



HIGH COURT OF JUDICATURE AT ALLAHABAD
FIRST APPEAL No. - 395 of 2012

Versus

.....Appellant(s)

.....Respondent(s)

Along with :

First Appeal No. 445 of 2012:

1. Versus

Counsel for Appellant(s)	: Dinesh Tiwari
Counsel for Respondent(s)	: P.S. Verma, Pankaj Agrawal

RESERVED
AFR

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.

(Delivered by Indrajeet Shukla, J.)

1. Heard Mr. Dinesh Tiwari, learned counsel for the appellant-opposite party (for short, the appellant) and Mr. Keshav Hari Dixit, Advocate, holding brief of Mr. Pankaj Agrawal, learned counsel for the respondent-petitioner (for short, the respondent).

2. The present appeal and the connected one have been filed under Section 19 of the Family Courts Act, 1984 (for brevity, the 'Act, 1984') by the appellant, assailing the correctness and legality of the judgment and decrees dated 18.05.2012, whereby the petition bearing No.805 of 2006, filed by the respondent,

t, under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955'), was allowed and a decree of divorce granted, whereas Petition No.336 of 2008, filed by the appellant under Section 9 of the Act, 1955, seeking restitution of conjugal rights, was dismissed.

3. Both the petitions filed before the Trial Court, arising out of the *inter se* pleadings of parties, involved common questions of fact and law; therefore, these were clubbed together by the Trial Court vide order dated 29.10.2009 and decided by a common judgment and decrees dated 18.05.2012, which are impugned herein.

4. Before examining the rival submissions advanced by parties, it would be apposite to first take a bird's-eye view of the factual matrix, which is set out hereunder:

4.1. The admitted factual position, as emerges from the pleadings of the parties, is that their marriage was solemnised on 11.02.2005 at Agra in accordance with Hindu rites, rituals, customs and traditions. It is also an admitted position that the parties lived together at Delhi from 20.02.2005 to 21.09.2006, without any interference from their parents/in-laws or relatives, and accordingly led their matrimonial life.

4.2. The pleadings contained in the petition filed under Section 13 of the Act, 1955, reflect that, out of all statutory grounds recognised by law for seeking dissolution of marriage, namely, adultery, **cruelty**, **desertion**, conversion, mental disorder, venereal disease, renunciation of the world and presumption of death, the respondent pleaded and pressed the grounds of **cruelty** and **desertion** in the petition.

4.3. The allegations made in the petition are that the appellant was a quarrelsome woman of a highly volatile mental disposition. The matrimonial discord had reached such an extent that allegations regarding character assassination and illicit relations with other women had become a routine affair. It was further alleged that the abuses and physical assaults,

including pulling of hair and teeth biting, caused mental trauma to the appellant, her oppressive conduct, making it impossible for the respondent to continue with the marital tie under the same roof.

4.4. It was further pleaded that the petitioner was employed in a private organization in Delhi, namely, 'Kone Elevator' on the post of Executive and Taxation Advisor. His working hours sometimes extended from 9:00 a.m. to 9:00 p.m. His long duty hours annoyed the appellant. It is further pleaded that whenever the respondent returned home from the office, the appellant would invariably quarrel with the respondent, almost every single day and would level allegations against the respondent that he had returned home after spending time with some other woman. The respondent was hurled with filthy abuses and became a victim of physical assault as well, during the period the appellant stayed with him.

4.5. It has also been pleaded that the appellant would threaten lodging of false cases relating to demand of dowry and have the entire family sent to jail. The pulling of hair and smashing the respondent head against the wall was almost an every day's affair. It was further pleaded that, during this period, the appellant-defendant conceived but only with the intention of causing mental trauma to the respondent (husband) got herself aborted against the wishes of the respondent, which, according to him, caused him a mental shock of the highest degree.

4.6. It has been averred in the petition that, on one occasion, when the respondent returned home from the office, the appellant assaulted him with a knife, as a result whereof he sustained an injury to his finger, which started to bleed. It was further alleged that the appellant would repeatedly accuse the respondent of having an illicit relationship with another woman, which became a usual daily affair. It was also alleged that, on one occasion, the appellant-defendant attempted to puncture the gas cylinder and threatened to set the house on fire.

4.7. She stopped managing the household affairs, including the house-keeping that fell to her share of the household duties. The appellant would often lock the house from inside when the respondent was going to his office, and, despite his repeated requests, the lock would not be opened, and the respondent would be prevented from going to his office or elsewhere. When the respondent requested her to open the lock, the appellant would abuse him and behave indecently towards him and his family members. The respondent was struck with kicks, fists, shoes and slippers, causing him extreme mental distress. The cruelty committed by the appellant had reached such an extent that the respondent became perpetually apprehensive that the appellant might, at any time while they lived together, assault him and that the respondent's life could be in danger at the hands of the appellant.

4.8. In such circumstances, the respondent refused to accompany the appellant and requested her to leave his house. Thereupon, the appellant gave a written assurance to the respondent that she would not repeat the cruel conduct committed by her in the past and tendered a written apology. Upon tendering the written apology, the respondent adopted a conciliatory approach and made one more attempt to resume their matrimonial life. However, the appellant allegedly repeated her acts of harassment and cruelty by beating the respondent, threatening to kill him, attacking him with a knife, threatening to commit suicide and threatening to falsely implicate him in a case relating to demand of dowry. Ultimately, the respondent and his family members requested the appellant to take her belongings and return to her parental home, as they considered it preferable to continue to live amidst such daily quarrels. Accordingly, on 21.09.2006, the appellant left for her father's residence at Behran, District Agra.

5. On the other hand, the appellant filed her written statement (Paper No. 23-C), wherein the factual averments contained in the petition were denied. In the additional pleas, it was stated that the parents of the appellant had spent a sum of Rs.10 lakhs at the time of her marriage. It was further

pleaded that she had always diligently performed her matrimonial duties and never subjected the respondent or his family members to any form of cruelty. Since no cruelty had ever been committed by her, there was no occasion for her to tender any apology or give any written assurance. It was further pleaded that, despite the substantial amount of dowry given by her parents, the respondent and his family members remained dissatisfied, and their further demands ultimately led to the institution of the petition under Section 13 of the Act, 1955.

6. The appellant-defendant further pleaded that the respondent used to keep her hungry and thirsty for several days to pressurize her and her family to fulfil their demand for dowry in their form of a car and a sum of Rs.5 lakhs in cash. She further pleaded in her written statements that she tolerated the harassment to save the family, which is an institution of great importance, but no change could be brought about in the behaviour of the respondent and his family members, which led to the filing of criminal cases against the respondent at a subsequent point of time after she failed to save matrimonial peace, despite remaining as a silent spectator and victim of cruelty and harassment.

7. It was further pleaded that the appellant even attempted to accompany the respondent on 02.09.2007, but her efforts remained in vain, as she was not allowed to stay in the shared household. It was also pleaded that the petition for dissolution of marriage had earlier been dismissed on 28.11.2006, as the respondent was allegedly negotiating for dowry.

8. The facts pleaded in the written statement filed in the petition for dissolution of marriage are akin to those pleaded in Petition No. 353 of 2006, instituted under Section 9 of the Act, 1955, wherein the appellant is the petitioner. Therefore, in order to avoid repetition and not to burden the judgment, the same are not being reproduced herein; however, they have been duly considered.

9. Since the facts and evidence in both the proceedings, i.e., Case No. 805 of 2006, instituted under Section 13 of the Act, 1955, and Case No. 353 of 2006, instituted under Section 9 of the Act, 1955, were common and

involved overlapping questions of fact and law, the Trial Court decided both the proceedings together. Consequently, the petition filed by the respondent under Section 13 of the Act, 1955, seeking dissolution of marriage, was allowed, whereas the petition filed by the appellant under Section 9 of the Act, 1955, seeking restitution of conjugal rights, was dismissed.

10. Having heard learned counsel for the parties and upon a perusal of the original record, this Court proceeds to decide both the appeals preferred by the appellant, assailing the judgment and decree whereby the marriage between the parties was dissolved, and the relief of restitution of conjugal rights sought by her declined. The facts pleaded by the parties in both the proceedings have been set out in detail hereinbefore.

11. The respondent pleaded the acts of cruelty in detail, furnishing particulars of the place, date and time of the alleged occurrences, and asserting that such cruel conduct on the part of the appellant had become a routine affair.

12. On behalf of the respondent, Ashish Dixit testified in his examination-in-chief on oath as P.W.1 and was thereafter cross-examined. He also got his father, _____ examined as P.W.2. On behalf of the appellant, _____ as D.W.1, while her father, _____ as D.W.2. The parties also adduced documentary evidence, which has been duly considered and appreciated by the Trial Court.

Points of Determination

13. We, based on pleadings and evidence of respective parties, formulate the following points of determination:

- i. Whether the petition filed by the respondent-husband under Section 13(1)(ib) of the Act, 1955, seeking decree of divorce on the ground of **desertion**, was maintainable, in view of the statutory period of two years

from the date of the alleged desertion having not elapsed before the institution of the petition?

ii. Whether the learned Trial Court correctly appreciated the pleadings and evidence on the question of desertion and, on such appreciation, was justified in granting a decree of divorce on the said ground?

iii. Whether the learned Trial Court was justified in holding that the acts of cruelty pleaded and proved by the respondent-plaintiff were sufficient to warrant a decree of divorce on the ground of cruelty?

iv. Whether a written application is mandated by law on a plain reading of Section 25 of the Act, 1955, for grant of permanent alimony or at least a demand made in the written statement itself?

14. The admitted case of the parties is that both spouses lived together at Delhi from 20.02.2005 to 21.09.2006, the latter being the date on which the respondent alleges that the appellant deserted him, without any interference from their respective parents or in-laws. Thus, the evidence of P.W.2, on the question of cruelty is not direct evidence. The only direct oral evidence of the alleged acts of cruelty available on record is that of P.W.1, which is required to be re-appreciated by this Court in exercise of our jurisdiction as the first appellate court.

15. We are conscious of the settled position in law that no amount of evidence can be looked into in respect of a plea which has neither been pleaded nor put in issue by the parties.

16. The decree of divorce passed by the learned Trial Judge is, therefore, required to be tested on the strength of the pleadings and evidence adduced by the parties in this regard. In **Ram Sarup Gupta v. Bishun Narain Inter College**, (1987) 2 SCC 555, it was observed as below:

"6. The question which falls for consideration is whether the respondents in their written statement have raised the necessary pleading that the licence was irrevocable as contemplated by Section 60(b) of the Act and, if so, is there any evidence on record to support that plea. It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and

that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Some times, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings; instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence in that event it would not be open to a party to raise the question of absence of pleadings in appeal."

17. In **Biraji @ Brijraji vs. Surya Pratap and Others**, AirOnline 2020 SC 806, the Supreme Court reiterated the aforesaid principle in the following terms:

"7. Having heard the learned counsels on both sides, we have perused the impugned orders and other material placed on record. The suit in Original Suit No. 107/2010 is filed for cancellation of registered adoption deed and for consequential injunction orders. In the adoption deed itself, the ceremony which had taken place on 14.11.2001 was mentioned, hence it was within the knowledge of the appellants- plaintiffs even on the date of filing of the suit. In the absence of any pleading in the suit filed by the appellants, at belated stage, after evidence is closed, the appellants have filed the application to summon the record relating to leave/service of Ramesh Chander Singh on 14.11.2001 from the Rajput Regiment Centre Fatehgarh. It is fairly well settled that in absence of pleading, any amount of evidence will not help the party. When the adoption ceremony, which had taken place on 14.11.2001, is mentioned in the registered adoption deed, which was questioned in the suit, there is absolutely no reason for not raising specific plea in the suit and to file application at belated stage to summon the record to prove that the second respondent- Ramesh Chander Singh was on duty C.A.Nos.4883-4884 of 2017 as on 14.11.2001. There was an order from the High Court for expeditious disposal of the suit and the application which was filed belatedly is rightly dismissed by the Trial Court and confirmed by the Revisional Court and High Court. It is also pertinent to mention, subsequent to dismissal of the application in Application No. 97-C, for summoning the leave/service record of defendant No.2, from his place of working that is Rajput Regiment Centre Fatehgarh, by the Trial Court on the ground that there was no such pleading in the suit, the appellants herein have filed application for amendment of the plaint in an Application No. 103-A, which

was dismissed by the Trial Court and said order was confirmed by the District Judge, Gazipur in Civil Revision No. 58 of 2013 by order dated 03.05.2013. The said order has become final.”

SUBMISSIONS ADVANCED ON BEHALF OF APPELLANT

18. Learned counsel for the appellant submitted that the appellant had never failed to discharge her matrimonial duties and obligations and, rather, was herself a victim of dowry demands and harassment, having been kept hungry for several days. It was contended that it was the respondent demand for additional dowry which compelled the appellant to leave the matrimonial home. Learned counsel further submitted that the allegations of cruelty contained in the petition were vague, generic and lacking in material particulars; therefore, the learned Trial Judge erred in accepting the evidence led in support thereof. It was further contended that no amount of evidence can be relied upon in support of a case which has not been pleaded.

19. The further contention is that a solitary incident cannot be construed as cruelty. Neither the pleadings nor the evidence disclose any particulars as to when the appellant pressure with the respondent for leaving the job. Similarly, there is no medical report to demonstrate that the appellant had bitten the respondent or pulled his hair and assaulted him, except that an imaginary bald allegation has been put forth.

20. The allegations that the appellant attempted to puncture the gas cylinder and attempted suicide are also vague and bereft of material particulars, rendering them inherently difficult to accept. Similarly, the evidence regarding locking of the doors and preventing the respondent from leaving for his office, as well as the alleged assault by fists and kicks, does not inspire confidence in the absence of specific particulars or any cogent and supporting material.

21. The respondent failed to produce any documentary evidence of the alleged written apology, which could have lent at least some corroboration to the assertion that the alleged incidents had, in fact, occurred.

22. The story of desertion as pleaded and stated before the Trial Court is completely unfounded, as admittedly in 2007, the appellant tried to accompany the respondent and resume cohabitation. Cross-examination is the greatest engine for eliciting the truth, and the respondent admitted that no complaint to the police mentioning assault by knife, attempt to suicide and puncture of the gas cylinder was ever made. The respondent himself admitted in his cross-examination that he had not recorded the dates of the alleged quarrels; rather he maintained a diary containing such details, which could be produced in event of necessity. The diary entry/occurrence of cruelty to be produced as evidence is neither permissible in law nor of any consequence in absence of pleadings.

23. It is beyond understanding that anybody would note the dates of quarrel in a diary unless he writes his memoir in regular course, which is not the case of respondent. Moreover, even the diary in which the dates of quarrels were alleged to be mentioned was never produced before the Trial Court, which simply indicates that the allegations set out in the petition are general in nature and not worthy of credence.

24. In his cross-examination, the respondent admitted that the appellant had remained with him till 20.09.2006, and thereafter, left the matrimonial home at his request. Thus, the appellant's departure cannot be construed as willful abandonment, and the ground of desertion, therefore, fails.

SUBMISSIONS ADVANCED ON BEHALF OF RESPONDENTS

25. Per contra, learned counsel for the respondent submitted that specific instances of cruelty have been pleaded in the petition and duly proved through his oral testimony as P.W.1. It was further submitted that the appellant subjected the respondent to mental stress, abuse, cruelty and

oppressive conduct, as evident from the pleadings and evidence adduced in support thereof.

26. It was submitted that the appellant was hell-bent upon making the life of the respondent miserable. Not only were filthy remarks and abuses frequently hurled at him, but he was also subjected to physical assault in the course of their matrimonial life. Learned counsel submitted that, in domestic disputes, a spouse may not ordinarily be expected to undergo medical examination after every incident of assault and, therefore, absence of an injury report cannot, by itself, discredit the respondent's testimony. The appellant, on several occasions, bit the respondent's body with her teeth. She pulled the respondent's hair and dragged him to the wall, causing cruelty that was physical as well as mental, which made it almost impossible for the respondent to lead his matrimonial life.

27. Learned counsel for the respondent lastly submitted that the acts of physical assault, including pulling of hair and biting, as well as locking up of the doors, were a recurring feature of their matrimonial relationship, as pleaded and established through the oral testimony of the respondent, who was himself the victim of such conduct. It was further submitted that, despite an extensive cross-examination and full opportunity having been afforded to the appellant, nothing material could be elicited so as to successfully impeach the testimony of the respondent regarding the alleged acts of cruelty.

ANALYSIS

28. Having heard the rival submissions and upon a consideration of the pleadings and evidence on record, it emerges that the parties cohabited as husband and wife for a relatively short period of about one year and seven months, i.e., from 20.02.2005 to 21.09.2006.

29. The first two points of determination, relating to desertion, are taken up first for consideration by this Court hereinbelow:

30. The case set up by the respondent is that he was deserted by the appellant on 21.09.2006, which led to the institution of the petition for dissolution of marriage on the grounds of desertion as well as cruelty.

31. For institution of a petition on the ground of desertion under Section 13(1)(ib) of the Act, 1955, a continuous period of two years is required to constitute desertion within the meaning of the statute.

32. In the present case, what led the respondent to treat the appellant's departure as wilful and permanent abandonment is neither discernible from the pleadings nor established by the evidence on record. The same also finds no substantiation in the submissions advanced on behalf of the respondent.

33. In the present case, we find that desertion has been pleaded only as a single act of the appellant leaving the matrimonial home on 21.09.2006 and that too, on the request of the respondent. The petition seeking dissolution of marriage on the ground of desertion under Section 13(1)(ib) of the Act, 1955, was instituted on 26.09.2006, i.e., within five days of the alleged desertion. The statutory scheme mandates that desertion must have continued for a period of not less than two years immediately preceding the presentation of the petition. Thus, the statutory requirement was ex facie not satisfied in the present case. It is, therefore, profitable to take note of Section 13(1)(ib) of the Act, 1955, which reads:

“(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition;”

34. By virtue of Section 13(1)(ib) of the Hindu Marriage Act, 1955, desertion must have continued for a period of not less than two years immediately preceding the presentation of the petition. Thus, the statutory requirement of continuous desertion for the prescribed period of two years is mandatory. In the present case, the said statutory requirement was not fulfilled as on the date of institution of the petition. Consequently, the petition seeking dissolution of marriage on the ground of desertion under

Section 13(1)(ib) of the Act, 1955, was neither maintainable nor sustainable on such ground.

35. To establish desertion within the meaning of Section 13(1)(ib) of the Act, 1955, the party asserting desertion is required to establish the factum of separation, namely, that the other spouse has physically separated from the matrimonial home and has been living apart.

36. The party alleging desertion is further required to establish the intention to abandon the matrimonial relationship (*animus deserendi*), namely, that the spouse who has separated did so with a clear and permanent intention to bring the matrimonial relationship to an end. It must also be established that such separation was without the consent or agreement of the other spouse and without reasonable cause or lawful justification.

37. Admittedly, the pleadings and evidence put forth by the parties clearly indicate that the appellant had not, at any point prior to 26.09.2006, exhibited any conduct which could be construed as amounting to desertion. The evidence and pleadings of respondent establish that the respondent himself requested the appellant to leave the matrimonial home; thus, the departure of the appellant on 21.09.2006 and going to her parent's home cannot be termed or described as willful abandonment by the respondent. The essential element of *animus deserendi*, which is indispensable to constitute desertion, is therefore conspicuously absent.

38. It is well settled that, where desertion is relied upon as a ground for dissolution of marriage, the separation must be the result of a voluntary abandonment by one spouse of the other, without reasonable cause and against the wish of the other spouse. Where the separation is occasioned by the conduct, request or circumstances created by the spouse alleging desertion, such separation cannot ordinarily be attributed to a voluntary abandonment of the other spouse.

39. Desertion must constitute an intentional and permanent abandonment of one spouse by the other, without reasonable cause and without the

consent of the spouse deserted. In the present case, however, it was the respondent himself who asked the appellant-defendant to leave the matrimonial home. Her subsequent departure, therefore, cannot be construed as wilful abandonment, constituting desertion.

40. Neither the pleadings nor the evidence on record establish any intention on the part of the appellant to abandon the matrimonial relationship (*animus deserendi*). The date of the alleged abandonment, as emerging from the pleadings, is 21.09.2006, whereas the petition seeking dissolution of marriage on the ground of desertion was instituted on 26.09.2006, i.e., within five days thereof. Thus, apart from the absence of *animus deserendi*, the statutory requirement of continuous desertion for the prescribed period was also not satisfied.

41. It is well settled that desertion must continue for the statutory period. Desertion is not a single or isolated act, but a continuous course of conduct over time (see: **Savitri Pandey Vs. Prem Chandra Pandey, 2002 (2) SCC 73**).

42. So far as desertion is concerned, the appellant's attempt to resume cohabitation in the year 2007, after institution of the divorce petition, itself militates against any intention on her part to permanently abandon the matrimonial relationship. More importantly, the alleged desertion commenced on 21.09.2006, whereas the petition was instituted on 26.09.2006, i.e., within a week. Thus, the statutory requirement of two years' continuous desertion was *ex facie* not satisfied and the said ground was, therefore, unavailable to the respondent.

43. The Trial Court also relied upon the judgment of the Supreme Court in **Geeta Jagdish Mangtani v. Jagdish Mangtani, 2005 (4) AWC 3533 (SC)**, wherein the husband had repeatedly called upon the wife to return to the matrimonial home with a view to preserving the marital relationship, but she refused to do so despite such repeated efforts. In those circumstances, the decree of divorce granted by the learned Trial Court was affirmed.

44. The ratio laid down in the said judgment was that where the marital relationship has become dead, both emotionally and practically, and reunion of the parties is an impossibility, continuance of such relationship would only prolong their agony. The Supreme Court, while considering the mandate of Section 13(1)(ib) of the Act, 1955, proceeded on the aforesaid circumstances.

45. In that case, the wife had left the matrimonial home long back and made no subsequent attempt to resume cohabitation, thereby clearly establishing *animus deserendi* on her part. In the present case, however, the Trial Court failed to record any finding that the appellant had such intention to permanently abandon the matrimonial relationship. On the contrary, her subsequent conduct indicates otherwise. The said authority of the Supreme Court, therefore, has little relevance to the facts of the present case.

46. The ground of desertion was not available for consideration in view of the pleadings and evidence of the respondent himself, which disclose that it was he who requested the appellant to leave the matrimonial home. Consequently, her departure from the matrimonial home cannot be characterised as voluntary or wilful abandonment of the respondent. The acts of cruelty pleaded by the respondent, even if accepted, may constitute a ground for dissolution of marriage on the ground of cruelty, but cannot, in the facts of the present case, constitute desertion. The grounds of cruelty and desertion operate in distinct fields. Thus, the finding of desertion recorded by the Trial Court is wholly unfounded and cannot be sustained.

47. The ground of desertion was not available to the Trial Court for granting a decree of divorce, in view of the statutory requirement contained in Section 13(1)(ib) of the Act, 1955, which mandates that desertion must have continued for a period of not less than two years immediately preceding the presentation of the petition.

48. The question of *animus deserendi* was not required to be adjudicated by the learned Trial Court, as the petition for divorce on the ground of

desertion was itself not maintainable in view of the statutory bar. Since the petition was instituted within a week of the alleged date of desertion, the mandatory requirement of two years' continuous desertion under Section 13(1)(ib) of the Act, 1955, was admittedly not satisfied. The Trial Court, therefore, ought not to have adjudicated the ground of desertion in the first place.

49. In view of the discussion made hereinabove, we decide the first two points of determination in favour of the appellant and against the respondent by concluding that desertion is not available as a ground for the pressing of a decree of divorce in the present case in the respondent's favour.

50. The third point of determination framed by us is, "Whether the learned Trial Court was justified in holding that the acts of cruelty pleaded and proved by the respondent-plaintiff were sufficient to warrant a decree of divorce on the ground of cruelty."

51. The evidence, pleadings and submissions of the respective parties qua "cruelty" as a ground for decree of divorce, are considered hereunder:

52. The expression 'cruelty' has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their way of life, relationship, temperaments and emotions that have been conditioned by their social status.

53. Cruelty has not been defined under the Act. It is quite possible that a particular conduct may amount to cruelty in one case, but the same conduct necessarily may not amount to cruelty due to changes in various factors and circumstances. Therefore, it is essential for the appellant, who claims relief, to prove that a particular conduct or part of such conduct or behaviour resulted in cruelty to him. No prior assumptions can be made in such matters. This means that it cannot be assumed that a particular conduct will, under all circumstances, amount to cruelty, vis-a-vis the other party.

54. It is settled law that the instances of cruelty are not to be taken in isolation but the cumulative effect of the facts and circumstances emerging from the evidence on record are to be considered and then a fair inference drawn whether the party seeking divorce has been subjected to cruelty, particularly mental, due to the conduct of the other spouse.

55. The Supreme Court in its celebrated judgment on the point of cruelty as a ground for a decree of divorce has dealt with the meaning of cruelty in contrast to some instances of human behavior which are relevant in dealing with cases of cruelty and they shed light across a wide spectrum for guidance. The relevant remarks in **Samar Ghosh vs Jaya Ghosh, (2007) 4 SCC 511**, read:

“38. Before we critically examine both the judgments in the light of settled law, it has become imperative to understand and comprehend the concept of cruelty.

39. Shorter Oxford Dictionary defines “cruelty” as “the quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness”.

40. The term “mental cruelty” has been defined in Black's Law Dictionary (8th Edn., 2004) as under:

“Mental cruelty.—As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse.”

41. The concept of cruelty has been summarised in Halsbury's Laws of England (Vol. 13, 4th Edn., para 1269) as under:

“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.”

44. This Court has had an occasion to examine in detail the position of mental cruelty in *N.G. Dastane (Dr.) v. S. Dastane* [(1975) 2 SCC 326] , SCC at p. 337, para 30 and observed as under:

“The inquiry therefore has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent.”

46. In *Shobha Rani v. Madhukar Reddi* [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] this Court had an occasion to examine the concept of cruelty. The word “cruelty” has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.

8. Again, this Court had an occasion to examine in great detail the concept of mental cruelty. In *V. Bhagat v. D. Bhagat* [(1994) 1 SCC 337] the Court observed, in para 16 at SCC p. 347, as under:

“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.”

55. This Court in *Vinita Saxena v. Pankaj Pandit* [(2006) 3 SCC 778] aptly observed as under: (SCC p. 798, paras 37-38)

“37. As to what constitutes the required mental cruelty for the purposes of the said provision, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home.

38. If the taunts, complaints and reproaches are of ordinary nature only, the court perhaps need consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer.”

97. *This Court in Naveen Kohli v. Neelu Kohli [(2006) 4 SCC 558] dealt with the similar issues in detail. Those observations incorporated in SCC paras 74 to 79 are reiterated in the succeeding paragraphs: (SCC pp. 579-80)*

“74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised 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.

75. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

76. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.

77. Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems than are sought to be solved.

78. The other majority view, which is shared by most jurists, according to the Law Commission Report, is that human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom.

79. When we carefully evaluate the judgment of the High Court and scrutinise its findings in the background of the facts and circumstances of this case, then it becomes obvious that the approach adopted by the High Court in deciding this matter is far from satisfactory.”

100. *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 straitjacket 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.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour 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 behaviour 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 behaviour 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 sterilisation 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.'

(emphasis added)

56. The statements of P.W.2, _____, and D.W.2,]
are of little relevance for determining the alleged matrimonial cruelty, as the entire conduct imputed to the appellant took place within the four walls of the matrimonial home at Delhi, where the spouses alone were residing. Thus, neither witness had direct knowledge of the alleged acts of cruelty.
57. The lodging of a case, particularly in respect of a dowry demand, cannot be said, by itself, to constitute cruelty as allegations set out therein are still to be tried by the Court.
58. It is only where, upon adjudication, the allegations of dowry demand are found to be false, and the accused acquitted even finding that the institution of criminal proceedings may, depending upon the facts and circumstances of the case, be taken into consideration as an act of matrimonial cruelty.
59. The allegations relating to demand of dowry are still pending adjudication before the competent criminal court, and the respondent has been chargesheeted in the said proceedings. In such circumstances, unless and until the competent criminal court tries and decides that case, it cannot be presumed in law that the criminal proceedings initiated by one of the parties constitute false implication or that the resort to such legal remedy, by itself, amounts to an act of matrimonial cruelty. The mere institution or

pendency of criminal proceedings cannot, without more, be treated as proof of their falsity or as a circumstance constituting matrimonial cruelty.

60. It is now beyond cavil that if a false criminal complaint is preferred by either spouse, it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce.

61. At this stage, we refrain from making any observation on the allegations relating to the demand of dowry, as the said charges are pending adjudication before the competent criminal court. Any observation made by this Court in that regard may have a bearing upon, or potentially influence, the independent adjudication of the criminal proceedings.

62. The learned Trial Court also relied upon the authority of this Court in **Smt. Sadhana Srivastava v. Arvind Kumar Srivastava, 2006 Civil Court Cases 347**, observing that the criminal cases instituted between the husband and wife had caused mental distress to the husband and that, on such ground, he was entitled to a decree of divorce.

63. We are afraid that the learned Trial Courts, at times, tend to rely upon judicial decisions as though they were statutory provisions, without appreciating and applying the *ratio decidendi* laid down there to the facts and circumstances of the case before them.

64. In **Smt. Sadhana Srivastava (supra)**, the criminal proceedings were found to be false by the competent court and, in that context, the lodging of a false criminal case was held to constitute an act of matrimonial cruelty. Such a factual situation is conspicuously absent in the case in hand. The learned Trial Judge, however, appears to have relied upon the said judgment as though it were an absolute proposition of law, akin to Euclid's theorem, without examining its applicability to the facts of the present case. Disposal of a case by blindly relying upon a decision may lead to a flawed judgement. (See: **Deepak Bajaj vs State of Maharashtra, AIR 2009 SC 628**). The relevant remarks in **Deepak Bajaj** read:

7. It is well settled that a judgment of a Court is not to be read mechanically as a Euclid's theorem nor as if it was a statute. 8. On the subject of precedents Lord Halsbury, L.C., said in *Quinn vs. Leatham*, 1901 AC 495 :

9 "Now before discussing the case of *Allen Vs. Flood* (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all." We entirely agree with the above observations.

9. In *Ambica Quarry Works vs. State of Gujarat & others* (1987) 1 SCC 213 (vide paragraph 18) this Court observed : "The ratio of any decision must be understood in the background of the facts of that case. It has been said a long time ago that a case is only an authority for what it actually decides and not what logically follows from it". 10. In *Bhavnagar University vs. Palittana Sugar Mills Pvt. Ltd.* (2003) 2 SCC 111 (vide paragraph 59), this Court observed : "It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision". 11. As held in *Bharat Petroleum Corporation Ltd. & another vs. N.R. Vairamani & another* (AIR 2004 SC 4778), a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed : "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not¹⁰ interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes". (emphasis supplied)

12. In *London Graving Dock Co. Ltd. vs. Horton* (1951 AC 737 at page 761), Lord Mac Dermot observed : "The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge".

13. In *Home Office vs. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid Said, "Lord Atkin's speech ... is not to be treated as if it was a statute definition; it will require qualification in new circumstances, Megarry, J. in (1971) 1 WLR 1062 observed : "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament".

14. And in *Herrington vs. British Railways Board* (1972 (2) WLR 537) Lord Morris said : "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may

make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus : Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it." (emphasis supplied)

15. The same view was taken by this Court in *Sarva Shramik Sanghatana (K.V.), Mumbai vs. State of Maharashtra & Ors.* AIR 2008 SC 946 and in *Government of Karnataka & Ors. vs. Gowramma & Ors.* AIR 2008 SC 863.

65. In **Bharat Petroleum Corpn. Ltd. and another vs. N.R. Vairamani and another**, (2004) 8 SCC 579, the Supreme Court has held:

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: "The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge." In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition it will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: 12 "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case." Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus: "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide

*therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive." *** *** *** "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."*

66. The Trial Court has treated the filing of civil and criminal proceedings as a source of bitterness between the parties. No doubt, such proceedings may reflect the strained relationship between the parties; however, the mere institution of causes, by itself, cannot be construed as an act of matrimonial cruelty.

67. In the factual backdrop of the present case, the Trial Court also relied upon the judgment of the Supreme Court in **Praveen Mehta v. Inderjit Mehta, (2002) 5 SCC 706 : AIR 2002 SC 2582**, wherein the Supreme Court found that, within six months of the marriage, the wife had started behaving abnormally, causing embarrassment to the husband, stayed away from the matrimonial home and failed to respond to the advice of a superior judicial officer for normalising the matrimonial relationship. The relevant remarks in **Praveen Mehta** (*supra*) read:

"Judged in the light of the principles discussed above what we find is that right from the beginning the matrimonial relationship between the parties was not normal; the spouses stayed together at the matrimonial home for a short period of about six months; 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 may lead a normal sexual life; all such attempts proved futile. The appellant even refused to subject herself to medical test as advised by the doctor. After 21st June, 1987 she stayed away from the matrimonial home and the respondent was deprived of her company. 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 expects to enjoy and also social embarrassment due to the behavior of the appellant. Further, 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 Mr.S.K.Jain and taking a false plea in the case that she had conceived but unfortunately there was miscarriage are bound to cause a sense of mental depression in the respondent. The cumulative effect of all these on the mind of the respondent, in our considered view, amounts to mental cruelty caused due to the stubborn attitude and inexplicably unreasonable conduct of the appellant.

The learned Single Judge in his judgment has discussed the evidence in detail and has based his findings on such discussions. In the Letters Patent Appeal the Division Bench on consideration of the facts and circumstances of the case

agreed with the findings recorded by the learned Single Judge. In the context of the facts and circumstances on record we are of the view that the learned Single Judge rightly came to the conclusion that the prayer of the respondent for dissolution of the marriage on the ground of cruelty under Section 13(1)(ia) of the Act was acceptable. Therefore, the Division Bench committed no error in upholding the judgment of the learned Single Judge.

As noted earlier the parties were married on 6th December, 1985. They stayed together for a short period till 28th April 1986 when they parted company. Despite several attempts by relatives and well-wishers no conciliation between them was possible. The petition for the dissolution of the marriage was filed in the year 1996. In the meantime so many years have elapsed since the spouses parted company. In these circumstances it can be reasonably inferred that the marriage between the parties has broken down irretrievably without any fault on the part of the respondent. Further the respondent has re-married in the year 2000. On this ground also the decision of the High Court in favour of the respondent's prayer for dissolution of the marriage should not be disturbed. Accordingly this appeal fails and is dismissed. There will, however, be no order for costs."

68. The prayer for dissolution of marriage on the ground of cruelty was allowed upon considering the cumulative effect of all the attending circumstances, including the stubborn attitude and inexplicably unreasonable conduct of the wife. The Supreme Court held that, in the facts and circumstances of that case, the High Court was justified in granting a decree of divorce to the husband on the ground of cruelty.

69. In the case in hand, we are afraid that the ratio laid down in **Pravin Mehta** (*supra*) has no application and bearing for present case owing to factual dissimilarity. This is not a case where the appellant was unwilling to accompany the respondent-husband; rather, she herself instituted proceedings seeking restitution of conjugal rights. The efforts to restore matrimonial ties in the past of appellant went in vain. The ratio of **Pravin Mehta** (*supra*), therefore, was rendered in the peculiar facts and circumstances of that case and cannot be applied to the facts of the present case.

70. The Trial Court also relied upon the judgment of the Supreme Court in **Durga Prasanna Tripathi v. Arundhati Tripathi, 2005 (3) JCLR 198 (SC)**, wherein the parties had been living separately for about fourteen years, and the possibility of reunion was found to be remote. In those

circumstances, the decree of divorce was upheld but in the exercise of power under Article 142 of the Constitution of India.

71. The Trial Court took note of the fact that, at the time of passing the decree of divorce, the parties had been living separately for about six years and several criminal cases were pending between them, and, on that basis, concluded that reunion between the parties was not possible. Thus, irretrievable breakdown of marriage was considered and accordingly the Court proceeded to grant a decree of divorce on such ground, which is nothing but adding an additional ground to Section 13 (1)(1a), to wit, adding a new ground for divorce which is neither available to the trial judge nor us.

72. The Learned Trial Judge has erred in considering irretrievable breakdown as a ground for decreeing divorce, having been swayed by the pronouncements of the Supreme Court in exercise of their Lordships' power conferred under Article 142 of the Constitution of India. It is apt to remind the trial court as well as ourselves that, being the Court of First Appeal, Article 142 of the Constitution of India is not a law-declaring provision, like Article 141 of the Constitution. Article 142 grants the Supreme Court power to deliver complete justice by moulding the relief between the parties. Thus, the orders therein are binding *inter partes* binding but do not necessarily serve as precedent.

73. The judgment and orders passed under Article 142 of the Constitution of India are tailored to specific facts of the case and do not establish broad universally applicable laws. The said provision in the Constitution traces its roots to Section 210 of the Government of India Act, 1935, resolving disputes based on justice, equity and good conscience. Article 142 of the Constitution of India is intended to supplement a statute by filling gaps and not to supplant or override any statutory framework, which is used as a curative tool of last resort and not a shortcut to bypass statutory civil and criminal procedure. The Supreme Court regularly uses this power to grant

divorce in case of irretrievable breakdown of marriage for doing complete justice on the peculiar facts of a case.

74. The Supreme Court expounded the principle that directions issued under Article 142 do not constitute binding precedent, unlike Article 141 of the Constitution of India. The Supreme Court in **Nidhi Kaim & Anr vs State Of M P And Ors, (2017) 4 SCC 1**, held:

“12. Based on an analysis of the judgments rendered by this Court, it was submitted that in the judgments of this Court wherein Article 142 had been invoked would demonstrate that whenever the law applicable to, and governing a particular cause, was found to be inadequate, or whenever the law applicable did not provide means for a complete resolution of the dispute, the endeavour of a court ought to be to discover and to address the manner of doing complete justice. It was submitted that even though the law provided for the situation obtaining in a particular cause, and there was scope for a better and more fulfilling outcome, this Court should search for the same, and give effect to it. It was contended that this Court had found good reason to invoke the power vested in it to do complete justice between the parties (— through the reasoned order of the Hon'ble Presiding Judge of the former Division Bench). It was submitted that whenever legal resources and materials were found to be in a state of indeterminacy calling for articulation of new principles and fashioning new remedies, this Court would reach out to a just cause, by invoking Article 142, by filling up the lacuna. It was pointed out that indeterminacy or lack of completeness of law and legal resources, in a given case, was the foundation for invocation of Article 142. The learned counsel ventured to clarify that in doing complete justice whilst a court would not act in disregard to binding provisions of law, the said restraint was applicable only with reference to an available statutory regime/scheme. Thus viewed, whenever there was an available statutory scheme, courts would not ordinarily take recourse to Article 142, but in the absence thereof, the field would always remain wide open for this Court to intervene, and render complete justice. It was pleaded that there could not have been a better case, than the one in hand, to invoke such power.

22. Our attention was also drawn to the judgment rendered in State of Punjab v. Rafiq Masih (Whitewasher), (2014) 8 SCC 883, wherein this Court recorded the distinction between the exercise of jurisdiction vested in this Court under Article 136 as against Article 142. The relevant determination was expressed in the following paragraphs:

“8. In our view, the law laid down in Chandi Prasad Uniyal case, no way conflicts with the observations made by this Court in the other two cases. In those decisions, directions were issued in exercise of the powers of this Court under Article 142 of the Constitution, but in the subsequent decision, this Court under Article 136 of the Constitution, in laying down the law had dismissed the petition of the employee. This Court in a number of cases had battled with tracing the contours of the provision in Articles 136 and 142 of the Constitution of India. Distinctively, although the words employed under the two aforesaid provisions speak of the powers of this Court, the former vest a plenary jurisdiction in the Supreme Court in the matter of entertaining and hearing of appeals by granting special leave against any judgment or order made by a Court

or Tribunal in any cause or matter. The powers are plenary to the extent that they are paramount to the limitations under the specific provisions for appeal contained in the Constitution or other laws. Article 142 of the Constitution of India, on the other hand is a step ahead of the powers envisaged Under Article 136 of the Constitution of India. It is the exercise of jurisdiction to pass such enforceable decree or order as is necessary for doing 'complete justice' in any cause or matter.

*** **

12. Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. The directions issued by the court can normally be categorized into one, in the nature of moulding of relief and the other, as the declaration of law. "Declaration of law" as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the highest court of the land. This Court in the case of Indian Bank v. ABS Marine Products (P) Ltd., (2006) 5 SCC 72, Ram Pravesh Singh v. State of Bihar, (2006) 8 SCC 381 and in State of U.P. v. Neeraj Awasthi, (2006) 1 SCC 667, has expounded the principle and extolled the power of Article 142 of the Constitution of India to new heights by laying down that the directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are direction issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court has compartmentalized and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case." Based on the above distinction between the exercise of jurisdiction under Articles 136 and 142 of the Constitution, it was submitted, that the power to do complete justice under Article 142, was far-far beyond the power vested in this Court under Article 136. It was therefore, the submission of learned counsel, that this Court should not refrain from extending complete justice to the appellants, in the manner expressed by the Hon'ble Presiding Judge (of the 'former Division Bench').

75. With utmost humility and regard, we find the judgment of **Romesh Chander vs Smt. Savitri**, 1995 SCC (2) 7, was passed by the Supreme Court in exercise of the extraordinary powers conferred by the Constitution of India upon their Lordships, which are available to them alone for doing complete justice.

76. The Trial Court for grant of a decree of a divorce has relied upon the holding of the Supreme Court in **Hitesh Bhatnagar Vs. Deepa Bhatnagar, AIR 2011 SC 1637**. The said judgment was rendered in the peculiar facts and circumstances of that case, in exercise of extraordinary jurisdiction under Article 142 of the Constitution of India, where the Supreme Court has held that power under Article 142 of the Constitution of India is plenipotentiary and termed the same as an extraordinary jurisdiction vested by the Constitution with implicit trust and faith and, therefore, extraordinary care and caution has to be observed while exercising this jurisdiction.

77. The authority of the Supreme Court in **Hitesh Bhatnagar (supra)** was not available to the Trial Court for reliance in the manner in which it has been applied, as the said judgment was rendered by the Supreme Court in exercise of its extraordinary jurisdiction under Article 142 of the Constitution of India, in the peculiar facts and circumstances of that case.

78. The Trial Court has relied upon several judgments of the Supreme Court which were rendered in exercise of the extraordinary jurisdiction vested in the Supreme Court under Article 142 of the Constitution of India. Such judgments, having been rendered in the peculiar facts and circumstances of those cases for doing complete justice between the parties, could not have been treated as laying down an independent proposition of law or as conferring a similar power upon the Trial Court in the absence of irretrievable breakdown of marriage as a statutory ground for granting the decree of divorce.

79. The Supreme Court in **Vishnu Dutt Sharma vs. Manju Sharma (2009) 6 SCC 379**, has held that irretrievable breakdown of marriage is not a ground for divorce as it is not contemplated under Section 13 of the Act, 1955 and granting divorce on this ground alone would amount to adding a clause therein by a judicial verdict which would amount to legislation by Court.

80. We find that the Trial Court committed an error of law in treating irretrievable breakdown of marriage as an independent ground for granting a decree of divorce, particularly when no such ground is statutorily recognized under Section 13 of the Act, 1955. In the absence of such a statutory ground, the Trial Court could not have granted a decree of divorce solely on that basis. For the same reason, this Court, while exercising our first appellate jurisdiction, cannot sustain the decree on a ground which is not available under the statutory scheme of the Act, 1955.

81. Seen in that light, the Trial Court has fallen into a manifest error in being moved, perhaps in part by the evidence led by the respondent, that there was complete incompatibility between the parties and that their marriage may have broken down irretrievably. While that factual conclusion may or may not be correct, we do not recognise irretrievable breakdown of marriage as a statutory ground available to the parties to dissolve a Hindu marriage. That ground being available outside the statutory law, it may remain in the domain of the Supreme Court to consider that factor in view of its overarching jurisdiction to do complete justice, under Article 142 of the Constitution of India. Insofar as we remain an appellate court under the statute, we have no misconception about our limited jurisdiction.

82. To our dismay, we find that, in order to brush aside the authorities of the Supreme Court relied upon by the parties, the Trial Court observed that recent legal pronouncements ought to be preferred. At this stage, we cannot refrain from observing that the understanding of the value precedents of the Learned Trial Judge with respect to the principle of *stare decisis* and binding precedent is not in congruence with the settled dictum of the Supreme Court, that merely because a judgment is of recent time, it does not eclipse an earlier binding precedent, unless the previous one has been overruled, distinguished or otherwise rendered inapplicable by a Bench of larger quorum. The Courts are not supposed to follow recent judgments in utter ignorance of the old or of earlier vintage.

83. The question as to which decision is to be followed where there are conflicting judgments rendered by Benches of equal strength of the Supreme Court has been considered by the Supreme Court in **Union Territory of Ladakh and Others v. Jammu & Kashmir National Conference and Others**, Civil Appeal No. 5707 of 2023 (@ SLP (C) No. 18727 of 2023). Relying upon the Constitution Bench judgment in **National Insurance Company Limited v. Pranay Sethi**, (2017) 16 SCC 680, the Supreme Court reiterated that, where two conflicting decisions have been rendered by Benches of equal strength, the earlier decision is to be followed by the High Courts, subject to due regard being had to the facts and circumstances of the case before them.

84. The Constitution Bench in **Pranay Sethi** (*supra*), while examining the doctrine of precedents in the context of conflicting decisions of Co-ordinate Benches, considered, inter alia, the earlier judgments in **Chandra Prakash and Others v. State of U.P.**, (2002) 4 SCC 234; **Union of India v. Raghubir Singh**, (1989) 2 SCC 754; **Pradip Chandra Parija and Others v. Pramod Chandra Patnaik**, (2002) 1 SCC 1; **Rattiram v. State of Madhya Pradesh**, (2012) 4 SCC 516; **National Telephone Company Ltd. v. Post Master General**, 1913 AC 546 (HL); and **Sandeep Kumar Bafna v. State of Maharashtra**, (2014) 6 SCC 623. The principle emerging from the aforesaid authorities is that, where decisions of equal strength conflict, the earlier decision continues to hold the field and is required to be followed unless the later decision has considered the earlier authority and, in accordance with law, taken a contrary view.

85. The same principle was reiterated by a three-Judge Bench in **Rattiram** (*supra*), wherein, upon a consideration of the Constitution Bench judgment in **Union of India v. Raghubir Singh** (*supra*) and other authorities, the Supreme Court held that an earlier decision of a Co-ordinate Bench remains binding where a subsequent decision has been rendered without noticing the earlier binding authority. In such circumstances, the doctrine of *per incuriam* may become relevant. It is, however, not open to

the High Court to declare a judgment of the Supreme Court to be *per incuriam*.

86. The position that thus emerges is that mere chronology does not render a subsequent judgment of a Co-ordinate Bench superior to an earlier binding decision. Where two judgments of Benches of equal strength are found to be in conflict, the earlier decision is to be followed, unless the subsequent judgment has duly considered the earlier decision and thereafter consciously departed from the view taken therein. *In the absence of such consideration and conscious departure, the earlier binding precedent continues to hold the field.*

87. The position of law is no longer *res integra* that a subsequent pronouncement of the Supreme Court would be binding where it has considered the earlier pronouncement and has thereafter taken a contrary view.

88. After advancing their respective submissions at length, learned counsel for the parties, upon taking instructions from their respective clients, say that the decree of divorce having been passed about fourteen years ago and the parties admittedly having lived separately since 21.09.2006, to wit, nearly twenty years. The learned Counsel therefore, submitted that, without recognizing irretrievable breakdown of marriage as an independent ground for divorce, the ends of justice would be adequately served if permanent alimony is granted in favour of the appellant-wife. Upon instructions, both sides are stated to be *ad idem* on this aspect.

89. We are conscious of the fact that the grant of permanent alimony, by itself, cannot furnish a legal basis for sustaining a decree of divorce. At the same time, having regard to the request made by the parties and since, in our considered opinion, the ground of desertion, though not available to respondent but at the same time, the finding of cruelty, on which the decree of divorce is based, is not being interfered with, in our jurisdiction as the

First Appellate Court, we proceed to consider the question of permanent alimony in the interests of justice.

90. There is admittedly no written application on behalf of the appellant seeking grant of permanent alimony. The statutory scheme under Section 25 of the Act, 1955 contemplates consideration of such relief in the manner prescribed therein, and in the present case, neither any written application was filed, nor any claim was made in written statement before the Trial Court seeking grant of permanent alimony.

91. At this stage, an oral prayer for grant of permanent alimony having been made by the respondent, we proceed to examine entertainability of an oral prayer for grant of permanent alimony in event the decree of divorce is maintained. We have already framed the fourth point of determination as under:

“Whether written application is mandated by law on plain reading of Section 25 of the Act, 1955, for grant of permanent alimony or at least a demand made in the written statement itself?”

92. If a written application seeking permanent alimony is filed, it would undoubtedly facilitate effective adjudication by the Court, as the parties would have an opportunity to place their respective pleadings, affidavits and oral as well as documentary evidence on record concerning their respective economic status, means and liabilities.

93. We could not lay our hand on any of the authoritative pronouncements of our Court on the fourth point of determination, whether a written application for grant of permanent alimony is the mandate of law and whether the same can be relaxed by permitting an oral prayer in this regard. We proceed to address the point of determination framed by us as under.

94. The right to permanent alimony, as contemplated under Section 25 of the Hindu Marriage Act, 1955, is not merely a statutory right but is closely connected with the fundamental right to life and, in particular, the right to

live with dignity. Where a marriage is dissolved by a decree of divorce, the financial sustenance of the spouse who is unable to maintain himself or herself becomes an important consideration for the Court while determining the appropriate relief to be granted.

95. In **Geeta Satish Gokarna v. Satish Shankarrao Gokarna**, AIR 2004 Bom 345, the Bombay High Court, observed that permanent alimony and maintenance constitute an important facet of the right to life. The underlying object of these provisions is to ensure that a spouse who is unable to maintain himself or herself is not left without adequate means of sustenance following the dissolution of marriage. Thus, the power conferred upon the Court under Section 25 is intended to secure financial protection and enable the economically dependent spouse to lead life with dignity after divorce.

96. It is apposite to take note of Section 25 of the Hindu Marriage Act, 1955, which reads as under:

“25. Permanent alimony and maintenance.-

(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall *** pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.”

97. The High Court of Bombay similarly, in **Vijayashree vs. Dr. Nishant Arvind Kale**, 2021 SCC Online Bom 29, interpreted the law with regard to the requirement of a separate application for grant of permanent alimony in exercise of power and procedure contemplated under Section 25 of the Act, 1955. In **Vijayashree (supra)** it was held:

"8. With regard to question under consideration before this court, various other High Courts including this High Court have held that the word 'application' as referred to in Section 25 of the Act i.e. 'on application made to it' does not specify as to whether it is oral application or application in writing. It is also held that broader view of Section 25 of the Act is to be taken considering the object and purpose for inclusion of this provision in the Act.

9. The Madras High Court in the case of Umarani Vs. D. Vivekannandan reported in 2000 SCC Online Mad 50 held that there is no need of written application under Section 25 of the Hindu Marriage Act, 1955 and permanent alimony and maintenance can be granted on the basis of oral application. The relevant para No. 10 in this judgment reads thus :10. It is true that Section 25 of the Act contemplates an application for the said purpose.

SA 125.2019.odt When the lower court has not disposed of Section 24 application in time and has disposed of along with the main application, it should have disposed of the application under Section 25 also.

Therefore, one more litigation could be avoided and on the basis of very same order, the maintenance could be provided for the wife and child. From the conduct of the respondent, it is clear that he will not pay the maintenance which is legally due to the petitioner. Under these circumstances, asking the petitioner to file another application under Section 25 or asking to file a separate suit and again seeking indulgence of the Court below will be harsh. The Act also does not say that there should a written application. It only says that an application made to it. It can also be on the basis of oral application....."

10. The Madhya Pradesh High Court in the case of Surajmal Ramchandra Khatri Vs. Rukminibai d/o Prabhulal reported in 1999 SCC Online MP 87 held that merely because wife had not presented a separate application praying for grant of permanent alimony, it cannot be said that she is not entitled to the same. It is further observed that the provisions of Section 25 of the Act have been introduced for the purpose of protecting the interest of such spouse against whom the court has passed the decree.

11. This Court in the case of Sadanand Sahadev Rawool Vs. Sulochana Sadanand Rawool reported in 1989 SCC Online Bom 5 held that Section 25 of the Act when it speaks of an application does not specify that the same has to be in writing. An application can be SA 125.2019.odt in writing as also by word of mouth. Although this judgment is overruled by the Apex Court on the point of entitlement of the spouse to claim permanent alimony and maintenance even if the the court dismisses the petition and does not pass any decree as contemplated in Section 25 of the Act.

12. The Division Bench of the Punjab and Haryana High Court in the case of Mukesh Kumar Vs. Sunita in FAO-M-46 OF 2010 while relying on the judgment in the case of Sadanand Rawool (supra) and Surajmal (supra) held that

the approach to be adopted in matrimonial cases has to be practical and not based on mere technicalities. The expression "on application made to it" occurring in Section 25 of the Act should not be construed narrowly but keeping in view the intent of the legislature in enacting this provision. The purpose behind this provision appears to be to safeguard the interest of the spouse against whom the decree had been passed. It is further held that grant of permanent alimony and maintenance under Section 25 of the Act is sine-qua-non if the prayer made in that regard whether in writing or orally and there can either be a separate written application claiming permanent alimony and maintenance under Section 25 of the Act or in the written statement or even by oral prayer."

98. The High Court of Madhya Pradesh in **Surajmal Ramchandra Khati v. Rukminibai**, 1999 SCC OnLine MP 87, while considering the scope of Section 25 of the Hindu Marriage Act, 1955, held that the expression “**on application made to it**” occurring in Section 25(1) should not be construed narrowly or technically. The relevant remarks are reproduced hereinbelow:

“6. Shri Ukas further placed reliance on the provisions of section 25 of the Hindu Marriage Act 1955 (hereinafter referred to as Act for convenience) wherein it has been provided that—

“Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant (the conduct of the parties and other circumstances of the case), it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.”

7. While considering provisions of section 25 of the Act, provisions of section 23(B) cannot be ignored which provides that—

“In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on that ground; and if the petitioner's adultery, cruelty or desertion is proved, the Court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground.”

It means that in absence the petition filed by other spouse who has been contesting said litigation as respondent, is entitled to claim any relief under the provisions of the Act by making counter claim on the ground of petitioner's adultery, cruelty or desertion. And such spouse would be entitled to get such relief if he proves the said fact. That spouse would be entitled to get said relief from the Court as if the said spouse had presented a petition seeking such relief on that ground. Thus, keeping in view the spirit of provisions of section 23(B), the spirit behind the enactment will have to be seen. The Act has adopted a broader approach while dealing with matrimonial cases. Therefore, the word ‘on

application made to it' used in sub-section (1) of section 25 will have to be interpreted in a broader view. This word 'on application made to it' should not be construed in a strict sense. It does not mean always that such spouse is required to present a separate application for making a prayer for permanent alimony. After all, provisions of section 25 of the Act according to me have been introduced in the Act for the purpose of protecting the interest of such spouse against whom the Court has passed the decree. When such spouse happens to be a wife, the society and law would not afford to see such spouse seeking sanctuary on the streets at the stake of losing her soul and virtues. When the decree of divorce is passed, the law would be definitely interested in seeing that some arrangement has been made for the purpose of enabling such spouse wife to have some money with her which would enable her to live safely and with dignity of womanhood. Such provisions would be made if she is left to maintain herself with a child begotten out of the wedlock which has been dissolved by decree of divorce dissolving such marriage. It would create difficult situation for such discarded wives and children increasing the possibility of vagaries and unchastity. Therefore, it will have to be seen whether a prayer has been made by such spouse any way in the written statement or by separate application. Keeping in view the spirit of the enactment of the Act, it would be safe if such a prayer is made in the written statement.

8. In the present matter in para 2 at page No. 4 of the written statement, the respondent has made a prayer to the Court to grant Rs. 3000/- per month to her from the appellant as permanent alimony. In my view this is sufficient. The divorced wife cannot be thrown on streets after dissolution of the marriage by a decree of divorce without granting permanent alimony to her if such a prayer has been made by her in her written statement, when the Act has adopted broader view as indicated under section 23A of the Act."

99. Similarly, the Division Bench decision of the High Court of Madhya Pradesh in **Ghanshyam Baser v. Jyoti**, 2025 SCC OnLine MP 2858, after considering the Bench decision in **Abhishek Parashar vs Neha Parashar**, 2023 SCC OnLine MP 277, has held that without demanding permanent alimony in the written statement or by a separate application, the court could not grant permanent alimony. The relevant excerpts are reproduced hereinbelow:

"9. In the case of Abhishek Parashar v. Neha Parashar, (2023) 1 MP LJ 648, the Division Bench of this Court, in paragraphs-42 to 47 of the judgment has held as under:—

"42. Learned counsel for the wife by placing reliance on the Division Bench Judgments of this Court in Rituraj Singh (supra) and Dharmendra Tiwari (supra) contended that no express application is required to be filed under section 25 of the Hindu Marriage Act and this Court without such application can decide the question of alimony. It is noteworthy that SLP filed against the judgment of this Court in Rituraj Singh (supra) was dismissed (SLP No. 27693 of 2019) on 3-2-2022. However, a plain reading of this order makes it clear that:—

(i) Leave was not granted and SLP was not converted into a civil appeal. Thus, in the light of judgment of Supreme Court in (2000) 6 SCC 359: 2000 MP LJ OnLine (SC) 2, *Kunhayammed v. State of Kerala*, it cannot be presumed that judgment of this Court in *Rituraj Singh* got stamp of approval from the Supreme Court and doctrine of merger has played its role. (ii) The Apex Court while deciding the SLP of *Rituraj Singh* has not specifically dealt with and examined section 25 of the Hindu Marriage Act.

43. The legal journey shows that way back in the case of *Jitbandhan* (supra) Justice G.P. Singh considered the language used in section 25 of the Act and came to hold that said provision does not permit the Court to decide the question of alimony in absence of an express application. The ratio of this judgment was followed by Division Bench in *Chhaya Kshatriya* (supra). In *Chhaya Kshatriya* (supra), this Division Bench also considered the previous judgments of *Bhikalal* and *Meerabai* (supra). This principle was followed by Single Bench in *Mahesh Prasad* (supra). Lastly, another Division Bench in *Manoj* (supra) (decided on 23-10-2012) poignantly held that without an application made to the Court under section 25 of the Hindu Marriage Act, the Family Court cannot decide the aspect of alimony.

44. The aforesaid journey makes it clear that view taken by Justice G.P. Singh way back in the year 1982 in the case of *Jitbandhan* (supra) was consistently followed by various Division Benches. The cleavage of opinion is because of subsequent Division Bench judgments in *Rituraj Singh* and *Dharmendra Tiwari* (supra) wherein the subsequent Division Benches opined that in order to claim alimony, it is not necessary to prefer a written application. A careful reading of judgment of *Rituraj Singh* (supra) shows that the Division Bench has not reproduced and considered section 25 of H.M. Act. Section 25(1) of H.M. Act reads as under:—

“25. Permanent alimony and maintenance.— (1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall 55 (***) pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant 56, (the conduct of the parties and other circumstances of the case), it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(Emphasis Supplied)

45. In both the subsequent judgments i.e. *Rituraj Singh* (supra) and *Dharmendra Tiwari* (supra), the Division Benches have not considered the previous judgments of this Court passed in *Jitbandhan*, *Chhaya Kshatriya*, *Bhikalal*, *Meerabai*, *Mahesh Prasad* and *Manoj v. Raksha* (supra). Thus, ancillary question is, out of the two views, which view/judgment will be binding on us. In our view, the curtains on this aspect are drawn by a Special Bench (five Judges) of this Court in the case of *Jabalpur Bus Operators Association v. State of M.P.*, (2003) 1 MP LJ 513 wherein it is held as under:—

“..... Similarly, Division Bench is bound by the judgment of earlier Division Bench. In case, it does not agree with the view of the earlier, Division

Bench, it should refer the matter to larger Bench. In case of conflict between judgments of two Division Benches of equal strength, the decision of earlier Division Bench shall be followed except when it is explained by the latter Division Bench in which case the decision of latter Division Bench shall be binding. The decision of larger Bench is binding on smaller Benches.”

(Emphasis Supplied)

46. We also find substance in the argument of Shri Shrotri based on the judgment of Supreme Court in the case of *State of Bihar v. Kalika Kuer*, (2003) 5 SCC 448 : 2003 MP LJ OnLine (SC) 45 wherein it was held that if previous binding judgment is not considered by the subsequent Bench, the judgment of subsequent Bench is per incuriam. Thus, it can be safely held that in absence of application preferred under section 25 of H.M. Act, no directions can be issued by this Court for grant of permanent alimony. Apart from this, for deciding the aspect of permanent alimony various factual aspects regarding income, expenditure etc. of the parties are required to be taken into account by the Court. In *Rajnish v. Neha*, (2021) 2 SCC 324 : (2021) 3 MP LJ 22 (SC) : (2021) 1 MP LJ (Cri) 187 (SC), the Apex Court held as under:

“73. Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the Court concerned, for fixing the permanent alimony payable to the spouse.”

(Emphasis Supplied)

47. So far judgment of Apex Court in *Ramesh Chand Rampratapji* (supra) in concerned, it is noteworthy that Court focussed and interpreted the expression ‘at the time of passing any decree’ mentioned in section 25(1) of the H.M. Act. The observation of Supreme Court in para-17 of said judgment about ‘ancillary’ and ‘incidental’ power of the Court, in our humble view, is not the ratio or principle laid down. This is trite that precedent is what is actually decided by the Apex Court and not what is logically flowing from it. [See: *State of Orissa v. Sudhansu Sekhar Misra*, (1968) 2 SCR 154, *Regional Manager v. Pawan Kumar Dubey*, (1976) 3 SCC 334, *Ambica Quarry Works v. State of Gujarat*, (1987) 1 SCC 213, *Commr. of Customs (Port) v. Toyota Kirloskar Motor (P) Ltd.*, (2007) 5 SCC 371]. Hence, this judgment is of no assistance to respondent-wife.”

10. Thus, from the judgment of this Court, it is clear that at least an application demanding permanent alimony is required, that may be either in a written statement or by a separate application.

100. In **Vinny Parmar vs Paramvir Parmar** 2011 (13) SCC 112, the Supreme Court has considered the various facets of law while granting permanent alimony as contemplated under Section 25 of the Act, 1955. While dealing with the concept of permanent alimony, the Supreme Court has observed that while granting permanent alimony, the Court is required

to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort, considering her status and the mode of life she was used to when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party.

101. The judgment of other High Courts though do not bind us, but these are of great persuasive value. From a plain reading of the statutory mandate contained under Section 25 of the Act, 1955, it is as clear as daylight that at least an application demanding permanent alimony is required and is the mandate of the statute. The said request may be either be carried in the written statement or made by separate application. The purpose behind mandating an application as contemplated under Section 25 of the Act, 1955 is that in the event the Court is called upon to decide upon permanent alimony, it is required to decide the quantum of permanent alimony; and, for such decision, the economic status, means/assets, liabilities, including maintenance or any other financial obligation, are required to be considered and set off against the final quantum of permanent alimony. The pleadings in the written statement, if these, would not put parties to surprise; rather, some sort of material evidence would be there for adjudication of liabilities and means, which is in the time with the view of the Supreme Court in **Rajnish vs Neha, (2021) 2 SCC 324**.

102. A written application under Section 25 (1) of the Act, 1955 is required, as any amount awarded towards maintenance, such as one under Section 125 CrPC, Section 24 of the Act 1955, Section 18 of Hindu Adoptions and Maintenance Act, 1956 and Section 20 of Protection of Women from Domestic Violence Act, 2005 (D.V. Act) may be required to be set off against the final determination of permanent alimony under Section 25 (1) of the Act, 1955. The object is that multiple channels of remedy seeking maintenance can be streamlined. If a written application is filed and

adjudicated under Section 25 of the Act, 1955 necessary orders of set-off may be passed to balance equities and advance justice.

103. In absence of written application preferred under Section 25 of the Act, 1955, it would be almost impossible to adjudicate upon the quantum of permanent alimony, inasmuch as for the adjudication of permanent alimony many factual aspects regarding income, expenditure, liabilities, socio-economic strata of parties are required to be considered. That is possible only if neither party is taken by surprise, and they can lead oral or documentary evidence on the feet of the application or objection filed under Section 25 (1) of the Act, 1955,

104. We do not mean to say that an oral prayer for permanent alimony cannot be adjudicated, as the same is not prohibited by the law. But, where adjudication of the quantum of permanent alimony is needed, the written application and the objection of the other party would facilitate quantification, if any is required, for the grant of ancillary relief of permanent alimony. The oral prayer for permanent alimony can be permitted by the Court, where the parties are *ad idem* with respect to not only to the quantum of permanent alimony but also its entitlement and no adjudicatory process is involved.

105. Thus, we conclude that the filing of a written application for the adjudication of a claim of permanent alimony and inviting objection, allowing oral and documentary evidence is the rule and in exceptional cases oral prayer can also be entertained by the Court where the Court is not required to adjudicate in relation to the quantum and entitlement of permanent alimony. Since in the case in hand the parties themselves have agreed and made a statement through their counsels that they are *ad idem* as regards the grant of Rupees nine lakhs as permanent alimony, we, in order to ensure that the respective Counsel have taken instructions from their clients, put a pointed query whether, on the point of entitlement and quantum of permanent alimony, they had taken instructions from their

client, as it would bind them; the response was in the affirmative. Thus, permanent alimony of a sum of Rs.9 lakhs to the appellant-wife, in lump sum, is awarded, which shall be paid within a period of three months from date through a demand draft.

106. The decree of divorce was granted by the Trial Court on both the grounds of cruelty and desertion. We have already disapproved the ground of desertion; however, in regard to cruelty, in the exercise of our jurisdiction as the First Appellate Court, we meticulously examined the pleadings and evidence on record to determine whether the acts of cruelty alleged against the appellant stand established. Though the instances relating to imputation of character, biting and pulling of hair have not been stated with specific dates and time of events nevertheless, on a broad consideration of the evidence, nothing material has emerged in the cross-examination of P.W.1, _____, so as to discredit his testimony. In fact, when questioned in his cross-examination regarding the dates of the quarrels, the respondent was able to specify the date of quarrels which was missing initially; dates of occurrences, specific instances inferring cruelty have been filled/supplied by appellant through the test of cross-examination of the respondent.

107. We cannot lose sight of the fact that, in cases of physical assault occurring within the matrimonial home, independent evidence may not ordinarily be available and the testimony of the spouse subjected to such conduct may constitute the principal evidence. In the present case, the pleadings and evidence also contain an allegation that the respondent-plaintiff's head was repeatedly smashed against the wall. It is equally possible that, in an attempt to preserve the matrimonial relationship and protect the family from public embarrassment, a spouse may refrain from immediately seeking medical examination.

108. The finding of fact recorded by the Trial Court with regard to cruelty, upon appreciation of the evidence adduced by the parties, does not appear to be perverse or contrary to the weight of evidence on record. So far as the

ground of cruelty is concerned, the challenge to the finding recorded by the Trial Court, therefore, fails. Consequently, no interference with the judgment and decree of the Trial Court is called for on this ground.

109. We accordingly maintain and uphold the judgment and decree of divorce passed by the Trial Court, albeit on the ground of cruelty alone under Section 13(1) (ia) of the Act, 1955. Further, we concur with the decision taken by the Learned Trial Judge dismissing the petition for restitution of conjugal rights, under section 9 of the Act, 1955.

110. The registry is directed to draw up the decrees accordingly and transmit a copy of this judgement along with the decrees to the concerned Family Court.

111. In this case, the Court places on record its appreciation for the diligent efforts and valuable assistance rendered by Ms. Shreya Shukla, Research Associate. Her contribution has meaningfully aided the adjudication of the present matter and deserves due acknowledgment.

112. The Appeal is **disposed of** in the aforesaid terms. No order as to costs.

(Indrajeet Shukla,J.) (J.J. Munir,J.)

September 15, 2026

S.P.