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

% Reserved on: 05.08.2021
Pronounced on: 01.12.2021

\+ MAT.APP.(F.C.) 75/2020

RAHUL KESARWANI .....Appellant

Through: Mr. Abhey Narula, Advocate

versus

SUNITA BHUYAN .....Respondent

Through: Respondent in person

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. The present appeal has been filed by the Appellant (Husband) under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 challenging the judgment and decree dated 30.11.2019, whereby the petition filed by the Respondent for dissolution of Marriage under Section 13(1)(ia) and (iii) of the Hindu Marriage Act, 1955 has been allowed, and the marriage between the parties has been dissolved.

2. At the very outset, it must be noted that we on 15.07.2021, had interacted with the parties to explore the possibility of a mediated settlement. However, it was of no avail.

3. The necessary facts, giving rise to the present appeal are that the Appellant-husband and the Respondent-wife got married on 06.05.2011 at Delhi according to Hindu rites and ceremonies. The parties resided

together at J1/226, DDA Flats, Kalkaji, New Delhi till 10.07.2011, after which the respondent left the matrimonial home.

4. On 01.09.2012, the Respondent filed a petition under Section 13(1)(ia) and 13(iii) of the Hindu Marriage Act, 1955. In the petition, the Respondent claimed that the parties did not consummate their marriage; that there were dowry demands by the appellant and his family members; that the appellant fought with her constantly; that the appellant used to torture her; that he did not spend any amount towards household expenses and; lastly that he was suffering from a Bi-Polar disorder which he concealed from her before marriage.

5. The Family Court found that:

   i. the respondent/wife has brought sufficient material on record and given specific incidents of cruelty on the part of the appellant/husband

   ii. The respondent proved that the appellant was abusive, and was in the habit of picking up quarrels frequently.

   iii. The appellant abused the respondent making the allegations that she was having sexual relationship with her brother and father.

   iv. The appellant was a patient of "PSYCHOMOTOR ACTIVITY, BIOLAR DISORDER AND PERSONALLITY DISORDER MULTIPLETRAIT".

   v. The appellant did not show any interest, whatsoever, in establishing conjugal relationship with the respondent.

   vi. The appellant used to insult the respondent before relatives/domestic helps.

vii. The appellant had assaulted, beaten, and tortured the respondent continuously, accusing her of bad character suspecting of her having affairs.

viii. The appellant did not have physical intimacy with the respondent for long.

ix. On 10.07.2011, when the respondent told the appellant that house rent and other bills for two months have not been paid, the appellant asked the respondent to bring Rs. 1.0 lac from her mother and when she refused, the appellant threw utensils and glasses on the floor.

x. The appellant threatened the respondent to butcher her with a knife. The respondent was scared of him. After 10.07.2011, the parties did not have any conjugal relationship.

xi. The conduct of the appellant by no stretch of imagination, could be termed as ordinary wear and tear of matrimonial life. The appellant subjected the respondent with continuous ill-treatment. The contemporaneous evidences, in the form of complaints filed by the respondent with the police against the behaviour of the appellant were relied upon.

xii. The above series of acts/incidents would constitute the mental cruelty, which is a ground for divorce under Section 13(1)(ia)of Hindu Marriage Act.

6. The main contentions of the Appellant in this appeal are as under :

(i) That the Family Court has not adjudicated the matter based on pleadings and has given findings on issues which were neither pleaded nor proved.

(ii) That the Respondent was not a reliable witness. The averments made in her petition are false to her knowledge and there exist many inconsistencies between the averments in the petition filed by her, and the statements made by her in the Cross examination before the Family Court.

(iii) That the Respondent before the Family Court did not press her claim for divorce on the ground of unsound mind. However, the Family Court still proceeded to deal with the same.

(iv) That in the investigation conducted by the Police in FIR No.198/2012 it was concluded that no offence of dowry demand or harassment was made out against the parents of appellant or the appellant himself, and the same was never challenged by the Respondent.

(v) It is alleged by the Appellant that the Family Court had contradicted itself in the judgment while noting that it is the case of the Respondent that the parties did not have conjugal relations since the first day of marriage, but later observed that it is in fact not the case of the Respondent that they did not have physical intimacy during their marriage.

(vi) That the Family Court relied on three alleged incidents of 10.07.2011, 21.10.2011 and 26.12.2011 in deciding the matter, which had not even been pleaded by the Respondent by way of her evidence.

(vii) The Family Court held that making allegations against the character of the spouse is cruelty but did not substantiate how the Respondent had proved that in her Petition.

(viii) The Family Court has failed to give any reasons as to how the Respondent has proved her allegations relating to the alleged abuse against her character or aspersions of infidelity.

(ix) That the Family Court erred in law and on facts, by finding that prior medical condition of the Appellant entitled the Respondent to a divorce.

(x) That the Family Court had not given any reasoning as to why- without any documentary evidence being proved on record, or with any third party affirmation the respondent had successfully proved her case.

7. We have heard Learned Counsel for the Appellant and have gone through the impugned judgment and the documents placed on record before us.

8. The Appellant has stated that the Respondent was not a reliable witness and the Family Court erred in relying upon her statements. However, we do not agree with this submission of the Appellant, as not only had the Respondent substantiated and supported her claims by way of her Evidence Affidavit and Written Submissions, besides being cross examined before the Family Court. The Family Court has considered the said aspect in the impugned judgment as follows:

> *"40. I agree with the contention of Ld. Counsel for the respondent that in the evidence affidavit, the petitioner has narrated some facts/incidents that the respondent burnt her with cigarette, once fractured her hand by beating her with chimta,*

her parents-in-law refused to interfere even when she told them that the respondent was getting anti-social people at home, which facts she has not stated in her petition or the replication and that in view of the law laid down in the case Prakash Ratan lal (supra), the evidence beyond pleadings must be rejected but besides above, there is enough direct and circumstantial evidence, which substantiate the allegations of the petitioner that she was subjected to mental & physical cruelty as discussed in the preceding paras. In the instant case, she has given the specific instances, how she was subjected to mental & physical cruelty."

No specific reason has been pointed out by the appellant to claim that the Respondent was not a reliable witness. Her cross examination by the appellant does not show that she faltered or could not withstand the same. No specific contradictions have been brought forth by the appellant, in the testimony of the Respondent, to support his submissions that the Respondent has not a truthful and reliable witness. It is a well settled proposition that pleadings and evidence have to be read as a whole and no single instance can be picked and read in isolation. The impugned judgment in above paragraph, has noted that there are factual instances found in the evidence, which are not pleaded in pleadings. However, those incidents are not the fulcrum of the findings of the Family Court that the Respondent has been subject to mental and physical cruelty by the Appellant.

One incident, not having been pleaded or having certain inconsistencies, cannot make an individual an unreliable witness. The test of unreliable witness has been laid down in ***Kuria v State of Rajasthan*** (2012) 12 SCC 433 which states:

> "30. *This Court has repeatedly taken the view that the discrepancies or improvements which do not materially affect the case of the prosecution and are insignificant cannot be made the basis for doubting the case of the prosecution. The courts may not concentrate too much on such discrepancies or improvements. The purpose is to primarily and clearly sift the chaff from the grain and find out the truth from the testimony of the witnesses. Where it does not affect the core of the prosecution case, such discrepancy should not be attached undue significance. The normal course of human conduct would be that while narrating a particular incident, there may occur minor discrepancies.*
>
> *34. Where the witness is wholly unreliable, the court may discard the statement of such witness, but where the witness is wholly reliable or neither wholly reliable nor wholly unreliable (if his statement is fully corroborated and supported by other ocular and documentary evidence), the court may base its judgment on the statement of such witness. Of course, in the latter category of witnesses, the court has to be more cautious and see if the statement of the witness is corroborated."*

The facts of the present case do not meet the said test. We do note there was indeed a minor inconsistency in the statement of the Respondent-wife during her cross examination relating to the payment of Household expenses. However, the same is a minor aberration and does not make the Respondent-wife an unreliable witness. Minor aberrations are normal to occur, and cannot be a reason to discard the entire testimony of a witness.

9. Further, the grievance of the Appellant as to why the Family Court adjudicated on the ground of unsound mind, when the same was not pressed by the Respondent is again irrelevant for us. The divorce petition was filed under two grounds i.e. Section 13(1)(ia) and Section

13(iii) of the Hindu Marriage Act, 1955. The Family Court had to deal with both the grounds in the impugned judgment, as neither of these grounds were withdrawn by the Respondent-wife. However, the same has no bearing on the matter, as the Respondent – wife failed to prove the necessary ingredients of Section 13(1)(iii) before the Family Court and the divorce was granted on the sole ground of '*cruelty*'. It was made clear by the Family Court that there was no finding related to the unsoundness of mind of the Appellant, and that issue was decided in favour of the Appellant. The Family Court in paragraph 47 held :

> "*47. Now the question arises whether the respondent was incurably of unsound mind? Although, the petitioner has placed a document Ex. RWI / PIO i.e. the discharge summary of the respondent, but from this document no inference can be drawn that the respondent was incurably of unsound mind or it cannot reasonably be expected to live her with him. He was admitted in Rehab Centre, where he was treated for "PSYCHOMOTOR ACTP / ITY, BIPOLAR DISORDER AND PERSONALLITYDISORDER/MULTIPLE TRAIT". There is no document to that effect that his disease was such that it cannot be cured. I am of the view that petitioner has failed to prove the necessary ingredients of Section 13 (1) (iii) of the Hindu Marriage Act.*"

Thus, aforesaid cannot be a reason for the Appellant to seek the setting aside of the judgment, on this ground.

10. The Appellant has claimed in his appeal that the Respondent admitted herself that there is nothing on record to prove that he or his family demanded money, or any form of dowry from her, and the FIR registered by her in that respect has been closed. Yet, at the same time he has also admitted in his cross examination the fact that his mother

had asked for dowry. The Family Court Judge noted in the judgment that :

> "*42. .... It is also significant to note that in the matrimonial proceedings, strict rule of evidence is not followed. In the email Ex. RWl/P11, he has admitted that in February 2011, when he was on ship, he had asked the petitioner to arrange wine from his friends and colleagues. He has also admitted that he had written an email Ex. RW1/P12 dated 29.12.2011, wherein,* ***he had mentioned that his mother had demanded dowry from her****. I do not find force in the contention of the respondent that he had written these mails at the behest of the petitioner as he wanted to save the marriage.*
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> *ExRW1/P-12 reads as under:-*
>
> *"dear milli*
> *meri saari gaitiyon ko maaf kardo*
> *meri mummy ne jo kuch bhi kaha use chod do mere parivar se tumhara koi Rishta nahin rahega ……* ***tumse dowry maangi… maine tumhe pehle bhi bataya tha ki meri mummy ka nature theek nahin hai….unse zyada batein mat kiya karo……****"*
> *(emphasis supplied)*

Rather by way of her Evidence Affidavit, the Respondent had proved that the Appellant and his family had demanded dowry from her family -both at the time of marriage, and after the marriage and she has even placed on record email chats between herself and the Appellant establishing the same. The respondent, in her Evidence Affidavit had deposed:

> "*14.I say that I got married with the respondent on 6''' May 2011, at Golden Fiesta-AISF Building-venue and all expenses were borne by my family. I state that soon after the time of marriage the Respondent and the other family members particularly the parents, were not happy and were cribbing that they wanted a car, which was not given by my family, however the marriage got over and the next day the I along with the Respondent reached*

the rented accommodation at Govindpuri in Kalkaji with lots of present such as gold rings, chain, suits, golden cufflinks, many utensils in silver along with bedding, clothes, bed, furniture, washing machine, kitchenware etc.
15. I say that the worst stared from the next day of marriage i.e., 7th May 2011 onwards, the parents of the Respondent were also residing then in the rented house at Kalkaji, also the sister was present during the early days after the marriage, I have been harassed by my in-laws and husband. My mother-in-law along with my husband was harassing me for dowry.

17.I say that from very inception of their marriage the respondent and his family members started cursing me for not bring sufficient and adequate dowry according to their economic standard and further told that the dowry at the time of marriage by my parents were Sub-standard products and that is why the respondent started finding fault in every work done by me and started rebuking and using most abusive and filthy language for me and my parents without any reasonable cause and cursed me for not bringing sufficient dowry and cash to make them rich and to raise prestige of my in-laws and economic standard."

Pertinently, the Learned Family Court has not mentioned even the factum of the registration of the said FIR, and the Appellant has not been able to prove that there was no dowry demand whatsoever. Simply stating that there was no dowry demand, is not sufficient to establish the innocence of the Appellant, especially when he himself has accepted that his mother did demand dowry. Thus, we cannot accept this argument of the Appellant. A fact which had been admitted by the Appellant, needed no further proof or corroboration by the Respondent under Section 58 of the Indian Evidence Act, which reads as under:

> "*58 Facts admitted need not be proved. —No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.*"

11. The Appellant has stated that there are several inconsistencies and contradictions in the judgment passed by the Learned Family Court. It was argued by the Appellant that in the judgment, the Family Court first observed that the parties did not have conjugal relations since the first day of marriage, but later stated that it was not the case of the Respondent that they did not have physical intimacy. This submission is meritless. Paragraph 36 of the impugned judgment states that it is the case of the petitioner before it that there was no healthy physical relationship. The Family Court had simply noticed the case of the Respondent-wife and, rather, had made no independent observation with regard to the consummation of their marriage.

12. Further, the Appellant has claimed that the Family Court took into account three incidences which were not even pleaded by the Respondent. The factum that the incidents of 10.07.2011, 21.10.2011 and 26.12.2011 were not pleaded by the Respondent-wife in her petition, but disclosed only in the Evidence Affidavithas duly been appreciated by the Family Court in paragraph 40 of the Impugned Judgment. The Family Court however, has not relied on any of these incidents to come to the conclusion of the Respondent- wife being

subjected to cruelty– and, hence, the Appellant cannot have any reason to challenge the judgment on this ground.

13. The Family Court also held that the Appellant suspecting the Respondent's character and making allegations of infidelity and illicit relationships amounted to cruelty. The Appellant denied making any such allegations or statements. However, the Family Court in the Impugned judgment has found the same in favour of the Respondent wife.

14. On this aspect, we are of the view that the grievance of the Appellant is justified. Apart from the self-serving statement of the Respondent, which was denied by the Appellant, and her controverted testimony, she did not lead any other independent evidence on this aspect.

15. We may, however, observe that even if this allegation is taken as not established against the Appellant, there were other matrimonial misconducts which were clearly established against him, which were sufficient to establish the ground of cruelty under Section 13(1)(ia) against him.

16. The Appellant contends that the Family Court observed that a prior medical condition of his would entitle the Respondent-wife to a decree of divorce. However, that is not the position on record. The above disorder of the Appellant has only been referred to in passing and has not been made basis for granting divorce to the Respondent. In Paragraph 51 of the Impugned Order the Family Court noted the opposite andobserved:

> *"It is true that mental disorder in itself is not a ground for divorce and it is necessary for the party to show that the other*

spouse has been suffering continuously and intermittently from mental disorder and this mental disorder should be of such a kind and to such an extent that he cannot be reasonably be expected to live with her and that the petitioner has failed to prove that the respondent has been suffering from mental disorder to that extent but it is not in dispute that he suffered from "PSYCHOMOTOR ACTIVITY, BIPOLAR DISORDER AND PERSONALLITY DISORDER/MULTIPLE TRAIT" and for which he was treated in Hope Foundation. It was a material information, which he had concealed from the respondent before the marriage."

As per the Appellant's own admission in his Evidence Affidavit, he did seek medical assistance in a Rehabilitation Centre called Hope Foundation and was treated for irritability and depression. A perusal of the discharge summary of the Appellant from Hope Foundation shows that the Appellant was treated for Bipolar Affective Disorder and was admitted twice between 24th October - 8th November 2008. The summary states that he suffered from extreme agitation, irritability and violent behaviour. However, that disorder has not been made the basis for coming to the finding of cruelty, and thus needs no further adjudication.

17. The last aspect argued by the appellant is that the Family Court- without any documentary evidence or third party affirmation, has granted divorce to the Respondent-wife.

18. We do not agree with this submission of the appellant. The numerous complaints and specific incidents of cruelty – both mental and physical, show the true conduct of the Appellant, which cannot be expected in any healthy matrimonial relationship. Therefore the submission of the Appellant that no instance of cruelty has been established does not

impress us. This Court in MAT APP (F.C) 5/2020 titled '***Laxmi v. Kanhaiya Lal'*** has stated :

> "*When the marriage sours, the vows that the couple takes at the time of marriage are a casualty. We take it that neither of the parties to a marriage enters into the matrimonial bond, only to break it later. If the said bond breaches, there are bound to be some underlying reasons for the same. In some cases, those reasons may come to the surface and the court may be able to see them. In others, they may remain latent for myriad reasons. Those reasons would, invariably, be attributable to both the parties, as it takes two to fight. And when the fight goes to the point of them filing cases against each other, the situation becomes messy and bitter for both of them. Unless the situation is diffused early and the parties decide to reconcile and call a truce, with passage of time, the void between them only increases, and the feeling of love and warmth in their relationship begins to fade. What is left is only a feeling of hurt, hatred, disrespect, disregard and bitterness for the other. These negative feelings and thoughts are bound to give rise to mental trauma, harassment and cause immense cruelty to one - if not both the parties. It is well known and medically established that constant feeling of sorrow, hatred, stress, pain, hurt - and the like, do also manifest in the form of serious diseases such as heart diseases, diabetes, cancer, etc. [The same has been a point of study in an article by Timothy W. Smith and Brian R. W. Baucom, wherein it was stated that quality of intimate relationships matter as "strain and disruption are associated with increased risk" (of coronary heart disease)]*[1]. *In our view, there is no reason, not to recognize this as cruelty, entitling the court to pass a decree of divorce on the ground of cruelty.*
>
> *In today's day and age, with education, knowledge and awareness, the capacity of both-men and women, to adjust,*

[1] Timothy W. Smith and Brian R. W. Baucom, "Intimate Relationships, Individual Adjustment, and Coronary Heart Disease: Implications of Overlapping Associations in Psychosocial Risk" [2017] 72 (6) American Psychologist (American Psychological Association) 578.

accommodate, tolerate has gone down. Materialism has increased. The capacity to forget and forgive and move on is less. Stresses of life have increased with increased competition and faster pace of life. These factors are leading to matrimonial breakdowns. The conduct of the parties to a marriage cannot be described in black and white. There is a lot of grey, and it is not always possible to pin-pointedly say that one spouse is the villain, while the other is the victim. Both may be villains and victims at the same time. In such situations, the mere continuation of the relationship between the warring spouses causes immense emotional and psychological trauma to the parties which would, in itself, tantamount to cruelty by both parties, upon the other."

The ratio of the above judgment is squarely applicable to the facts of this case and relying on the same, we cannot believe the *ipse dixit* of the Appellant.

19. The Appellant has argued that for setting aside the judgment:-

a) There must be non-appreciation of evidence to a such material degree which changes outcome of the verdict; or

b) Some evidence must have been misread, mis appreciated, or misconstrued in such a way, which if read in proper perspective changes the entire verdict; or

c) Some material evidence has totally been omitted to have been read.

It is argued that the Appellant has been able to meet the above tests. If the contradictions and misappreciations are of a minor nature, or do not change the essence of the case of the concerned party, the minor aberrations are to be ignored by Appellate Court. To justify interference, there must be such substantial inconsistencies and

contradictions of material facts that, if seen in the proper perspective, they would change the entire essence of the judgement. Inconsistencies of such a minor nature neither change the thread, nor the essence of the judgment. The contradictions pointed out by the Appellant are not so serious as to change the finding, persuading us to set aside the impugned judgment, nor are they so grave that they violate the principles of natural justice.

20. We may now notice the findings of the Family Court in the Impugned Judgment:

> *"32. ……..Although, the respondent in his written statement had stated that he has no permanent source of income, he was doing a revalidation course for renewal of his licence, but no such suggestions were given by him during the cross examination of the petitioner/PWl. Her testimony shows that the respondent did not correctly inform her about his profile.*
>
> *37. PWl/petitioner has deposed that the respondent used to abuse and fight with her on petty issues. She has denied that there was no incident of mental and physical violence by the respondent. She has stated that she did not file the complaint since she wanted to save her marriage. I find force in this contention. It is seen that a woman at the initial stage of marriage bears the mental and physical violence to save her matrimonial life. When the other party crosses his Limit then the woman goes for a complaint against that person. In this case, she had made the complaint only on 21.10.2011, when she was harassed /slapped and beaten. She again lodged a complaint on 26.12.2011, when she was abused, and the respondent and his friends forcefully entered her house. She has placed on record the complaints. She has stated that the respondent had assaulted her several times. Although, she had called the police on 100 number but every time, the respondent gave an assurance that he would not repeat such act in future.*

41. It is pertinent to note that the respondent had filed a petition for restitution of conjugal rights, which was registered vide 26/2013 but, in ***his testimony, he has stated that he doesn't want to live with the petitioner.*** *This goes to show that he had filed the petition only to create evidence in his favour, so that he may take benefit later.*

45. On a careful appreciation of the evidence in the given facts & circumstances, I am of the view that the petitioner has brought ***sufficient material and given specific incidents of cruelty on the part of the respondent****. She has proved that the respondent was abusive and was in the habit of picking up quarrels frequently. He abused her making the allegations that she was having sexual relationship with her brother and father. He was a patient of "PSYCHOMOTOR ACTIVITY, BIPOLAR DISORDER AND PERSONALLITY DISORDER/ MULTIPLE TRAIT". He did not show any interest whatsoever in establishing conjugal relationship with the respondent. He used to insult the respondent before relatives/domestic helps. He assaulted, beat and tortured her continuously accusing her of bad character suspecting of her having affairs. He did not have physical intimacy with the petitioner for long. He used to beat and torture her. On 10.07.2011, when she told him that house rent and other bills for two months have not been paid, he asked her to bring Rs. 1.0 lac from her mother and when she refused, he threw utensils and glasses on the floor. He threatened her to butcher her with a knife. She was scared of him. After 10.07.2011, they did not have any conjugal relationship.*

The conduct of the respondent by no stretch of imagination can be termed as ordinary wear and tear of matrimonial life. He subjected the petitioner with continuous ill-treatment. *The contemporaneous evidences, which are in the form of complaints filed by the petitioner with the police against the behaviour of the respondent also support her case. The above series of acts/incidents would constitute the mental cruelty, which is a ground for divorce under Section 13 (1) (ia) of Hindu Marriage Act.*

48. In the instant case, the conduct complained of was grave and weighty. It can safely be concluded that the petitioner spouse cannot be reasonably expected to live with the respondent spouse. It was something more serious than ordinary wear and tear of the married life. Their relationship had deteriorated to such an extent due to the conduct of the respondent that it became impossible for them to live together without mental agony, torture or distress, which make the petitioner spouse entitle to secure divorce. It is clearly borne out that the respondent has caused mental pain of such a magnitude that it has severed the bond between the wife and the husband. I am of the view that the requirement of Section 13 (1) (ia) of Hindu Marriage Act stands fulfilled. The issue no. 1 is accordingly decided in favour of the petitioner and against the respondent. Issue no. 2 is not proved by the petitioner."

21. The above findings are founded upon the pleadings in the petition made by the Respondent, proved by way of the Evidence Affidavit, and sustained in the extensive Cross Examination of the Appellant..

22. The term cruelty as envisaged in the Hindu Marriage Act,1955 is not and cannot be exhaustively defined. However, the same can be inferred from a long line of judicial decisions.

23. In the case of ***Samar Ghosh v Jaya Ghosh,*** (2007) 4 SCC 511 it was held:

"On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may

not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration."

24. In ***N.G Dastane v. S. Dastane***, (1975) 2 SCC 326 it was observed as :

"The enquiry therefore has to be whether the conduct charges 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."

25. It has also been observed by the Supreme Court and other Courts that no straitjacket formula can be applied to cases of cruelty in matrimonial dispute. In ***Samar Ghosh*** (supra) it was observed that there can be no fixed parameter in determining cruelty. In most of the cases, cruelty is inflicted by one party and felt by another in a variety of circumstances. What may constitute cruelty in one matter may not constitute cruelty in another. Each case and relationship must be viewed separately and its own totality.

26. The matrimonial disputes between a husband and a wife cannot be expected to, and are incapable of following strict parameters of

evidence. In cases where there are allegations of cruelty – specially mental cruelty such as Dowry Demand, violent abusive behaviour, starving the spouse of affection, resources and emotional support, there can be no set parameters that the court can follow. Matrimonial issues are generally confined to the bedroom and the matrimonial home, away from public eye and gaze. A lot of times these cases do not have any independent or impartial witnesses. The doctrine of preponderance of probabilities has to be applied while evaluating the evidence, and the court must decide the matter based on the overall picture that emerges from the undisputed and uncontroverted facts and circumstances, and those established by documentary or other evidence.

27. In the case of ***Sheenu Mahendru v. Sangeeta***, (2019) SCC Online Utt 376 the Court observed:

> *"The burden lies upon the respondent to establish the charge of cruelty. The question is as to what is the standard of proof to be applied in order to judge whether the burden has been discharged or not. The rule which governs matrimonial cases is, that a fact could be established, if it is proved by a preponderance of probabilities. Proof beyond a reasonable doubt is a proof of a higher standard, which generally governs criminal trials or trials involving inquiry into issues of a quasi-criminal nature. Such proof beyond a reasonable doubt could not be imported in matters of pure civil nature especially matrimonial matters."*

28. In the present case, the Family Court correctly employed the standard of proof of preponderance of probabilities. The facts which emerge from the record are that:

(i) The parties lived together only for a period of 64 days.

(ii) The parties have been living separately for a decade now,

(iii) The Respondent walked out in 2011, and filed for divorce under Section 13(1)(ia) and Section 13(1)(iii) of the Hindu Marriage Act, 1955

(iv) It was accepted by the Appellant that he, indeed, was admitted to the Hope Foundation and was treated for Bipolar Disorder.

(v) The Appellant has admitted in his email that his mother had demanded dowry from the Respondent.

(vi) The Appellant himself refused to reside with the Respondent, or file for divorce by mutual consent.

29. Upon a perusal of the pleadings and evidence led by the parties before the Family Court, we find that the Appellant/husband has not been able to substantiate any of his grounds of challenge. The Family Court has discussed and appreciated the evidence before it, and we find no perversity in the impugned judgment. The number of incidents pleaded and duly proved by the Respondent before the Family Court are sufficient to hold the Appellant guilty of marital cruelty. These instances cannot be said to be the ordinary wear and tear of day-to-day life.

30. The parties cohabited together only for a period of 64 days and have been living separately since 10.07.2011. It has been a decade since the parties have lived together and the entire substratum of marriage has perished. Even when the parties were, in fact, living together, there were many allegations of dowry demand, cruelty and abuse. There are

several allegations and counter allegations in the Family Court record, which display the heightened animosity between the parties.

31. As noted by the Hon'ble Supreme Court in ***Sivasankaran v Santhimeenal,*** (2021) SCC Online SC 702:

> ***"20.*** *In view of the legal position which we have referred to aforesaid, these continuing acts of the respondent would amount to cruelty even if the same had not arisen as a cause prior to the institution of the petition, as was found by the Trial Court. This conduct shows disintegration of marital unity and thus disintegration of the marriage. In fact, there was no initial integration itself which would allow disintegration afterwards. The fact that there have been continued allegations and litigative proceedings and that can amount to cruelty is an aspect taken note of by this court The marriage having not taken of from its inception and 5 years having been spent in the Trial Court, it is difficult to accept that the marriage soon after the decree of divorce, within 6 days, albeit 6 years after the initial inception of marriage, amounts to conduct which can be held against the appellant.*
>
> ***21.*** *In the conspectus of all the aforesaid facts, this is one case where both the ground of irretrievable breakdown of marriage and the ground of cruelty on account of subsequent facts would favour the grant of decree of divorce in favour of the appellant."*

32. Further it has also been observed by the Supreme Court in ***Naveen Kohli v. Neelu Kohli,*** (2006) 4 SCC 558 :

> *"72. 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.

73. A law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the fault theory, guilt has to be proved; divorce courts are presented with concrete instances of human behaviour as they bring the institution of marriage into disrepute.

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 the fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period continuous separation, it may be fairly 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.

87. The High Court ought to have visualised that preservation of such a marriage is totally unworkable which has ceased to be effective and would be a greater source of misery for the parties.

88. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life."

33. The continuation of the marriage between the parties would cause undue harm to not only the Respondent/wife, but also the Appellant/husband. There has been a complete breakdown of marriage.

34. It is clear from a bare perusal of the matter at hand that the marriage is beyond repair. The continuity of this marriage is fruitless, and is rather causing grief and harm to both the parties.

35. In this view of the matter, we do not find ourselves inclined to grant the Appellant's prayer against the dissolution of marriage and find no infirmity in the impugned order dated 30.11.2019.

36. Accordingly, the present appeal is dismissed being devoid of merits.

JASMEET SINGH, J

VIPIN SANGHI, J

DECEMBER 01, 2021/ 'ms'