judgment.

7. After the relations between the parties soured, the respondent wife initiated a proceeding under Section 12 of the Protection of Woman against Domestic Violence Act, 2005 (hereinafter referred to as DV Act), which is pending adjudication before learned MM, Saket Courts, South District, Delhi. It is submitted by the learned counsel for the respondent that due to societal pressure, it took so long for the respondent to take the first step and file the said case. In the aforesaid case, vide order dated 15.04.2010, the learned MM granted interim relief to the respondent and directed the appellant to leave the shared household and refrain from visiting the school of the children. Hence, on 18.04.2010, the appellant left the house of the petitioner/respondent and till date they have been living separately. The submission of the respondent is that the said order was passed, after the learned MM was satisfied that the respondent was subjected to cruelty by the appellant. Thereafter, the appellant preferred an appeal against the aforesaid order, which was dismissed vide order dated 27.08.2015 by the learned ASJ, Saket Courts, Delhi. The respondent, thus submits, that the finding of cruelty against the appellant stood affirmed and became final. As a counter blast to the case under DV Act, the appellant also filed a complaint against the respondent and her father.

8. The respondent then filed the divorce petition based on the order dated 15.04.2010 of the learned MM on the *prima facie* findings of cruelty meted out by the appellant.

9. The appellant denied the allegations of the respondent. He claimed that the respondent harassed the appellant mentally and physically, and, in fact, appellant helped the respondent overcome her family's debt, and always took care of all the expenditures, and has been a doting father. He

claimed that the respondent is obsessed with her colleague, who is also a Radha Swami follower, and the allegations of the respondent are only aimed to remove the appellant from the family, and deprive the daughters of the love of their father.

10. It appears that an application was filed before the Family Court by the appellant for grant of 8 weeks' time to file his evidentiary affidavit, which was dismissed by the Family Court vide order dated 13.07.2021. The Family Court then proceeded to adjudicate the matter in the absence of any defence evidence of the appellant. The appellant has challenged the judgment of the Family Court on the grounds that the Family Court did not allow the appellant to lead his evidence and decided the petition without giving him any opportunity to defend his case. He submits that serious injustice has been caused to him by not allowing him to submit his evidentiary affidavit, and striking off his defence vide order dated 23.07.2021.

11. The learned counsel for the appellant further submitted that Family Court was wrong in dismissing the application of the appellant for grant of 8 weeks to file his evidentiary affidavit along with relevant documents. He submits that the Family Court is obligated to allow all evidence, irrespective of it being admissible or relevant; it is the duty of the family court under Section 14 of the Family Court Act, 1984 to admit all documents and decide the admissibility or relevance of those documents while adjudicating the matter before it. Learned counsel for the appellant relied on decision of learned Single Judges in ***Deepali Santosh Lokhande v. Santosh Vasantrao Lokhande,*** (2018) 1 Mah LJ 944 (Bom) and ***Deepti Kapur v. Kunal,*** AIR 2020 Del 156.

12. The learned counsel for the appellant further submitted that the

Family Court granted divorce to the respondent on false allegation raised by the respondent, solely relying on the submissions of the respondent. It is further submitted that the allegations of cruelty levelled against him by the respondent could not have been established from the pleadings or evidence on record.

13. On the other hand, learned counsel for the respondent submitted that the respondent filed her evidentiary affidavit in the divorce petition, whereafter she was cross-examined by the counsel for the appellant. The respondent closed her evidence in the affirmative on 26.06.2021. The Family Court on 13.07.2021, granted 3 days time to the appellant to file his evidentiary affidavit, which was challenged by the appellant before this Court in CM (M) No. 436/2021. This court on 15.07.2021, directed the Family Court to adjudicate the divorce petition, and the connected maintenance petition on merits before 14.08.2021, and time granted to the appellant for filing his affidavit was extended by 10 days. The appellant challenged the said order before the Supreme Court by filing SLP (Civil) No. 11118/2021, which was dismissed as withdrawn. The appellant failed to file his evidentiary affidavit within the time granted by this court vide order dated 15.07.2021. Later, his defence was also struck off by the Family Court for repeated non-compliance of orders. In the aforesaid background, the appellant's written statement was perused by the Family Court before pronouncing the judgment.

14. We have considered the submissions of the learned counsels for the appellant and the respondent, and we have gone through the impugned judgment and documents placed on record.

15. First and foremost, it is pertinent to mention here that while rejecting

the plea of the appellant by order dated 13.07.2021, the Family Court observed that the fresh documents cannot be filed at the stage of evidence and are required to be filed along with the reply or written statement, *"One party cannot file fresh documents on basis of the cross-examination of the opposite party"*. The appellant challenged the aforesaid order before this Court without success, and later, before the Supreme Court, which petition was dismissed as withdrawn. The appellant was granted time to file his evidentiary affidavit, and only his plea to file additional documents was rejected, but the appellant failed to file his evidentiary affidavit within time.

16. Order 8 Rule 1A (1) of Civil Procedure Code, 1908 (hereinafter referred to as CPC) mandates the defendant to file the documents in his possession at the time of filing the written statement. In case the defendant fails to file such documents at the time of presenting the written statement, then the same shall not be allowed to be received in evidence on behalf of the defendant. Filing of additional documents by the defendant can be permitted only with the leave of the court.

17. Section 14 of the Family Courts Act, 1984 empowers the Family Court to receive any evidence, whether or not the same is relevant or admissible under the Indian Evidence Act if, in its opinion the same would assist it to deal effectually with the dispute before it. However, the Family Court is deemed to be a Civil Court and provisions of CPC apply to the proceedings before it by virtue of Section 10 of the Family Courts Act. Section 14 cannot be read as an exemption from the application of Order 8 Rule 1A (i) of the CPC. The issue before the Family Court was not about the admissibility of the documents, but about the belated stage at which the appellant sought to bring the same on record.

18. A bare perusal of the order dated 23.07.2021 shows that the appellant preferred an appeal before this Court, against the order of the learned MM in Domestic Violence case for payment of maintenance to the respondent. On 31.10.2018, this Court directed the appellant to pay the arrears within six months, over and above the monthly allowances, on or before 15.11.2018. The appellant filed Crl. M.C. 4816/2015 before this Court, for extension of time to comply with the aforesaid order. On 03.05.2019, the said petition was dismissed and no extension of time was granted. Thereafter, the appellant challenged the said order before the Supreme Court in SLP No. 4980/2019. The same was dismissed vide order dated30.05.2019, wherein, the Court observed: *"Having heard the learned counsel appearing on behalf of petitioner and upon perusal of the record, no case is made out to interfere in view of the specific undertaking given by the petitioner. Hence, the special leave petition is dismissed*", although the Court extended the period for three months i.e. 30.08.2019, for payment of the maintenance amount. The appellant again approached this court to extend time to pay Rs. 1 lakh. He was directed to pay Rs. 25000 by 30.06.2021, and remaining amount within three weeks, which the appellant did not pay. This Court vide order dated 11.05.2021 in CM (M) 368/2021, gave him last and final opportunity to pay the amount, failing which, the court decided to proceed on merits. The appellant failed to comply with various orders of this Court, as well of the Supreme Court, and the Family Court qua payment of the maintenance and preferred to indulge in frivolous litigations instead of paying the outstanding maintenance amount. The appellant was directed by this court to deposit the maintenance amount, failing which the appellant shall bear the consequences. Instead of the paying the maintenance on time, the appellant

preferred to repeatedly flout the directions of this Court. Hence, we are of the view that the Family Court was justified in striking off the defence of the appellant. The appellant was very well aware of the consequences of his actions.

19. The Family Court in its order dated 04.08.2021, observed as follows :

> *"14. The contention of Ld. Counsel for the respondent that order dated 23.7.2021 passed by this Court is liable to be reviewed as alleged non-compliance of High Court orders was not an issue on the said date before this court, is without any merit. It is for this Court to see on every date that the orders of this court and the High Courts are complied with in letter and spirit. In case unscrupulous litigants are allowed to violate the orders of the court, people will lose faith in the courts of justice and jungle raj will prevail. It is the bounden duty of every Court to see that the majesty of the court is not lowered. The orders passed by the High Court of Delhi/Apex Court must be treated by every litigant with utmost respect and be complied with in its letter and spirit but in the present case respondent has repeatedly overlooked and neglected the compliance of the said orders and has treated them as something written on an ordinary piece of paper.*
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> *16. From March 2021 till date the respondent had preferred 10 petitions i.e. CM(M)-280/21, CM(M)-281/21 CM(M)-368/21, CM(M)-369/21, CM(M)-408/21, CM(M)-418/21, CM(M)-436/21, TP(CRL)-40/2021 and TP (CRL)-37/2021, Crl M.C. 1725/2021 and 3-4 Miscellaneous Applications before the High Court of Delhi, various applications before this Court as well. He had filed one Miscellaneous Application and 2 Petitions before the Apex Court. This clearly shows that the Respondent is not having any financial crunch as all the petitions preferred by him only shows that he is in habit of luxurious litigations instead of paying the maintenance of his own daughters, while claiming that he is poor and ex-serviceman."*

20. The conduct of the appellant clearly shows that the appellant deliberately and intentionally did not abide by the orders of the Supreme Court, this Court and the Family Court. At various instances, the appellant undertook to make the payment and the dates were extended with his consent, but he disobeyed the orders. Number of opportunities were given to the appellant. However, it appears that the intentions of the appellant was not clean from the beginning. Even after number of directions of the Courts, the appellant casually filed petitions, without following any of the directions.

21. In this regard, reference may be made to ***Bimal Chand Jain v. Sri GopalAgarwal***, (1981) 3 SCC 486, wherein the Supreme Court – while deciding an appeal where the defence of the appellant was struck off for default in making payment under Rule 5 of Order 15, *inter alia*, held as follows:

> *"6. ……..Sub-rule (2) obliges the court, before making an order for striking off the defence to consider any representation made by the defendant in that behalf. In other words, the defendant has been vested with a statutory right to make a representation to the court must consider it on its merits, and then decide whether the defence should or should not be struck off. This is a right expressly vested in the defendant and enables him to show by bringing material on the record that he has not been guilty of the default alleged or if the default has occurred there is good reason for it. Now, it is not impossible that the record may contain such material already. In that event, can it be said that sub-rule (1) obliges the court to strike off the defence? We must remember that an order under sub-rule (1) striking off the defence is in the nature of a penalty. A serious responsibility rests on the court in the matter and the power is not to be exercised mechanically. There is a reserve of discretion vested in the court entitling it not to strike off the*

defence if on the facts and circumstances already existing on the record it finds good reason for not doing so. It will always be a matter for the judgment of the court to decide whether on the material before it, notwithstanding the absence of a representation under sub-rule (2), the defence should or should not be struck off."

22. Reference may also be made to ***M/s Babbar Sewing Machine Co. v. Triloknath Mahajan,*** (1978) 4 SCC 188. In this case, the Supreme Court, while dealing with Order 11 Rule 21 CPC, considered the effect of non-compliance of order for discovery, and observed:

"25. ..... A perusal of Order XI, Rule 21 shows that where a defence is to be struck off in the circumstances mentioned therein, the order would be that the defendant 'be placed in the same position as if he has not defended'. This indicates that once the defence is struck off under Order XI, Rule 21, the position would be as if the defendant had not defended and accordingly the suit would proceed ex parte. In Sangram Singh v. Election Tribunal[1] *it was held that if the court proceeds ex parte against the defendant under Order IX, Rule 6(a), the defendant is still entitled to cross-examine the witnesses examined by the plaintiff....."*

23. The Supreme Court in ***Modula India v. Kamakshya Singh Deo***, (1988) 4 SCC 619, while dealing with the appeal, where the defence of tenant was struck off against delivery of possession under West Bengal Premises Tenancy Act,1956, *inter alia*, observed:

"24. .....,even in a case where the defence against delivery of possession of a tenant is struck off under Section 17(4) of the Act, the defendant, subject to the exercise of an appropriate discretion by the court on the facts of a particular case, would generally be entitled:

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[1]1955 (2) SCR 1

(a) to cross-examine the plaintiff's witnesses; and
(b) to address argument on the basis of the plaintiff's case.
We would like to make it clear that the defendant would not be entitled to lead any evidence of his own nor can his cross-examination be permitted to travel beyond the very limited objective of pointing out the falsity or weaknesses of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses."

24. A Division Bench of this Court applied the ratio of the decision of ***Modula India*** (supra) in ***Kulbhushan Seth v. Seema Seth &Ors.***, ILR (2008) 2 Del 698. The defence of the appellant was struck off by the learned Single Judge because the appellant failed to file an affidavit disclosing his gross salary in petition for maintenance by the respondent. After referring to the above extract from ***Modula India*** (supra), the Division Bench held as follows:

"5. A perusal of the above judgment of the Hon'ble Supreme Court makes it clear that the right of the defendant in such a situation is to cross-examine the plaintiff's witnesses and to address arguments on the basis of the plaintiff's case. It has also been held that in no circumstances the cross-examination can be permitted to travel beyond the legitimate scope and to convert itself virtually to a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses. In our view, this itself shows that the judgment of the Hon'ble Supreme Court does not support the plea advanced by the learned Counsel for the appellant and on the contrary supports the stand of the respondent that the appellant's written statement cannot be taken in account. Accordingly, there is no merit in the appeal".

25. For the above reasons, we are of the view that the Family Court was right in striking off the defence of the appellant *qua* non-payment of the maintenance, after number of opportunities were given by various Courts. Since, the evidentiary affidavit or additional documents that the appellant wishes to place on record could not have been relied upon by the Family Court, the dismissal of application to file evidentiary affidavit does not prejudice any right of the appellant. A perusal of the impugned judgment shows that the Family Court relied upon the written statement of the appellant. The appellant cross examined the respondent. Since the defence of the appellant was struck off, he was not allowed to lead his evidence or file additional documents, representing his case, directly or indirectly.

26. Secondly, the learned counsel for the appellant submitted that the Family Court relied on serious allegation of *sexual weakness/ impotency*, which was not even proved, in spite of the appellant having two daughters. Upon perusal of the pleadings and evidence, we find that the respondent in her cross examination was suggested on behalf of the learned counsel for the appellant that she made false allegation, that the appellant is suffering from sexual weakness. This was denied by the respondent. The learned counsel for the appellant further asked the respondent to explain the sexual weakness suffered by the appellant. The respondent answered that she was informed by the appellant about his sexual weakness when they were not able to consummate the marriage for approximately a week. The respondent has reiterated the same in her pleadings, that the appellant suffered from sexual weakness, for that reason the marriage was consummated at a much later date. However, as submitted by the appellant, the allegation of *impotency* against the appellant, has no basis. Pertinently, there has been no mention of

the word *'impotency'* in the divorce petition, or the impugned judgment of the Family Court.

27. The learned counsel for the appellant in the cross-examination of the respondent suggested that she made false allegation that the appellant was impotent. This was also denied by the respondent. It appears that the contention of sexual weakness was not pressed by the respondent, and the Family Court did not rely on the said ground to grant divorce. No finding in this regard has been returned by the Family Court against the appellant. Thus, the aforesaid contention of the appellant cannot be a ground to set aside the judgment of the Family Court.

28. The appellant has not disclosed any reason, or pointed out any contradictions in the respondent's testimony, which could create a reasonable doubt in our mind to disbelieve the testimony of the respondent. The appellant did not file any evidence to support his grounds or prove the contrary. It is pertinent to mention that the respondent in her cross examination, by the learned counsel for the appellant, did not falter and withstood her testimony, which has also been appreciated by the Family Court in the impugned judgment. The Family Court was also of the view that respondent proved that the conduct of the appellant amounted to cruelty within the parameters of Section 13(1)(ia) of the HMA and the relevant paragraphs from the impugned judgment read as follows:

> *"29. I find the testimony of PW-1 reliable and trustworthy. Her testimony could not be shaken in the cross examination conducted on behalf of the respondent. Respondent subjected the petitioner and the children with immense cruelty and deprived them for the natural love affection. He neglected his matrimonial obligations and harassed the petitioner to such an extent that finally she had to approach the Court of law for*

redressal for her grievances. The petitioner has narrated several incidents of cruelty and has relied upon documents to prove the same. Being fed up of the cruelties subjected by the respondent petitioner filed under D.V. Act in the Court of the l.d. M.M. Interim relief was granted to the petitioner vide order dated 13.04.2010 (ex. PW 1/G) where upon respondent vacated the matrimonial house at Lodhi Road on 18.04.2010. It also stands proved that petitioner took financial assistance from her father/relatives to repay respondent's debts and rent of the house. The respondent forced the petitioner to shift 6 houses as he was always in the search of a house for which he had to pay less rent. Such an attitude of the respondent brought humiliated to the petitioner. When the petitioner got a promotion as Program Executive, she was not allowed to go Barelly, U.P. The petitioner and her daughter were not taken care of by the respondent when they were not well. The petitioner was defamed by the respondent by alleging that she was a characterless lady and he further taunted that both the daughters are not his daughters and DNA test should be conducted. He threatened the petitioner not to divorce her and raised a demand of Rs. 50 lakhs for giving divorce. He used to call the petitioner and her daughters as lesbians as they used to sleep together. He used to call the petitioner Chudail and Bhootani. To take care of her daughters, the petitioner had to often take leave from her department and she has proved documents in this respect as Ex. PW1/F. The petitioner has relied upon the Resume dated 01.04.2009 of the respondent (Ex. PW/F.) wherein respondent has given details of his 10 years professional carrier in private security from 1999 till 2009. In the cross examination of the respondent when he was asked about his professional and educational qualification till date, he deposed that he is a graduate and a diploma holder in electrical Engineering. It appears that he deliberately did not disclose his other qualifications as in response to question no. 3, he stated as under :-

"Ques. 3. Do you hold any other Degree (Professional/Qualification) apart from the above mentioned

ones? If yes, kindly provide the details of the same.
Ans. During pre-release courses in the year 1992, I underwent the training in Diploma Course and Computer and Tours and Travel Agency management Course."
30. Thus it stands proved that the respondent is a professionally qualified person and was in business. He was discharged on 31.08.1992 from Indian Air Force as a Sergeant. He has admitted that from 2000 to 2009, he was a partner in Vigil Services with Lt. Col. V.K. Sharma. He has admitted that ITRs were filled by him after year 2000. In response to a question as to why he has not filed ITRs, he replied that owing to his engagement in his younger brother's murder case, he could not do so. The respondent is contesting the cases filed by the petition with full vigour and has filed multiple petitions up to the Apex Court. The conduct of the respondent shows that he tried to evade filing of the ITRs in order to conceal his true income from this Court. Thus, an adverse inference is to be drawn against him for not filing the ITRs. He has admitted in his cross examination that since 2009 till April 2020, he had been a part time consultant in Lucknow and Jhansi and the income is already mentioned in his ITRs. He has not disclosed the names of the companies and the places where he worked on the ground that there is an oral non-disclosure agreement and for the said reason, the names cannot be shared. The plea taken by the respondent is not believable at all. The respondent has deliberately not shared the details of the companies in which he worked from 2009 till April 2020 to conceal his true income.
31. He has also invested money which stands proved vide receipt (EX.PW 1/I) with Ambey Car Rental Pvt. Ltd. The petitioner had also booked plots with several developers/builders. He purchased a WagonR Car in the year 2008.
32. PW-2 Mr. Harsh has proved the income details of the respondent since 201-16 till 2020-21 vide letter dated 08.07.2021 Ex. PW 2/I. For the AYs-2016-21, total income of the respondent as per ITR was Rs.2,68,500/-, Rs.4,65,850/-, Rs.5,22,490, Rs.6,74,600/- and Rs.5,24,690/- respectively. As per Ex. PW 2/2, amounts of Rs.63592/-, Rs.1417/-, Rs.152129/-

and Rs. 192478/- were deducted under Chapter V-A for the year 2017-2021. It appears that for these years certain investments were made by the respondent."

29. Thus, the respondent proved her ground that the appellant is earning handsomely, and deliberately did not provide for the family and is now avoiding paying the maintenance, by relying on the ITR details of the appellant for the assessment years 2015-2021, and receipts from Ambey Car Rental Services Pvt. Ltd. However, the appellant could not prove that he was bearing the expenditure of the family or, as submitted by him, got expensive gifts for the respondent. The averment of the appellant that he was only getting pension and had no other source of income was disproved by testimony of the Tax Assistant from Income Tax department as PW-2. This shows that the appellant is not interested in taking responsibility of his daughters and contributing towards the family expenses. This itself would have caused considerable trauma and harassment to the respondent, who was single handedly shouldering the responsibility of bringing up two daughters, without any financial or emotional support from their father. Hence, we do not agree with this submission of the appellant that the respondent had not substantiated her ground of cruelty before the Family Court.

30. In ***A. Jayachandra versus AneelKaur* (2005) 2 SCC 22,** the Supreme Court has held that the cruelty can be physical as well as mental. The Court, inter alia, observed:

"10. The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustified 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 they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not 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 on evidence. It is in this view that one has to consider the evidence in matrimonial disputes."

31. In **V. Bhagat v. D. Bhagat**, (1994) 1 SCC 337, the Supreme Court was dealing with the divorce petition filed by husband which he amended later from adultery to cruelty. The Court observed, as follows:

"16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not

necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be Determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."

32. The Family Court granted divorce to the respondent under Section 13(1)(ia) of the HMA solely relying on ground of *'mental cruelty'.* The Family Court considered the said aspect in the impugned judgment as follows :

"36. All the suggestions put to PW1 regarding the defence of the respondent have been denied by her. Mental cruelty and its effect cannot be stated with arithmetical accuracy. It varies from individual to individual, from society to society and also depends on the status of the persons. What would be mental cruelty in the life of two individuals belonging to a particular stratum of the society my not amount to mental cruelty in respect of another couple belonging to a different stratum of society……."

The Family Court also relied on the judgment of this Court in ***Hema v. Harish Aggarwal***, MAT APP (FC) 249/2019, decided on 27.9.2019, wherein the Court held the following:

"Ever since the decision in Dr. N.G. Dastane v. Mrs. S. Dastane, reported as Air 1975 SC 1534, courts have consistently held that that the inquiry required to be conducted has to be as to whether the conduct of a spouse alleged as

cruelty, is of such a character as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for him to continue living with the respondent. The courts are not dealing with ideal husbands and wives, but disputant couples. Cruelty would always depend upon the social background of the parties, their way of life, relationship, temperament and emotions. We are of the opinion that in the present case, the conduct of the appellant that in the present case, the conduct of the appellant/wife has been disclosed to be of such a quality, magnitude and impact as to have caused mental pain, agony and suffering to the respondent/husband on a regular and continuous basis, which clearly amounts to cruelty. The learned Family Court had rightly granted a decree of divorce in favour of the respondent/husband." (emphasis supplied)

33. Husband and wife are two pillars of the family. Together they can deal with any situation, balancing the family in all circumstances. If one pillar gets weak or breaks, the whole house crashes down. The pillars can withstand all the abuses together, the moment one pillar gets weak or deteriorates, it becomes difficult to hold the house together. When one pillar gives up, and puts all the burden on the other pillar, then it cannot be expected that one pillar will single handedly hold the house together.

34. As noticed above, we find no reason to differ with the view expressed by the learned Principal Judge Family Court. The appellant had put the entire burden on the respondent to manage the house, her job, and to look after the children. The appellant did not take any responsibility and, on the other hand, continuously abused the respondent and insulted her and her family members. The appellant even disrespected her father, and doubted the respondent's character. The appellant demanded money to give divorce to the respondent. He failed to discharge his duties as a husband – and

especially as a father. Even after directions of this Court and the Family Court, the appellant falsified about his earnings and failed to pay the maintenance for his daughters. *Prima facie*, the allegation of domestic violence had been proved and learned MM granted interim relief to the respondent.

35. In ***A. Jayachandra versus AneelKaur* (2005) 2 SCC 22** (supra) the court has also stated that *"Mental cruelty may consist of verbal abuses and insults by using filthy language leading to constant disturbance of mental peace of the other party."* The aforementioned circumstances, clearly lead to mental cruelty. No direct evidence is required, the trauma and mental suffering undergone by the respondent, and attitude of the appellant towards his family, evidently show that the appellant has caused mental cruelty to the appellant.

36. The Supreme Court in ***Sivasankaran v. Santhimeenal***, 2021 SCC OnLine SC 702, held that where the Court is convinced that the marriage has broken irretrievably and there are no chances of marriage surviving, the Court may exercise its power and dissolve the marriage. This Court in ***Laxmi v. Kanhaiya Lal***, MAT.APP.(F.C.) 5/2020, held as follows:

> *"23. When the marriage sours, the vows that the couple takes at the time of marriage are a casualty. We take it that neither of the parties to a marriage enters into the matrimonial bond, only to break it later. For the said bond to breach, there are bound to be some underlying reasons. In some cases, those reasons may come to the surface and the court may be able to see them. In others, they may remain latent for myriad reasons. Those reasons would, invariably, be attributable to both the parties, as it takes two to fight. And when the fight goes to the point of them filing cases against each other, the situation becomes messy and bitter for both of them. Unless the situation is*

diffused early and the parties decide to reconcile and call a truce, with passage of time, the void between them only increases, and the feeling of love and warmth in their relationship begins to fade. What is left is only a feeling of hurt, hatred, disrespect, disregard and bitterness for the other. These negative feelings and thoughts are bound to give rise to mental trauma, harassment and cause immense cruelty to one-if not both the parties. It is well known and medically established that constant feeling of sorrow, hatred, stress, pain, hurt-and the like, do also manifest in the form of serious diseases such as heart diseases, diabetes, cancer, etc. [The same has been a point of study in an article by Timothy W. Smith and Brian R. W. Baucom, wherein it was stated that quality of intimate relationships matters as "strain and disruption are associated with increased risk" (of coronary heart disease)]1 . The data from NCRB suggests that there are more suicides resulting from unsettled marital disputes, compared to those resulting from divorce. In our view, there is no reason, not to recognize this as cruelty, entitling the court to pass a decree of divorce on the ground of cruelty."

37. In the present case, even though the parties have been married for nearly 24 years, they have not spent major part together as husband and wife. They separated on 13.04.2010, and have not lived together since. The bond between the parties has irretrievably broken down and the respondent was subjected to repeated harassment at the hands of the appellant, making it impossible to reconcile their differences. We are, therefore of the view, that the respondent has well established the ground of mental cruelty by the appellant, in the light of ***Samar Ghosh v. Jaya Ghosh***, (2007) 4 SCC 511.

38. The learned counsel for the appellant has requested to modify the decree of divorce dated 10.08.2021 passed in favour of the respondent under Section 13(1)(ia) of the HMA, into a decree of divorce by way of mutual

consent under Section 13B of the HMA. The respondent has not consented to divorce by mutual consent. For this reason, we cannot grant divorce by mutual consent to the parties.

39. For all the aforesaid reasons, we do not find ourselves inclined to grant the appellant's prayer against the dissolution of marriage and find no infirmity in the impugned judgment of the learned Family Court dated 10.08.2021. Accordingly, the present appeal is dismissed.

(VIPIN SANGHI)
ACTING CHIEF JUSTICE

(JASMEET SINGH)
JUDGE

MAY 02, 2022