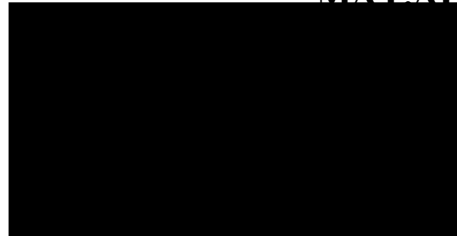




* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Reserved on: 31st July, 2023**
Pronounced on: 06th September, 2023

+ **MAT APP.(F.C.) 197/2022**



..... Appellant

Mr. Akash Madan, Advocate with
appellant in person.

..... Respondent

Through: Ms. Anurag Vashisht, Advocate
with respondent in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. An appeal under Section 28 of the Hindu Marriage Act, 1955 (*hereinafter referred to as "the Act, 1955"*) has been filed by the appellant challenging the Judgment dated 31.08.2007 *dismissing* the appellant's petition for divorce on the grounds of cruelty and desertion under Section 13(1)(ia) and 13(1)(ib) of the Act, 1955.

2. The **facts in brief** are that the parties to the proceedings got married on 09.04.1989, according to Hindu customs and rites, though no child was born from the said wedlock. The parties resided together for almost 7 years after which they parted ways on 27.11.1996.

3. The petitioner/appellant has claimed that she was subjected to various acts of physical and mental cruelty by the respondent and his family members.

3.1 The appellant has asserted that she was a graduate of Delhi University with outstanding achievements in education as well as in extra-



curricular activities. She was working with an MNC prior to her marriage and had a good standing in the Company with her employer. At the time of the marriage it was represented that the respondent was a graduate of Delhi University earning Rs.10,000/- per month from all sources and that he was working in an Export House on a monthly salary of Rs.3,000/-. Apart from that he was doing private business and was earning Rs.6,000 to 7,000/- per month and his total monthly income was Rs.10,000/-. It was also represented that the parents of the respondent had a good financial status and position and they owned a two and a half storeyed bungalow in Naraina Vihar, New Delhi. However, she subsequently came to know that the respondent was not a graduate and was not working in any concern and he also had no job in any Export House. He was not having any additional income and the only money he used to get was from his mother.

3.2 The appellant suffered her first abortion on 14.08.1992, at the Grover Nursing Home, on account of physical and mental atrocities committed by the respondent as well as his family members and she was not even taken care of during her illness. She also got pregnant in the year 1996 at which time she was turned out of the matrimonial home on 27.11.1996. Additionally, she again suffered miscarriage on 30.05.1997 at the Hem Raj Jain Nursing Home, Janakpuri, New Delhi because of the cruel behaviour of the respondent.

3.3 The respondent and his family started making demands for money after the marriage. The respondent and his family members also demanded a flat for the respondent, from the father of the appellant, by claiming that he had retired from a senior position in the Ministry of



Defence and had his own house. A demand for money was also made to invest in the business of the respondent. On 10.12.1994, the respondent/husband demanded a sum of Rs.10,000/- to let the appellant/wife to attend the marriage of her cousin Anita.

3.4 The respondent was also found to be suffering from a number of vices including gambling and consuming liquor daily. The respondent, due to his own frustrations and vices, started giving appellant merciless beatings and maltreated her by abusing in foul language. On one occasion when she refused to heed to the unjust demands of the respondent and bring money from her parents, her forehead was hit against the wall because of which blood started oozing out and she became unconscious. She was treated like a maidservant in the house and was given no love and affection by the respondent and his family members.

3.5 The appellant was not provided with basic necessities of life or with medical care. She once fainted in the office and had to be admitted in the Ram Manohar Lohia Hospital on 14.12.1994. It is because of the cruel conduct of the respondent that she became a patient of Epilepsy, despite which neither the respondent nor any of his family members ever came to see her in the hospital, where she was admitted for one day from 14.12.1994 to 15.12.1994. Due to her serious physical condition she was taken to her parental home on 15.12.1994 by her father, but none from the family of the respondent bothered to even contact her or take her back to the matrimonial home.

3.6 On account of the marriage of the younger brother of the respondent on 06.02.1995, the respondent and his family members came to the parental house of the appellant and promised not to inflict any



atrocities on the appellant or to make any unlawful and unjust demands and assured that the respondent would stop drinking or gambling. On these assurances and with the hope that the respondent would mend his ways, the appellant went back to the matrimonial home in the first week of February 1995, but soon after the marriage of the younger brother of the respondent, he went back to his original life style.

3.7 The father of the appellant, in order to generate some source of income for the respondent and help him to earn his livelihood, bought him a four-wheeler scooter of the make Bajaj which he got financed from Mini Auto Deal. However, the respondent, due to his irresponsible and dishonest attitude, was unable to generate any income from the four wheeler. The appellant and her father paid the instalments for about seven months but thereafter, the respondent failed to pay the instalments owing to which the appellant suffered a loss of more than Rs. 20,000/- and ultimately surrendered the vehicle to the Finance Company. Instead of mending his ways, the respondent had also incurred huge debts without any stable source of income to pay the same and thus, the appellant had to provide him financial assistance by arranging money from her father or her own income sources.

3.8 The respondent started levelling allegations against the appellant of having illicit relationships with her brother-in-law Ashok Bhagat and many other persons, only to create a situation where she would give in to all the demands of the respondent and his family members. The respondent also wrote several letters against her father and brother-in-law Ashok Bhagat to cause humiliation amongst her friends and relatives.

3.9 In addition to the demands of money for business assistance, flat,



physical abuse and threats, the respondent threatened the appellant that he would compel her to commit suicide if his demands were not met. The respondent also restrained the appellant from joining her sister's wedding on 04.12.1996 and demanded a sum of Rs. 2 lakhs. Thus, the appellant came to her parental home on 27.11.1996, but thereafter the respondent told her that the doors of the matrimonial home were closed permanently and if she tried to return, she would be killed by the family of the respondent. Since her jewellery and dowry articles were not returned, she had to file a complaint in the Crime Against Women (CAW) Cell in August, 1997.

4. The petitioner/appellant had thus claimed that she suffered cruelty due to the various acts of the respondent and his family members and sought divorce on the ground of cruelty under **Section 13(1)(ia) of the Act, 1955**.

5. The petitioner/appellant also asserted that she had been deserted by the respondent for more than two years prior to the filing of the petition and sought divorce on the ground of desertion under **Section 13(1)(ib) of the Act, 1955**.

6. The respondent in his **written statement** had denied all the allegations made against him. He denied that any dowry demands were made or any kind of cruelty was inflicted on the appellant. He also denied the allegations of gambling, drinking and other vices. The respondent explained that he had attempted various vocations for his career to earn money and put all his efforts, but he could not succeed. He further admitted that the father of appellant had introduced him to a Finance Company and he had purchased a Four Wheeler Tempo (Bajaj)



on finance. He, however, denied that seven instalments were paid by the appellant and her father. It was explained that his transport business failed because of his lack of experience. Thereafter, in consultation with the father of the appellant, he sold the Tempo back to the Finance Company. However, he denied that consequent thereto, the father of the appellant had to suffer a loss of more than Rs.20,000/-. He claimed that he had paid and cleared all the outstanding dues of the Finance Company. He further claimed that he thereafter purchased a Three Wheeler commercial vehicle, having got it financed from a Finance Company, but he ultimately had to surrender the Three Wheeler vehicle to the Finance Company as he did not succeed in his business. He denied that the father of the appellant had to suffer loss of Rs.15,000/- on this account.

7. The respondent had further explained that the younger sister of the appellant had to get married on 14.12.1996 for which the appellant's father had come to invite him and the other family members. However, he had suffered multiple serious injuries on his head and other parts of the body in a road accident in the year 1996 and was not in a position to move freely or to attend the marriage as per the advice of the Doctor. The respondent denied that they ever threatened the appellant or claimed that they would create a situation where she would be compelled to commit suicide. She herself left the matrimonial home along with her cousin brother Ravi on 27.11.1996 and his telephonic calls and multiple requests to her to return did not meet any success. He went to her parental home in July, 1997 and requested her parents to send her back, but they made a demand of Rs.1 lakh before sending the appellant to the matrimonial home. They also demanded that the first floor of the matrimonial home



be vacated for the sole residence of the appellant. He was unable to accede to the demands consequent to which a fake and frivolous complaint dated 06.08.1997 was filed in the CAW Cell. The items of the appellant were returned on 12.09.1997 and the complaint was closed.

8. He clarified that he suffered an accident in 1996 after which he stopped consuming alcohol on medical advice. The respondent further asserted that the appellant was suffering from Epilepsy and High Blood Pressure even prior to her marriage. Moreover, there was a constant interference in the day to day life of the parties by the appellant's parents, sisters and their husbands.

9. The respondent also claimed that it is the appellant who left the matrimonial home without any cause but with ulterior motive and despite several efforts, she refused to join the matrimonial home. He even initiated reconciliation proceedings before the Indian Chamber of Commercial Arbitration and Conciliation on 06.10.1997, but the Appellant failed to inform the respondent about her pregnancy even at that time. The respondent asserted that he was still willing to join the appellant and contested the divorce petition. He denied levelling any allegations of illicit relationship of the appellant with her brother-in-law or with any other person. Hence, it was claimed by the respondent that the divorce petition was liable to be dismissed.

10. The **issues** were framed by the learned Additional District Judge on the pleadings on **08.02.2001** as under :

“(i) Whether the petitioner has been treated with cruelty by the respondent after solemnization of the marriage? (OPP).

(ii) Whether the petitioner was deserted by the respondent for a period not less than two years prior to the filing of the present



petition? (OPP).

(iii) Relief.”

11. The evidence was led by both the parties.

12. The Learned Additional District Judge, Delhi, after considering the testimony of the parties and the incident narrated therein by the appellant, concluded that none of the incidents amounted to cruelty. Likewise, it was held that the respondent had not deserted the appellant as was claimed by her. The divorce petition was accordingly, dismissed.

13. Aggrieved by the dismissal of the Divorce Petition, the present appeal has been preferred by the appellant/wife.

14. **Submissions heard.**

15. It is an admitted fact that the parties got married on 09.04.1989 and resided together till 27.11.1996, when the appellant moved to her parental home. It is further an admitted fact that the parties have no children from the said wedlock. The appellant got pregnant in 1992 but suffered an abortion. She also got pregnant in 1996 but a dead child was born to her.

16. The appellant had claimed that though at the time of her marriage, the father of the respondent had assured that they had no demand for dowry and would respect the girl, but he unfortunately died just one month after their marriage. Thereafter, the respondent and his family members started harassing her and making demands for money, not only for investing in the business of the respondent but also started claiming a house for separate residence of the appellant and the respondent. Though the appellant wife had claimed harassment on account of dowry and asserted that she was physically abused by the respondent and his family members, none of these individual acts could be proved by evidence, as



rightly observed by the learned Additional District Judge.

17. The appellant herself has revealed the true reasons for discord in the marriage. She was qualified, educated and was working in an MNC since prior to her marriage. On the other hand, at the time of marriage it was represented that respondent was a graduate and was working in an Export House and was earning Rs.3,000/- per month. He had income from other sources which added up to Rs.10,000/- per month. However, the respondent, as per his own admissions, could not stabilize or establish a regular income. The father of the appellant, feeling concerned, had guided him to buy a four-wheeler vehicle for transportation business on instalments, but this business was unsuccessful and the vehicle had to be surrendered. Thereafter, a Three Wheeler commercial vehicle was purchased on instalments, but again the business did not take off. It is apparent from the assertions of the appellant that the respondent used to remain at home since he had no regular job and source of income and indulged in vices of alcohol consumption and gambling. It is but natural that with this kind of financial disparity, differences between the parties were bound to crop up.

18. It is further not in dispute that the appellant had gone to her parental home on 15.12.1994 and was later requested to return to the matrimonial home because of the marriage of the younger brother of the respondent. It is quite evident from the respective testimony of the parties and the father of the appellant that there was a discord amongst the two and despite efforts being made by the appellant to adjust in this difficult situation, she was unable to adjust in the family where the husband is not earning and is financially unstable, aside from being dependent upon his



mother for income.

19. At this juncture, it becomes apposite to evaluate the concept of “Cruelty”, as the same has not been defined in the Act, 1955.

20. “*Cruelty*”, which may be a ground for divorce, may be “physical” or “mental”. The “physical cruelty” is easy to comprehend as it involves causing physical harm to a person. In the instant case, though the appellant has claimed that she was being physically abused, beaten regularly and on one occasion her head was struck against the wall because of which she had to be taken to the hospital. However, there is no medical document to corroborate her assertions, except a medical report of RML Hospital dated 14.12.1994 (Mark R1), which merely reflected that the appellant suffered from an epilepsy attack on the said date. Also, it cannot be over looked that if she was being subjected to physical cruelty on regular basis, she would have made a call or complaint to the police on some occasion. There being no corroborative evidence or document to support the allegations of physical cruelty aside from Medical Report Mark R-1 which supports the case of respondent that she was suffering from epilepsy, it cannot be said that the respondent was responsible or was instrumental in causing any physical cruelty.

21. However, the more challenging aspect is “*mental agony*” which has also been recognized as part of “*cruelty*”, and a valid ground for divorce. The contours of “mental cruelty” were defined in case of *V. Bhagat v. D. Bhagat* (1994) 1 SCC 337, wherein the Hon’ble Supreme Court held that mental cruelty in Section 13(1)(ia) of the Act, 1955 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/appellant. 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.

22. The question of determination of mental cruelty was answered in the case of Shobha Rani v. Madhukar Reddi (1998) 1 SCC 105. The Apex Court observed that the enquiry of mental cruelty must begin with the nature of the cruel treatment and subsequently, the impact of such treatment on the spouse must be examined. It must be seen whether such actions caused reasonable apprehension that it would be harmful or injurious to live with the other spouse. It was further observed that the same is a matter of inference to be drawn from the facts and the circumstances of the case.

23. In light of the foregoing, it emerges that “Mental Cruelty” cannot be defined in any strait jacket parameter. The circumstances and the situation of the spouses has to be considered to ascertain if certain acts, which are complained of, would be a source of mental agony and pain.

24. In the present case, it is easy to decipher the mental trauma as the appellant was working and the respondent was not working. There was a huge disparity in the financial status of the appellant and the respondent. The endeavours of the respondent to be able to sustain himself had



admittedly failed. Such kind of financial instability is bound to result in mental anxiety on account of husband being not settled in any business or profession which resulted in other vices, can be termed as a constant source of mental cruelty to the appellant. The term “*mental cruelty*” is wide enough to take within its ambit the “*financial instability*”.

25. The appellant has also stated in her petition that the respondent started levelling allegations against her of having illicit relationship with her brother-in-law Ashok Bhagat and many other persons, to which the respondent has vaguely replied that there was constant interference of her brother-in-laws and other family members, which lends credence to her testimony. There can be no grater cruelty than making false allegations against the chastity of a woman.

26. It has also come in evidence that the appellant had gone to her parental home on 27.11.1996 but thereafter did not return to her matrimonial home. She was pregnant at that time but unfortunately, the child born was a still born. While the respondent has asserted that he made several efforts to bring her back to the matrimonial home, there is no evidence to show that he made any sincere efforts of bringing back the appellant. Be that as it may, it cannot be overlooked and ignored that the parties have been living separately since 1996. Though the respondent has claimed that he had even approached the Indian Chambers of Commercial Arbitration and Conciliation in the year 1997, but it did not meet any success, but there is no cogent evidence.

27. It is on record that the parties are separated since 1996 and there is no conjugal relationship between the parties since then. “*Cohabitation*” and “*Conjugal relationship*”, are the essence of a



marriage. *“The essence of marriage is sharing of common life, a sharing of all the happiness that life has to offer and all the misery that has to be faced in life, an experience of the joy that comes from enjoying, in common, things of the matter and of the spirit and from showering love and affection on one's offspring. Living together is a symbol of such sharing in all its aspects.”*

28. The very fact that the parties have been living separately since November 1996 and no conciliation has taken place for the past about 27 years, proves that the parties were unable to sustain their matrimonial relationship. For a couple to be deprived of each other's company and of conjugal relationship can be interpreted only as amounting to mental cruelty.

29. In one of the momentous decisions of the Apex Court in the case of *Naveen Kohli v. Neelu Kohli* (2006) 4 SCC 558 it has been observed that once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage, which has long ceased to be effective, are bound to be a source of greater misery for the parties.

30. The Apex Court in the case of *Samar Ghosh v. Jaya Ghosh* (2007) 4 SCC 511 laid down certain guidelines with respect to Section 13(1)(i-a) of the Act, 1955 and observed that in a marriage where there has been a



long period of continuous separation it may fairly be concluded that the marital 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 and can be termed as mental cruelty.

31. While referring to the case of Samar Ghosh (supra) the Apex Court, in the case of Gurbux Singh v. Harminder Kaur (2010) 14 SCC 301, observed by that while trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would entitle a party to a decree of divorce on the ground of cruelty; continuing and subsisting unjustifiable and reprehensible conduct which affects the physical and mental health of the other spouse may lead to mental cruelty.

32. Recently, the Apex court in the case of Rakesh Raman v. Kavita 2023 SCC OnLine SC 497, after relying upon the above referred observations of the Three Judge Bench in Samar Ghosh (supra), looking at the facts of the said case where the parties were residing separately for almost 25 years; had no cohabitation during this period; no child is born from the said wedlock; and repeated efforts for reconciliation for settlement resulted in failure, concluded that:

“17.When we take into consideration the facts as they exist today, we are convinced that continuation of this marriage would mean continuation of cruelty, which each now inflicts on the other. Irretrievable breakdown of a marriage may not be a ground for dissolution of marriage, under the Hindu Marriage Act, but cruelty is. A marriage can be dissolved by a decree of divorce, inter alia, on the ground when the other party “has, after the solemnization of the



marriage treated the petitioner with cruelty". In our considered opinion, a marital relationship which has only become more bitter and acrimonious over the years, does nothing but inflicts cruelty on both the sides. To keep the façade of this broken marriage alive would be doing injustice to both the parties. A marriage which has broken down irretrievably, in our opinion spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is therefore a ground for dissolution of marriage under Section 13 (1) (ia) of the Act.

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21. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1) (ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock."

33. The facts in the present case are almost in *para meteria*. A dead relationship only brings pain and agony and we find that the Court cannot be a party to perpetuation of such mental cruelty. The marriage ties which if kept lingering on account of irreconcilable differences and protracted litigation, only bring more cruelty and acrimony. Therefore, such situation



of separation of more than 27 years since December, 1996 is a ground for dissolution of marriage on the ground of cruelty. We, therefore, hold that the appellant is entitled to divorce on the ground of cruelty under Section 13(1)(ia) of the Act, 1955.

34. The appellant has also sought divorce on the ground of desertion. Admittedly, the parties are living separately since November, 1996. As already observed above, though respondent has claimed that he made efforts to reconcile with the appellant and bring her back to the matrimonial home, no cogent efforts are evident from the evidence. It can be fairly concluded from the entire compendium of facts that the respondent had separated from the appellant in 1996 and he had no intention to resume the matrimonial ties. We, therefore, find that the respondent had separated with an intent to not resume the matrimonial relationship for a period of more than two years prior to the filing of this petition. We, thus also hold that the appellant is also entitled to divorce on the ground of desertion under Section 13(1)(ib) of the Act, 1955.

35. We, therefore, allow the appeal and grant divorce on the grounds of cruelty and desertion under Section 13 (1)(ia) and 13 (1)(ib) of the Hindu Marriage Act, 1955. Decree sheet be prepared accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 06, 2023/val/jn