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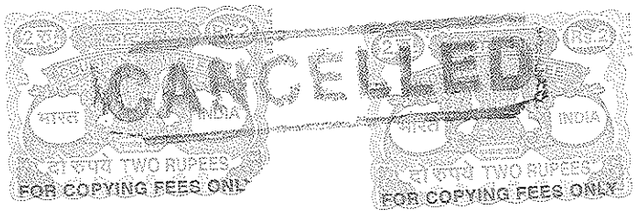
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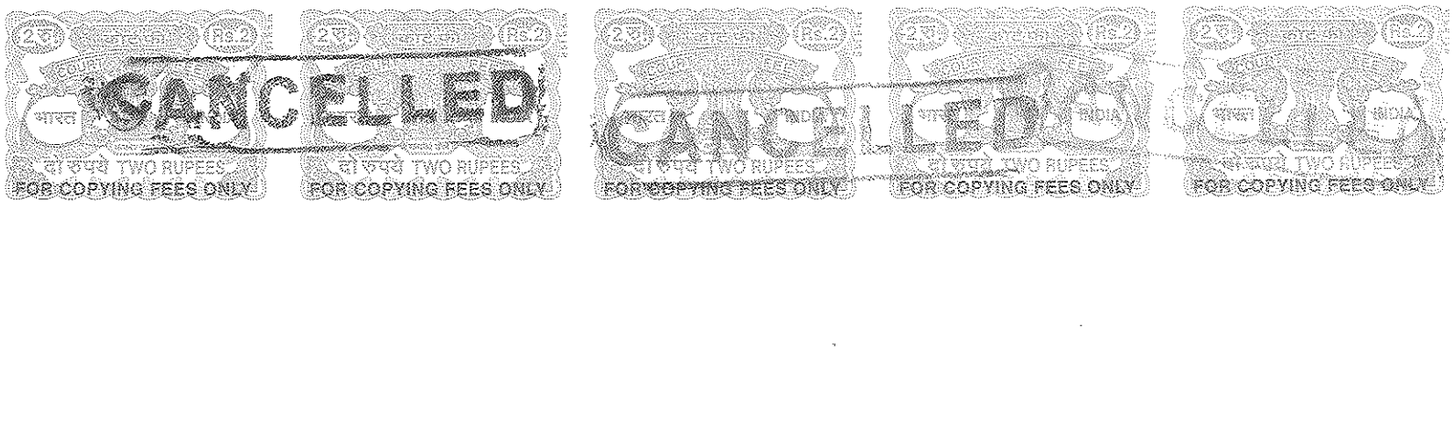
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HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Misc. Appeal No. 419/2022

----Appellant

Versus

----Respondent

For Appellant(s)	:	Mr. Parvej Khan
For Respondent(s)	:	Mr. Aman Bishnoi Bola

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SUNIL BENIWAL

Judgment

Reportable

Conclusion of Arguments & Reserved on : 18/03/2026
Pronounced on : 06/04/2026

(per Sunil Beniwal, J.)

1. The present Civil Miscellaneous Appeal has been preferred against the judgment and decree dated 17.11.2021 passed by the Family Court No. 3, Bikaner in Civil Miscellaneous Petition No. 82/2019 (CIS No. 83/2019), whereby the petition filed by the appellant-wife seeking dissolution of marriage under Section 13 of the Hindu Marriage Act, 1955 was dismissed.

06 APR 2026

2. The facts of the case are that the appellant-wife filed a petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act of 1955') before the Family Court No. 3, Bikaner, seeking dissolution of marriage. It was submitted that the marriage between the appellant-wife and the respondent-husband was solemnized on 27.05.2010 at Bikaner in accordance with Hindu rites and ceremonies, and that a son was

born out of the wedlock. The appellant alleged that soon after the marriage, her husband went to the United States and it was only after her father paid a dowry of Rs.5 lakhs that she was taken there. She stated that, while in the United States, she was repeatedly harassed and beaten, and later discovered that the respondent had illicit relationship with other woman. The respondent-husband forced the appellant out of the house and she returned to Bikaner thereafter.

2.1 The appellant further averred that in the year 2013, she returned to India along with her child with the assistance of the American police authorities and has been living separately since then. She also initiated criminal and maintenance proceedings against the respondent. It was contended that the marital relationship had irretrievably broken down and had become a dead letter, therefore, a decree of divorce was sought.

2.2 The respondent-husband filed a reply denying the allegations made by the appellant. However, he admitted that he had obtained an *ex parte* divorce decree from the Superior Court of California, USA, in the year 2015. During his examination, he reiterated this fact, and in cross-examination, supported the contention that the marriage had effectively broken down and expressed his unwillingness to continue the marital relationship.

2.3 On the basis of the pleadings, the learned Family Court framed issues for determination. The appellant-wife examined herself as AW-1 and produced documentary evidence in support of her case, while the respondent-husband examined himself as DW-1 and also placed documents on record. After hearing both parties

and considering the material available on record, the Family Court, by its judgment and decree dated 17.11.2021, dismissed the appellant's petition filed seeking dissolution of marriage.

2.4 Aggrieved by the said judgment and decree, the appellant-wife has preferred the present appeal.

3. Learned counsel for the appellant-wife submitted that the conduct of the respondent-husband constitutes mental cruelty of the gravest and continuing nature, warranting dissolution of marriage under Section 13(1) (i-a) of the Act of 1955. He also contended that the respondent unilaterally obtained an *ex parte* divorce decree from the Superior Court of California, USA, without any notice to the appellant, thereby unequivocally demonstrating his intention to treat the marriage as irretrievably broken. This fact stands admitted by the respondent in his pleadings as well as in his examination-in-chief and cross-examination. It was further submitted that since the parties have been living separately since 2013, and the respondent has made no effort whatsoever to seek restitution of conjugal rights, the marital bond has long ceased to exist in substance and the respondent-husband has, in fact, deserted the appellant.

3.1 Learned counsel further submitted that the respondent's persistent and intentional non-compliance of maintenance orders, despite the same having attained finality up to the Hon'ble Supreme Court, is a glaring instance of cruelty. Despite being directed to pay a sum of Rs.1,00,000/- per month towards maintenance, the respondent has not paid any amount since May 2022. His conduct in evading judicial process, being declared an

absconder, suffering impounding of his passport, and still continuing to reside abroad in defiance of court orders, reflects a deliberate and calculated attempt to cause financial and emotional hardship to the appellant and the minor child. It was argued that such sustained disobedience of judicial orders and abandonment of legal and matrimonial obligations squarely falls within the ambit of mental cruelty, as recognized by various judicial precedents.

3.2 It was also contended that the respondent has consistently frustrated all attempts at reconciliation, including mediation efforts before the Hon'ble Supreme Court, and has contributed to parental alienation, thereby adversely impacting the welfare of the minor child. Multiple criminal proceedings pending against him remain ineffective due to his evasion from jurisdiction. The appellant has been constrained to initiate further proceedings, including a writ petition, for enforcement of maintenance and other consequential reliefs, which itself underscores the extent of hardship caused by the respondent's conduct. The cumulative effect of these circumstances clearly establishes a sustained pattern of neglect, indifference, and harassment.

3.3 Lastly, learned counsel submitted that the learned Family Court has committed manifest error in appreciating the evidence by examining each instance of cruelty in isolation rather than assessing the cumulative impact of the respondent's conduct. It was argued that the overwhelming material on record, including admitted facts and subsequent conduct of the respondent, clearly demonstrates that the marriage has irretrievably broken down, and its continuance would itself amount to cruelty.

3.4 Learned counsel for the appellant-wife, in support of his submissions, relied on following judgments:-

(i) Naveen Kohli Vs. Neelu Kohli; (2006) 4 SCC 558

(ii) Rishikesh Sharma Vs. Saroj Sharma; (2007) 2 SCC 263

(iii) K. Srivinas Rao Vs. D. A. Deepa; (2013) 5 SCC 226

(iv) Rakesh Raman Vs. Kavita; (2023) 17 SCC 433

(v) Shilpa Shailesh Vs. Varun Sreenivasan; (2023) 4 SCC 692

(vi) Smt. Khusboo Vs. Manohar Lal; D.B. Civil Misc. Appeal No.2708/2024; decided on 03.02.2026 (Rajasthan High Court – Principal Bench)

4. Per contra, learned counsel for the respondent-husband submitted that the allegations sought to be raised by the appellant-wife are contrary to the record and beyond the scope of the original pleadings. The appellant herself left the matrimonial home in the United States on 13.11.2013 along with the minor child, without the consent or knowledge of the respondent. Despite repeated attempts by the respondent through emails and other communications requesting her to return to the USA and resume cohabitation, the appellant deliberately chose not to do so. In such circumstances, no case of desertion can be attributed to the respondent, particularly when no such ground was ever pleaded in the divorce petition nor framed as an issue by the learned Family Court.

4.1 Learned counsel further submitted that the proceedings before the competent Court in the United States clearly establish that the respondent was under the *bona fide* belief that the appellant's visit to India was temporary, and only upon realizing

her intention not to return, he initiated appropriate legal proceedings in California in July 2014. The Superior Court of California thereafter granted sole custody of the minor child to the respondent and also passed a decree of divorce on 29.04.2015. The said decree has attained finality, as the appellant unsuccessfully challenged the custody orders and sought recall of the same as late as 2021–2022, but did not assail the decree of divorce itself. It was thus argued that the appellant, having accepted the foreign divorce decree, is estopped from maintaining the present proceedings.

4.2 Learned counsel further submitted that the findings of the learned Family Court, based on appreciation of evidence, conclusively demonstrate that the allegations of cruelty were not proved. The evidence on record, including admissions made by the appellant in her cross-examination, reveal that the parties shared cordial relations during their stay in the USA, and the respondent duly took care of the appellant and her family members, including bearing educational and other expenses. The appellant admittedly did not initiate any complaint or legal action in the USA despite alleging cruelty, nor did she produce any contemporaneous documentary evidence in support of such allegations. Even the criminal proceedings initiated in India culminated in a final report, finding the allegations to be without merit. In such circumstances, the plea of cruelty raised by the appellant is merely an afterthought and devoid of substance.

4.3 Lastly, learned counsel for the respondent contended that the present proceedings are nothing but an abuse of the process

of law, instituted with the sole intent to harass the respondent and extract monetary benefits. In view of the subsisting foreign divorce decree, the failure to establish cruelty, and the absence of any pleaded ground of desertion, learned counsel submitted that no interference is warranted with the judgment of the learned Family Court.

5. Heard learned counsel for the parties and perused the record.

6. The learned Family Court framed three issues for adjudication, the English translation of which reads as under:-

1. Whether, after the solemnization of marriage between the parties, the non-applicant committed cruelty against the applicant as stated in the petition presented by the applicant.

2. Whether, in the proceedings of the divorce petition filed by the non-applicant before the Superior Court of California, the said Court has already disposed of the petition filed by the non-applicant on 29-04-2015, and what is the effect of the decision of dissolution of marriage between the parties on the present pending petition.

3. Relief.

7. With respect to the first issue of cruelty, the learned Family Court observed that although the appellant alleged that she was subjected to physical and mental cruelty on account of dowry demands, harassment, and the respondent's alleged illicit relationship, the evidence on record did not substantiate these allegations. On the contrary, it came on record, including from the appellant's own admissions, that during their stay in the United States, the respondent bore expenses towards her education,

pregnancy, and general maintenance, and also took care of her family members. The existence of cordial relations between the parties at least till the year 2012 was also evident from the appreciation letter written by the appellant's mother.

7.1 The learned Family Court further observed that no cogent or reliable evidence had been produced by the appellant to prove the alleged acts of cruelty. No contemporaneous complaint or legal action was initiated in the United States where the alleged incidents occurred, nor were any supporting communications placed on record. The criminal proceedings initiated in India also did not result in any conclusive finding in her favour. The contention regarding non-payment of maintenance was also found to be untenable in view of the appellant's admission that maintenance has been paid pursuant to orders of the High Court. Similarly, the plea of desertion was not established, as there is no material to show that the respondent had abandoned the appellant.

7.2 The learned Family Court also took note of the admitted position that the respondent had obtained an *ex parte* decree of divorce from a court in the United States in the year 2015, the knowledge of which came to the appellant only in 2018, and there was no satisfactory proof of due service of notice upon her. However, merely because the parties have been living separately for a long period and the marriage appears to have broken down irretrievably, the same by itself is not a statutory ground for divorce. Accordingly, the learned Family Court held that the appellant failed to prove cruelty or desertion as required under

Section 13 of the Act of 1955, and therefore, Issue No. 1 was decided against the appellant.

8. What can be discerned from the findings of the learned Family Court is that although it recorded that the marriage between the parties has irretrievably broken down, however, it cannot be dissolved by the Court as irretrievably breakdown is not included as one of the grounds under Section 13 of the Act of 1955.

9. This Court concurs with the findings of the learned Family Court to the extent that the marriage between the appellant and respondent has broken down irretrievably, however, what remains to be considered is whether the conduct of respondent-husband was such that the appellant-wife was subjected to cruelty.

10. The Apex Court, in various pronouncements, has discussed the ground of cruelty for divorce under Section 13 of the Act of 1955, more particularly, the facet of mental cruelty. Therefore, it would be apposite to refer to few renditions of the Apex Court qua the same.

10.1 The Apex Court in the landmark judgment of ***Samar Ghosh Vs. Jaya Ghosh; (2007) 4 SCC 511*** while laying few illustrations of mental cruelty observed as under:-

> *"72. On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.*
>
> *73. Human mind is extremely complex and human behavior is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behavior in one*

definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

*74. **No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.***

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behavior of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of

conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behavior of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

*(xiv) **Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.**"*

10.2 In the case of ***Rishikesh Sharma*** (supra), the Apex Court observed as under:

"4.....It is not in dispute that the respondent is living separately from the year 1981. Though the finding has been rendered by the High Court that the wife last resided with her husband up to 25.3.1989, the said finding according to the learned Counsel for the appellant is not correct. In view of the several litigations

between the parties it is not possible for her to prosecute criminal case against the husband and at the same time continue to reside with her husband. In the instant case the marriage is irretrievably broken down with no possibility of the parties living together again. Both the parties have crossed 49 years and living separately and working independently since 1981. There being a history of litigation with respondent-wife repeatedly tiling criminal cases against the appellant which, could not be substantiated as found by the Courts. This apart, only child born in the wedlock in 1975 has already been given in marriage. Under such circumstances the High Court was not justified in refusing to exercise its jurisdiction in favour of the appellant. This apart, the wife also has made certain allegations against her husband, that the husband has already remarried and is living with another lady as stated by her in the written statement. The High Court also has not considered the allegations made by the respondent which, have been repeatedly made and repeatedly found baseless by the courts.

In our opinion, it will not be possible for the parties to live together and therefore there is no purpose in compelling both, the parties to live together. Therefore the best course in our opinion is to dissolve the marriage by passing a decree of divorce so that the parties who are litigating since 1981 and have lost valuable part of life can live peacefully in remaining part of their life.

5. During this last hearing both the husband and wife were present in Court. Husband was ready and willing to pay lumpsum by way of permanent alimony to the wife. The wife was not wining to accept the lumpsum but however expressed her willingness to live with her husband. We are of the opinion that her desire to live with her husband at this stage and at this distance of time is not genuine. Therefore, we are not accepting this suggestion made by the wife and reject the same.

In the result, the appeal filed by the husband stands allowed. There will be a decree of dissolution of marriage in favour of the husband. No costs."

10.3 In ***K. Srivinas Rao*** *(supra)* it was observed as under:

"24. In our opinion, the High Court wrongly held that because the Appellant-husband and the Respondent-wife did not stay together there is no question of the parties causing cruelty to each other. ***Staying together under the same roof is not a pre-condition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a***

spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. *This is what has happened in this case.*

25. It is also to be noted that the Appellant-husband and the Respondent-wife are staying apart from 27/4/1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in Samar Ghosh, if we refuse to sever the tie, it may lead to mental cruelty.

26. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree.

27. In V. Bhagat this Court noted that divorce petition was pending for eight years and a good part of the lives of both the parties had been consumed in litigation, yet the end was not in sight. The facts were such that there was no question of reunion, the marriage having irretrievably broken down. While dissolving the marriage on the ground of mental cruelty this Court observed that irretrievable breakdown of marriage is not a ground by itself, but, while scrutinizing the evidence on record to determine whether the grounds alleged are made out and in determining the relief to be granted the said circumstance can certainly be borne in mind. In Naveen Kohli, where husband and wife had been living separately for more than 10 years and a large number of criminal proceedings had been initiated by the wife against the husband, this Court observed that the marriage had been wrecked beyond the hope of salvage and public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. It is important to note that in this case this Court made a recommendation to the Union of India that the Hindu Marriage Act, 1955 be amended to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce.

28. In the ultimate analysis, we hold that the Respondent-wife has caused by her conduct mental cruelty to the Appellant-husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court the Respondent-wife expressed that she wants to go back to the Appellant-husband, but, that is not possible now. The Appellant-husband is not willing to take her back. Even if we refuse decree of divorce to the Appellant-husband, there are hardly any chances of the Respondent-wife leading a happy life with the Appellant-husband because a lot of bitterness is created by the conduct of the Respondent-wife.

29. In Vijay Kumar, it was submitted that if the decree of divorce is set aside, there may be fresh avenues and scope for reconciliation between parties. This Court observed that judged in the background of all surrounding circumstances, the claim appeared to be too desolate, merely born out of despair rather than based upon any real, concrete or genuine purpose or aim. In the facts of this case we feel the same."

10.4 Further, in the case of ***Rakesh Raman*** (supra), the Apex Court while discussing irretrievable breakdown of marriage vis-a-vis cruelty, observed as under:-

"16. Matrimonial cases before the Courts pose a different challenge, quite unlike any other, as we are dealing with human relationships with its bundle of emotions, with all its faults and frailties. It is not possible in every case to pin point to an act of "cruelty" or blameworthy conduct of the spouse. The nature of relationship, the general behaviour of the parties towards each other, or long separation between the two are relevant factors which a Court must take into consideration. In Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511 a three judge Bench of this Court had dealt in detail as to what would constitute cruelty Under Section 13(1) (ia) of the Act. An important guideline in the above decision is on the approach of a Court in determining cruelty. What has to be examined here is the entire matrimonial relationship, as cruelty may not be in a violent act or acts but in a given case has to be gathered from injurious reproaches, complaints, accusations, taunts, etc. The Court relied on the definition of cruelty in matrimonial relationships in Halsbury's Laws of England (Vol 13, 4th Edn, Para 1269, Pg 602) which must be reproduced here:

> *The general Rule in all cases of cruelty is that the entire matrimonial relationship must be*

considered, and that Rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse. Malevolent intention is not essential to cruelty but it is an important element where it exists.

The view taken by the Delhi High Court in the present case that mere filing of criminal cases by the wife does not constitute cruelty as what has also to be seen are the circumstances under which cases were filed, is a finding we do not wish to disregard totally, in fact as a pure proposition of law it may be correct, but then we must also closely examine the entire facts of the case which are now before us. When we take into consideration the facts as they exist today, we are convinced that continuation of this marriage would mean continuation of cruelty, which each now inflicts on the other.

Irretrievable breakdown of a marriage may not be a ground for dissolution of marriage, under the Hindu Marriage Act, but cruelty is. A marriage can be dissolved by a decree of divorce, inter alia, on the ground when the other party "has, after the solemnization of the marriage treated the Petitioner with cruelty"1. In our considered opinion, a marital relationship which has only become more bitter and acrimonious over the years, does nothing but inflicts cruelty on both the sides. To keep the facade of this broken marriage alive would be doing injustice to both the parties. A marriage

> ***which has broken down irretrievably, in our opinion spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is therefore a ground for dissolution of marriage Under Section 13(1) (ia) of the Act.***
> *17. Cruelty has not been defined under the Act. All the same, the context where it has been used, which is as a ground for dissolution of a marriage would show that it has to be seen as a 'human conduct' and 'behavior" in a matrimonial relationship. While dealing in the case of Samar Ghosh (supra) this Court opined that cruelty can be physical as well as mental:*
> *XXX XXX XXX*
> *18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock.* ***The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty Under Section 13(1) (ia) of the 1955 Act.*** *We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock."*

11. True it is that the Apex Court has time and again invoked its power under Article 142 of the Constitution of India to dissolve marriages that have irretrievably broken down due to various reasons ultimately leading to a scenario where the parties in no case could live together as a married couple. The Apex Court has been constrained to exercise such extraordinary power as 'irretrievable breakdown of marriage' is not recognized as a ground under the Act of 1955 for seeking dissolution of marriage. Moreover, while parting with the judgment in the case of ***Naveen***

Kohli (supra), the Apex Court recommended the Union of India to consider bringing an amendment in the Act of 1955 to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce. However, with the development of jurisprudence on the aspect of mental cruelty, the Apex Court has proceeded to observe that compelling the parties to continue in a marriage which has broken down beyond repair would itself amount to cruelty to both the parties. Accordingly, cruelty being one of the grounds under Section 13 of the Act of 1955, a marriage may be dissolved on such count.

12. Keeping in view the observations made by the Apex Court so also the peculiar facts and circumstances of the present case, this Court is of the considered opinion that compelling the appellant-wife and the respondent-husband to reside together at this stage would amount to cruelty to both parties. The factors that have persuaded this Court to arrive at this conclusion are as follows:

(i) The parties were married in the year 2010. A son was born out of the wedlock in the year 2011 and within three years of the marriage, the parties started living separately after the appellant-wife returned to India in the year 2013. It is an admitted position that the parties have not resumed cohabitation thereafter.

(ii) The parties have been engaged in multiple litigation against each other, including criminal proceedings, the details of which are not necessary for the present purposes, as this is an admitted position. What is to be emphasized is that the relationship between the parties has turned irretrievably sour, and there is no visible possibility of reconciliation.

(iii) The parties have also admitted that multiple attempts at mediation were undertaken at various stages of the litigation, including before the Hon'ble Supreme Court, however, none of these attempts yielded any result.

(iv) The respondent-husband having obtained an ex parte divorce from a Court in USA in the year 2015.

12.1. Aside all above, we feel that, at this stage, any direction compelling the appellant–wife and the respondent–husband to cohabit at this juncture would not merely be impracticable, but would, in fact, inflict cruelty upon both parties, given that husband has already obtained a decree of divorce and in light of that to compel him to live with his divorced wife is unrealistic, especially when wife also does not wish to continue living . Matrimonial relief must be grounded in the realities of the relationship, not in a theoretical preservation of marital ties that have, in substance, already disintegrated.

12.2. Our opinion, ibid, is based on the decisive factor informing us about the conceded circumstance that the respondent–husband secured an ex parte decree of divorce from a court in the United States way back in 2015. The appellant–wife asserts that she became aware of this development only in 2018. Regardless of the precise timeline of such knowledge, the factual significance of this event unliterally by husband cannot be understated. The husband's act of one-sidedly dissolving the marriage abroad is a clear and unequivocal manifestation of his intention to sever the marital bond, apart from leaving the wife shocked, which is nothing but an act of cruelty inflicted on her.

12.3. May be compelled by the cruelty as above, or otherwise, be that as it may, equally telling is the subsequent conduct of the appellant/wife, who, rather than saving her marriage, by taking appropriate steps qua ex parte deecre, if she were so interested, or seeking restitution of conjugal rights under HMA, instituted independent divorce proceedings in India, which have culminated in the impugned judgment of the learned Family Court. This parallel pursuit of dissolution by both parties reinforces our inescapable inference that neither party harbors a genuine intention to resume cohabitation and the marriage has broken down beyond repair.

12.4. In these peculiar circumstances, to mandate that the parties resume living together would amount to a legal fiction imposed in disregard of their demonstrated mutual intentions and lived realities. Such a direction would serve no constructive purpose; instead, it would exacerbate discord and subject both parties to continued emotional hardship and mutual cruelty.

13. Although the above factors have persuaded this Court to conclude that the relationship between the parties has irrevocably turned bitter to such an extent that no assistance, even through mediation, could alter their decision to end the marriage, however, few more glaring facts that require attention is the conduct of the husband, as enumerated here in after.

13.1 While it is undisputed that the appellant returned to India in the year 2013 and did not thereafter go back to the USA, the respondent-husband has failed to establish that he undertook any meaningful efforts, beyond merely sending emails, to persuade

her to return or to preserve the matrimonial relationship. Instead, within a short span of approximately two years from the appellant-wife's return to India with the minor child, the respondent proceeded to initiate proceedings for child custody and obtained a decree of divorce in 2015.

Significantly, the respondent made no attempt to travel to India to reconcile or to salvage the marriage. It is not the case that he was in any manner restrained from leaving the USA and coming to India for such purposes. On the contrary, his conduct reflects a clear inclination to pursue legal remedies in the USA, culminating in an *ex parte* decree of divorce, rather than making genuine efforts toward reconciliation.

Furthermore, there is nothing on record to indicate that any members of the respondent-husband's family or relatives made genuine efforts to mediate or resolve the matrimonial dispute during the intervening period between the appellant's return to India and the respondent obtaining the divorce decree.

13.2 It is pertinent to note that the appellant-wife filed a petition under Section 13 of the Act of 1955 only in the year 2019. Meaning thereby, the respondent-husband had ample time to reconcile with her, i.e., from the year 2013, when the relationship allegedly began to deteriorate, however, he chose otherwise and obtained an *ex parte* divorce in the year 2015, thereby reflecting his intent to end the marriage.

13.3 Such conduct of the respondent-husband cannot, in any manner, be termed as reasonable. The clear absence of the respondent from the appellant's life, as well as from that of the

minor child, amounts to cruelty upon the appellant-wife. Accordingly, this Court finds it to be an appropriate case for the grant of divorce under Section 13 of the Act of 1955.

14. So far as the second issue is concerned, the learned Family Court observed that although it is an admitted position between the parties that an *ex parte* decree of divorce was passed by a Court in California, USA against the appellant, mere oral admission of such a decree is not sufficient for it to be relied upon in the present proceedings. The Court noted that as per Sections 13 and 14 of the Code of Civil Procedure, the conclusiveness and presumption attached to a foreign judgment operate in distinct spheres, and such presumption can arise only when a duly proved and certified copy of the foreign judgment is placed on record and the opposite party is afforded an opportunity to challenge the same. In the present case, certified copy of the foreign decree was not proved by the respondent, nor was the appellant given an effective opportunity to contest the same, therefore, no reliance could be placed upon such foreign judgment.

14.1 The learned Family Court further observed that the respondent failed to establish that the *ex parte* decree passed by the foreign Court was in conformity with Indian law. It is an admitted fact that the appellant is not a citizen of the said foreign country and had not voluntarily or unconditionally submitted to the jurisdiction of the foreign Court. It is also established that the appellant came to know about the said decree only in the year 2018 and lacked the means to contest the proceedings abroad. In such circumstances, the learned Family Court held that the decree

was not passed after affording a fair opportunity of hearing to the appellant, thereby violating the fundamental principle of *audi alteram partem*. Accordingly, it held that the *ex parte* divorce decree passed by the Court in California does not have any legal effect in India and cannot be relied upon in the present case, and the issue was decided accordingly.

15. This Court does not find any error in the reasoning adopted by the learned Family Court while adjudicating on the second issue.

16. In view of the above, since this Court has found the present case fit for granting divorce under Section 13 of the Act of 1955, the present appeal filed by the appellant-wife is partly allowed. The impugned judgment and decree dated 17.11.2021 passed by the Family Court No. 3, Bikaner in Civil Miscellaneous Petition No. 82/2019 (CIS No. 83/2019) to the extent of decision on Issue No.1 is quashed and set aside. The petition filed by the appellant-wife under Section 13 of the Act of 1955 stands decreed and marriage between the parties is dissolved.

17. Decree sheet be prepared accordingly.

18. Record of the learned Family Court be sent back.

19. Any pending applications stand disposed of.

(SUNIL BENIWAL),J **(ARUN MONGA),J**

-skm/-