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**IN THE SUPREME COURT OF INDIA**
CIVIL APPELLATE JURISDICTION
***ANIRUDDHA BOSE; J., BELA M. TRIVEDI; J.***
CIVIL APPEAL NO. 2045 OF 2011; 10 October 2023

**DR. NIRMAL SINGH PANESAR**
*versus*
**MRS. PARAMJIT KAUR PANESAR @ AJINDER KAUR PANESAR**

**Constitution of India, 1950; Article 142 – Decree of divorce - Irretrievable break down of marriage - Supreme Court can depart from the procedure as well as the substantive laws, and exercise its discretion under Article 142 for dissolving the marriage between the parties by balancing out the equities between the conflicting claims of the parties, however, such discretion should be exercised with great care and caution. This discretionary power could be exercised for dissolving the marriage on the ground of its irretrievable break down to do "complete justice," though one of the spouses opposes the prayer for dissolution of marriage.** *(Para 17, Followed: Shilpa Sailesh v. Varun Sreenivasan, 2023 INSC 468 (Constitution Bench)*

**Marriage - Institution of marriage occupies an important place and plays an important role in the society. Despite the increasing trend of filing the Divorce proceedings in the courts of law, the institution of marriage is still considered to be a pious, spiritual, and invaluable emotional life-net between the husband and the wife in the Indian society. It is governed not only by the letters of law but by the social norms as well. So many other relationships stem from and thrive on the matrimonial relationships in the society. Therefore, it would not be desirable to accept the formula of "irretrievable break down of marriage" as a strait-jacket formula for the grant of relief of divorce.** *(Para 18)*

**Divorce - Irretrievable break down of marriage - the husband is aged about 89 years and respondent-wife is aged about 82 years. The respondent all throughout her life has maintained the sacred relationship since 1963 and has taken care of her three children all these years, despite the fact that the husband had exhibited total hostility towards them. The respondent is still ready and willing to take care of her husband and does not wish to leave him alone at this stage of life. She has also expressed her sentiments that she does not want to die with the stigma of being a "divorcee" woman. In contemporary society, it may not constitute to be stigma but here we are concerned with the respondent's own sentiment. Under the circumstances, considering and respecting the sentiments of the wife, the Court held that exercising the discretion in favour of the appellant under Article 142 by dissolving the marriage between parties on the ground that the marriage has irretrievably broken down, would not be doing "complete justice" to the parties, would rather be doing injustice to the respondent. Appeal dismissed.** *(Para 19)*

*For Appellant(s) Mr. Vipin Gogia, Adv. Ms. Jaspreet Gogia, AOR Mr. Karanvir Gogia, Adv. Ms. Varnika Gupta, Adv.*

*For Respondent(s) Ms. Madhurima Tatia, AOR*

**J U D G M E N T**

**BELA M. TRIVEDI, J.**

**1.** "Should the irretrievable breakdown of marriage necessarily result in the dissolution of marriage in exercise of powers under Article 142 of the Constitution of India, when such

is not a ground for divorce under the Hindu Marriage Act 1955?" - is the question posed before us.

**2.** The appellant is a qualified doctor, and was Commissioned Air Force Officer. He retired on 30.04.1990 as Wing Commander. The respondent is also a qualified teacher, who was working in a Central School, and has retired now. The appellant had filed the Divorce proceedings on 12.03.1996 before the District Court, Chandigarh on two grounds, namely 'cruelty' and 'desertion' as contemplated in Section 13(1)(ia) and 13(1)(ib) respectively of the Hindu Marriage Act 1955 (hereinafter referred to as the said Act).

**3.** The instant appeal is directed against the judgment and order dated 18.02.2009 passed by the High Court of Punjab and Haryana at Chandigarh in LPA No. 195/2001 in FAO No. 44-M/2000 preferred by the appellant-husband, whereby the Division Bench of the High Court while dismissing the said LPA, had confirmed the judgment and decree dated 21.12.2000 passed by the Single Bench in the FAO No.44-M of 2000. The said FAO No. 44-M/2000 was preferred by the respondent-wife, against the judgment and decree dated 05.02.2000 passed by the District Judge, Chandigarh (hereinafter referred to as the District Court) in HMA No.63 of 1996, which had vide the said decree dated 05.02.2000 allowed the HMA filed by the appellant-husband, and dissolved the marriage between the parties under Section 13 of the said Act.

**4.** It is not disputed that the parties had married as per the Sikh rites on 10.03.1963 at Amritsar. The marriage was consummated and they were blessed with three children- two daughters - Harpreet Kaur and Rupdaman Kaur (both married now), and one son- Kunwarjit Singh Panesar. As per the case of the appellant, he was serving in the Indian army and the respondent was serving as a teacher in Central School in Amritsar. Till January 1984, the relations between the parties were normal. The acrimony in their relationship appears to have developed when the appellant was posted at Madras in January 1984 and the respondent did not join him, and preferred to stay initially with the parents of the appellant and thereafter with her son. Despite sincere efforts having been made by the parties, the differences and disputes could not be resolved, which ultimately led the appellant to file Divorce proceedings in the District Court.

**5.** As stated hereinabove, the District Court granted the decree of divorce, as prayed for by the appellant however the Single Bench of the High Court reversed the same and the Division Bench of the High Court confirmed the judgment and order passed by the Single Bench vide the impugned order.

**6.** At the outset, it may be stated that both the parties are in the late evening of their lives, in as much as the appellant is aged about 87 years and the respondent is aged about 82 years. The Court considering the age of the parties, had expected them to sit together and explore the possibility of an amicable settlement, however the same having failed, the Court had no option but to hear the respective learned counsels for the parties on merits.

**7.** Mr. Vipin Gogia, the learned advocate appearing for the appellant submitted that the High Court had committed gross error in reversing the well-reasoned decree of divorce granted by the District Court, which had concluded that the respondent had treated the appellant with cruelty and had deserted the appellant without any reasonable cause as alleged in the divorce petition. According to him, the acts of the respondent in not joining the appellant when he was transferred to Madras, and thereafter not taking care of the appellant though he had a heart problem, and subsequently making complaints to the Air Force Authorities against the appellant to malign his image, were the acts of "Cruelty,"

entitling the appellant to a decree of divorce, in view of the decision in case of ***Naveen Kohli vs. Neelu Kohli***[1]. He alternatively submitted that the parties are staying separate since the time the appellant had filed the Divorce petition in the District Court, and that the marriage having been irretrievably broken down, the Court should exercise the powers under Article 142 of the Constitution of India and grant a decree of divorce. In this regard, he has heavily relied upon the recent decision of the Constitution Bench in the case of ***Shilpa Sailesh vs. Varun Sreenivasan***[2].

**8.** Per contra, the learned advocate Ms. Madhurima Tatia for the respondent submitted that the respondent being an aged lady does not want to die with the stigma of a "Divorcee." According to her, the respondent had made all efforts to respect the sacred relationship between the parties all through out and is still ready to look after the appellant with the assistance of her son. Mere long period of separation could not tantamount to irretrievable break down of the marriage. She lastly submitted that the appellant having failed to make out any ground either of cruelty or desertion, the Court may not interfere with the concurrent findings recorded by the Single Bench and the Division Bench of the High Court in this regard.

**9.** We have given anxious thought and consideration to the submissions made by the learned advocates for the parties in the light of the evidence on record. There could not be any disagreement with the proposition of law canvassed by the learned counsel for the appellant that the allegations of 'cruelty' and 'desertion' are legitimate grounds for seeking a decree of divorce under Section 13(1) of the said Act. It is well accepted proposition that "cruelty" is a course or conduct of one party which adversely affects the other. The "cruelty" may be mental or physical, intentional, or unintentional. This court in ***Naveen Kohli*** (supra) has summarised the principles of law on "cruelty" as under: -

"46. The principles of law which have been crystallised by a series of judgments of this Court are recapitulated as under:

In *Sirajmohmedkhan Janmohamadkhan* v. *Hafizunnisa Yasinkhan* [(1981) 4 SCC 250 : 1981 SCC (Cri) 829] this Court stated that the concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition, that a second marriage is a sufficient ground for separate residence and maintenance. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used. Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which lead to mental or legal cruelty.

**47.** 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

[1] (2006) 4 SCC 558
[2] 2023 SCC Online SC 544

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.

**48.** The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.

**49.** ……..

**50.** …….

**51.** …….

**52.** This Court in *Savitri Pandey* v. *Prem Chandra Pandey* [(2002) 2 SCC 73] stated that mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other."

**10.** The crux of the various decisions of this Court on the interpretation of the word "cruelty" is that it has to be construed and interpreted considering the type of life the parties are accustomed to; or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.

**11.** Similarly, the law is also well settled as to what could be said to be "Desertion" in the divorce proceedings filed under Section 13 of the said Act. The expression "Desertion" had come up under the judicial scrutiny of this Court in ***BipinChandra JaiSinghBai Shah vs. Prabhavati***[3], which was again considered in case of ***Lachman UtamChand Kirpalani vs. Meena alias Mota***[4]. This Court collating the observations made in the earlier decisions, stated its view as under: -

"Collating the aforesaid observations, the view of this Court may be stated thus: Heavy burden lies upon a petitioner who seeks divorce on the ground of desertion to prove four essential conditions, namely, (1) the factum of separation; (2) animus deserendi; (3) absence of his or her consent; and (4) absence of his or her conduct giving reasonable cause to the deserting spouse to leave the matrimonial home."

**12.** Recently, in ***Debananda Tamuli vs. Kakumoni Kataky***[5], the Court referring the decision in case of ***Lachman UtamChand Kirpalani*** (supra) observed as under: -

"7. We have given careful consideration to her submissions. Firstly, we deal with the issue of desertion. The learned counsel appearing for the appellant relied upon the decision of this Court in Lachman Utamchand Kirpalani [Lachman Utamchand Kirpalani v. Meena, (1964) 4 SCR 331 : AIR 1964 SC 40] which has been consistently followed in several decisions of this Court. The law consistently laid down by this Court is that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be animus deserendi on the part of the deserting spouse. There must be an absence of consent

[3] AIR 1957 SC 176
[4] AIR 1964 SC 40
[5] (2022) 5 SCC 459

on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home. The view taken by this Court has been incorporated in the Explanation added to subsection (1) of Section 13 by Act 68 of 1976.

The said Explanation reads thus:

"13. Divorce. — (1) * * *

Explanation. —In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.""

"8. The reasons for a dispute between husband and wife are always very complex. Every matrimonial dispute is different from another. Whether a case of desertion is established or not will depend on the peculiar facts of each case. It is a matter of drawing an inference based on the facts brought on record by way of evidence."

**13.** Coming back to the facts of the present case, the Single Bench of the High Court holding that the appellant-petitioner had failed to prove the grounds of "cruelty" and "desertion" as contemplated in Section 13(1) of the said Act, had reversed the decree of divorce passed by the Trial Court. The Division Bench vide the impugned order confirmed the order passed by the Single Bench and observed by holding as under: -

"16. Coming now to the facts of the present case, it is undisputed that the wife continued to live with the husband without any grievance for 21 years and gave birth to three children. She looked after the children. One daughter was married in the year 1984 before separation. The grievance put-forward by the husband for the first time was that the wife did not join him when he was transferred to Madras. The parties were settled at Amritsar and lived there for 21 years where children and parents of the appellant were also living. Case of the wife is that the husband got himself transferred of his own volition. At this stage of life when there were three grown up children and the wife had been living with the husband for 21 years, if unilateral decision was taken by the husband and the wife expressed her opposition, could it be held that the wife deserted the husband or treated him with cruelty. We have already referred to the settled principles on the subject. If the wife did not agree to have herself transferred to Madras, in the given situation, it could not be held that the wife wanted to bring cohabitation permanently to an end without reasonable cause. This did not show any animus deserendi nor it could be held that the wife was cruel to the husband. Taking an overall view of the matter, it cannot be held that the view taken by the learned Single Judge is not a possible view so as to call for interference in an appeal under Letters Patent. The fact remains that the wife continued to look after the children and arrange their marriages. There is nothing to show that the husband made any effort to join the wife, who was living in the matrimonial home or to look after any of the children. The burden of proof is on the appellant to prove desertion and cruelty."

"17. Learned counsel for the appellant refers to Exh.A-8, which is a letter addressed to the wife, in response to her representation for maintenance. The contents of the letter are as under: -

"2. It is informed that we have tried our best to help you both to reconcile in the long-term interest of the welfare of the family and children. Accordingly, it is learnt that Wg Cdr. N.S. Panesar, in good faith and on our counsel signed for reconciliation. But it seems that you are not ready to reconcile even in the interest of children. Under the circumstances, there is no other alternative for this HQ except to advice you to redress your grievance, if any, in the Court of law. However, on moral and humanitarian grounds we have counselled your husband to continue remitting Rs.800/- p.m. till the matter is settled to mutual satisfaction."

He also refers to Exh.A-17, which is letter written by the son of the appellant, asking the appellant to send money to the Court."

"18. Next contention raised is that the jewellery should not be given to the wife. Learned counsel for the appellant suggested that a grand-daughter of the appellant should visit the appellant, in which case, the appellant will have no objection to the jewellery being given to the grand daughter. Learned counsel for the wife states that the grand-daughters will visit the appellant as often as possible and also depending on desire and attitude of the appellant but not as a condition for finding of learned Single Judge to be upheld. Finding of learned Single Judge in this regard is as under: -

" ... This is a fit case to hand over the jewellery which was given to appellant (wife) at the time of marriage and thus, I -direct the Manager, Bank of Baroda, Sector 22, Chandigarh to hand over all the jewellery to the appellant lying in the locker ... ""

**14.** Having regard to the observations made by the Single Bench and Division Bench of the High Court, we do not propose to take any different view. Suffice it to say that the appellant had failed to prove that the respondent had treated the appellant with "Cruelty" or that the respondent had "Deserted" the petitioner as contemplated in Section 13(1)(ia) and 13(1)(ib) respectively of the said Act.

**15.** This brings us to advert to the submission made by the appellant for granting the decree of divorce on the ground that the marriage has irretrievably broken down. There is no dispute that the parties are staying separate since last many years and all the efforts to bring them together have failed. Under the circumstances one may presume that the marriage is emotionally dead and beyond salvation and that there is an irretrievable break down of marriage between the parties. However, the question is, should the irretrievable break down of marriage necessarily result into a decree of divorce to be granted under Article 142 of the Constitution of India?

**16.** Recently, the Constitution Bench of this Court in the case of ***Shilpa Shailesh vs. Varun Sreenivasan*** (supra) while adumbrating the issue with regard to irretrievable break down of marriage and passing of decree of divorce under Article 142 of the Constitution, observed as under: -

"41. Having said so, we wish to clearly state that grant of divorce on the ground of irretrievable breakdown of marriage by this Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both parties. It is obvious that this Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. That the marriage has irretrievably broken down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations. We would not like to codify the factors so as to curtail exercise of jurisdiction under Article 142(1) of the Constitution of India, which is situation specific. Some of the factors mentioned can be taken as illustrative, and worthy of consideration.

42-49. ……

50. In view of the aforesaid discussion, we decide this reference by answering the questions framed in the following manner:

(i) The scope and ambit of power and jurisdiction of this Court under Article 142(1) of the Constitution of India.

This question as to the power and jurisdiction of this Court under Article 142(1) of the Constitution of India is answered in terms of paragraphs 8 to 13, inter alia, holding that this Court can depart from the procedure as well as the substantive laws, as long as the decision is exercised based on considerations of fundamental general and specific public policy. While deciding whether to exercise discretion, this Court must consider the substantive provisions as enacted and not ignore the same, albeit this Court acts as a problem solver by balancing out equities between the conflicting claims. This power is to be exercised in a 'cause or matter'.

(ii) In view of, and depending upon the findings of this bench on the first question, whether this Court, while hearing a transfer petition, or in any other proceedings, can exercise power under Article 142(1) of the Constitution, in view of the settlement between the parties, and grant a decree of divorce by mutual consent dispensing with the period and the procedure prescribed under Section 13-B of the Hindu Marriage Act, and also quash and dispose of other/connected proceedings under the Domestic Violence Act, Section 125 of the Cr. P.C., or criminal prosecution primarily under Section 498-A and other provisions of the I.P.C. If the answer to this question is in the affirmative, in which cases and under what circumstances should this Court exercise jurisdiction under Article 142 of the Constitution of India is an ancillary issue to be decided.

In view of our findings on the first question, this question has to be answered in the affirmative, inter alia, holding that this Court, in view of settlement between the parties, has the discretion to dissolve the marriage by passing a decree of divorce by mutual consent, without being bound by the procedural requirement to move the second motion. This power should be exercised with care and caution, keeping in mind the factors stated in Amardeep Singh (supra) and Amit Kumar (supra). This Court can also, in exercise of power under Article 142(1) of the Constitution of India, quash and set aside other proceedings and orders, including criminal proceedings.

iii) Whether this Court can grant divorce in exercise of power under Article 142(1) of the Constitution of India when there is complete and irretrievable breakdown of marriage in spite of the other spouses opposing the prayer?

This question is also answered in the affirmative, inter alia, holding that this Court, in exercise of power under Article 142(1) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do 'complete justice' to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. The Court, as a court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed."

**17.** In view of the afore-stated decision of the Constitution Bench, there remains no shadow of doubt that this Court can depart from the procedure as well as the substantive laws, and exercise its discretion under Article 142 for dissolving the marriage between the parties by balancing out the equities between the conflicting claims of the parties, however, such discretion should be exercised with great care and caution. It has also laid down that this discretionary power could be exercised for dissolving the marriage on the ground of its irretrievable break down to do "complete justice," though one of the spouses opposes the prayer for dissolution of marriage.

**18.** However, in our opinion, one should not be oblivious to the fact that the institution of marriage occupies an important place and plays an important role in the society. Despite

the increasing trend of filing the Divorce proceedings in the courts of law, the institution of marriage is still considered to be a pious, spiritual, and invaluable emotional life-net between the husband and the wife in the Indian society. It is governed not only by the letters of law but by the social norms as well. So many other relationships stem from and thrive on the matrimonial relationships in the society. Therefore, it would not be desirable to accept the formula of "irretrievable break down of marriage" as a strait-jacket formula for the grant of relief of divorce under Article 142 of the Constitution of India.

**19.** So far as the facts of the present case are concerned, as stated earlier, the appellant-husband is aged about 89 years and respondent-wife is aged about 82 years. The respondent all throughout her life has maintained the sacred relationship since 1963 and has taken care of her three children all these years, despite the fact that the appellant-husband had exhibited total hostility towards them. The respondent is still ready and willing to take care of her husband and does not wish to leave him alone at this stage of life. She has also expressed her sentiments that she does not want to die with the stigma of being a "divorcee" woman. In contemporary society, it may not constitute to be stigma but here we are concerned with the respondent's own sentiment. Under the circumstances, considering and respecting the sentiments of the respondent wife, the Court is of the opinion that exercising the discretion in favour of the appellant under Article 142 by dissolving the marriage between parties on the ground that the marriage has irretrievably broken down, would not be doing "complete justice" to the parties, would rather be doing injustice to the respondent. In that view of the matter, we are not inclined to accept the submission of the appellant to dissolve the marriage on the ground of irretrievable break down of marriage.

**20.** The appeal therefore is dismissed.