



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-M-88-2013 (O&M)

Reserved on: 30.01.2025

Pronounced on: 24.02.2025

RAKESH MITTAL

...Appellant

Versus

SHEETAL

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present:- Mr. Avnish Mittal, Advocate
for the appellant.

Mr. Sumeet Jain, Advocate,
for the respondent.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 15.01.2013 passed by the learned Additional District Judge, Narnaul (for short the 'trial Court'), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the appellant-husband, was dismissed.

2. The aforesaid petition had been filed by the appellant-husband, *inter-alia*, pleading therein that his marriage with the respondent-wife was solemnized on 16.02.2009 as per Hindu rites and out of the said wedlock, a male child was born. At that point, the respondent-wife expressed concerns about their son's education due to her perceived lack of education and progressive mindset in the

appellant-husband's family. It was further pleaded that the respondent-wife insisted on moving to Gurgaon for a better environment. On refusal of the appellant-husband citing his well-established business in Narnaul and his unwillingness to leave his family, the respondent-wife began creating problems. Further, the respondent-wife disobeyed him; refused to fulfil her duties; stopped cooking and eventually left Narnaul in May, 2010, taking their son along with her. Despite efforts to reconcile, interference of her parents had caused the marriage to deteriorate. The appellant-husband further pleaded that the respondent-wife deserted him without valid reason and that her acts amounted to cruelty. Thus, a decree of divorce had been sought for.

3. Upon notice, the respondent-wife appeared and filed her written statement admitting the factum of marriage. It was asserted that she always wanted to stay with the appellant-husband and his family at Narnaul and had never failed in her duties or misbehaved with them. The respondent-wife further asserted that the appellant-husband intentionally refused to keep her with him and she had denied the allegation of desertion. She further stated that the appellant-husband had fabricated claims of cruelty and rather, it was he, who had physically and emotionally mistreated her.

4. On the basis of the pleadings of the parties, the following issues were framed by the trial Court:-

- “i) Whether the petitioner is entitled to a decree of divorce on the grounds mentioned in the petition, as alleged?
- ii) Relief.”

5. In evidence, the appellant-husband examined himself as PW3; PW-1 Rattan Saini and PW-2 Om Prakash Bansal. On the other hand, the respondent examined herself as RW-3; RW-1 Rattan Lal; RW-2 Moti Lal; RW-4 Virender Kumar and RW-5 Suman.

6. The learned trial Court, after taking into consideration rival contentions of the parties and evidence on record, dismissed the petition filed by the appellant-husband, as noticed above.

7. Learned counsel for the appellant-husband has vehemently argued that the marriage between the appellant-husband and respondent-wife has become a dead wood as they have been living separately for the past 15 years. It is further submitted that all the efforts of mediation between the parties proved futile. He has further submitted that all this has caused mental cruelty to the appellant-husband and the sole objective of the respondent-wife is to keep herself engaged in a never-ending litigation.

8. On the other hand, learned counsel for the respondent-wife, while defending the findings recorded by the learned trial Court, has submitted that the appellant-husband cannot take benefit of his own wrongs. In support of the said assertions, the learned counsel for the respondent-wife refers to Section 23 of the Act. It is submitted that the appellant-husband himself deserted the respondent-wife and was never willing to cohabit with her and, therefore, if any indulgence is granted to him, it would amount to giving him the benefit of his own wrong, which is against the provisions contained Section 23 of the Act. It is further submitted that merely because the parties have been

living separately for a long period, is no ground to grant the decree of divorce to the appellant-husband.

9. We have heard learned counsel for the parties and have also gone through the records of the case. In our opinion, the following questions would arise for adjudication in the present appeal:-

“1. Whether a long separation between the parties, rendering the marital bond as unworkable and its having been ruptured beyond repair, amounts to mental cruelty?

2. Whether the impugned judgment and decree passed by the learned trial Court, requires any interference?

10. The learned trial Court has found that the appellant-husband was not able to prove that the respondent-wife had caused him cruelty. The appellant-husband's claim that Jatin, born on 23.11.2009, was being pushed into higher studies at just the age of six months was unrealistic. Additionally, the appellant-husband's testimony about the respondent's complaints regarding Narnaul being a backward area, lacking amenities like a mall or cinema hall, was an exaggeration. This is inconsistent with the appellant-husband's own statement that the respondent lived happily in Narnaul until their son was born. The appellant-husband also claimed that the respondent belittled his parents as uneducated and old-fashioned, but the said allegations were not substantiated by any cogent and convincing evidence. The testimony of Rattan Saini (PW1) and Omparkash

Bansal (PW2), did not substantiate the allegations of cruelty. Further, the ground of desertion by the appellant-husband without reasonable cause, was not available to him. In this case, the appellant-husband claimed that the respondent-wife deserted him in May, 2010, but the petition was filed on 24.02.2011, which is before the completion of the requisite two-year period as specified in Section 13(1)(b) of the Act.

11. Although the husband was unable to provide evidence of physical cruelty or desertion before the trial Court, we must examine whether the marital relationship between the husband and wife has ruptured beyond repair, especially when the parties have been living separately for more than fifteen years and during this period, there has been no resumption of their relationship and rather on account of protracted litigation, the same has got worsened day by day.

12. In the present case, efforts have been made firstly to resolve the matrimonial dispute through the process of mediation, which is one of the effective modes of alternative mechanism in resolving the personal dispute but the mediation between the parties failed. The parties were directed to be present before the Mediation and Conciliation Centre vide order dated 30.07.2013 passed by a Co-ordinate Bench of this Court. However, the matter was sent back to the Court as the appellant-husband did not join the mediation proceedings and the same has been observed in the order dated 25.08.2014 passed by a Co-ordinate bench of this Court. Taking this into consideration, again a request was made to refer the matter for Mediation and vide the same order, it was referred to Mediation and

Conciliation Centre but no settlement could take place between the parties.

13. Further, the case was again referred to Lok Adalat, vide order dated 11.01.2016 passed by the Coordinate Bench. A perusal of the file shows that the matter was taken up by the Lok Adalat on 28.03.2016 and subsequently on 09.05.2016. The following order was passed by the Lok Adalat on 09.05.2016:-

“The matter has been discussed in detail.

Efforts to persuade the parties to arrive at a settlement did not succeed. Returned to the High Court.”

14. Furthermore, on the joint request of learned counsel, the matter was again referred to the Mediation and Conciliation Centre vide order dated 16.09.2022 passed a Co-ordinate Bench. The Mediation between the parties was conducted on 11.01.2023, 10.02.2023, 10.03.2023 and lastly, on 18.03.2023. The report of the Mediator dated 18.03.2023 reads as under:

“Mediation proceedings held with the parties at length. Despite best efforts the parties could not arrived at any settlement. Hence, the case file be sent back to the Hon’ble High Court for further orders.”

15. The fact remains that the efforts for amicable settlement did not yield any result. Indisputably, the parties have been living separately since 2010. In the absence of any resumption of matrimonial obligation and cohabitation between the parties for a long period, there is no possibility of their reunion. The mediation proceedings before this Court, for an amicable settlement of the

dispute between the parties, remained unsuccessful. This further speaks of the bitterness of their relationship. Undoubtedly, it is an obligation on the part of the Court that matrimonial bond should as far as possible, be maintained, but when the marriage has become unworkable and it has become totally dead, no purpose would be served by ordering the reunion of the parties.

16. It is well settled that in order to constitute cruelty, the party alleging the same must prove on record that the behaviour of the party complained against, is or has been as such that it has made it impossible for the said party to live in the company of the party complained against. The acts of cruelty must be such from which it can be reasonably and logically concluded that there cannot be any reunion between the parties due to the said acts. The cruelty can either be physical or mental or both. Though there is no mathematical formula to devise the extent of cruelty alleged against, yet the facts and circumstances of each and every case must be examined in the light of the gravity contained in them.

17. In **Samar Ghosh v. Jaya Ghosh**, (2007) 4 SCC 511, it was held by the Hon'ble Supreme court that no uniform standard can be laid down as regards the cruelty, but certain instances of human behaviour, relevant in dealing with the cases of 'mental cruelty', were formulated. It was held by the Hon'ble Apex Court as under:-

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

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

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

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

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

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

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

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

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

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

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

extremely difficult to live with the other party any longer, may amount to mental cruelty.

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

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

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

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

In **Naveen Kohli v. Neetu Kohli**, 2006 (4) SCC 558, the Hon’ble Apex Court was considering a case of irretrievable breakdown of marriage. In the said case, the wife had been living separately for a long time, but did not want divorce by mutual consent only to make life of her husband miserable. The Hon’ble Apex Court, while holding the acts and conduct of the wife as cruelty, has held as under:-

"62. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had

broken down irretrievably and there is no chance of their coming together, or living together again. The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

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67. 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.

68. In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the Trial Court. In our opinion, wisdom lies in accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties.”

Still further, in **K. Srinivas Rao v. D.A. Deepa, 2013 (5)**

SCC 226 has observed that when a marriage is dead for all purposes, it cannot be revived by Court's verdict, if the parties are not willing since marriage involves human sentiments and emotions and if they have dried up, there is hardly any chance of their springing back to life on account of artificial reunion created by the Court's decree.

A Coordinate Bench of this Court in **Amandeep Goyal Vs. Yogesh Rani, 2022(1) PLR 479**, while considering the long separation of 10 years between the parties and the factum of wife not ready and willing to give mutual divorce, held that the marriage was dead and it amounts to cruelty towards the husband. The relevant extract from the said judgment would read as under:-

“20. In the present case, it is not in dispute that both the appellant and respondent are working as teachers on regular basis in

Government departments. Further they are living separately since 27.07.2011. The elder son (Manav Goyal), who is suffering from cancer, is living with appellant- husband and the younger son (Rooham) is staying with the mother. After living separately from her husband for more than 10 years, the respondent- wife is still not ready to give divorce to him.

21. The issue for consideration in the present appeal would be whether the relationship of the husband and wife has come to an end and if the respondent-wife is not ready to give mutual divorce to the appellant- husband, whether this act of her, would amount to cruelty towards husband, keeping in view the fact that she is not staying with her husband for the last 10 years and there is no scope that they can cohabit as husband and wife again.

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32. In the present case, the appellant-husband is looking after his son Manav Goyal since 27.07.2011 and has borne all the expenses incurred upon his son, who is suffering from Cancer. Thus, if the appeal filed by the appellant-husband is dismissed, he will face mental agony with his son, who is ill and requires repeated check ups and treatments from various hospitals. The appellant and the respondent are very sure that they cannot live together as husband and wife. The appellant-husband has shown that he also loves his second son i.e Rooham, as he brought gifts for him on 18.08.2021 and even respondent-wife also brought gifts for Manav Goyal. Both the appellant and the respondent are regular government teachers and are getting good salary and they are bringing up one child each. If the parents are not granted divorce, then both the children namely Manav Goyal and Rooham Goyal will not be able to meet each other in a positive environment. This will further result in cruelty because of the rigid attitude in giving divorce. Further when the appellant and the respondent came to this Court on 18.08.2021, they expressed their love and affection to child, who is not staying with them. The element of marriage which has become dead will result in further loss to both the children. It is a right time if both the children meet with each other in a positive environment as the parents are finally independent. The element of silence between the parties will result into mental cruelty to the children, as both the siblings cannot meet

with each other. Mental cruelty will blend with irretrievable and dead marriage is a good ground to grant divorce to the parties.”

A Division Bench of the Chhattisgarh High Court in **Duleshwari Sahu Vs. Ramesh Kumar Sahu**, 2023 AIR (Chhattishgarh) 95, has held that where the wife had been residing separately from the husband for a long period without any justifiable cause, the same would amount to cruelty. It was held as under:-

“15. In the present matter, on perusal of the pleadings of the respective parties and the evidence adduced by them in support thereof, as also the admission of the parties and their witnesses, it is found that the respondent wife is living separately from her husband at her parental home without any just and reasonable cause since May, 2014. She lodged a report on 17/09/2014 against the husband under Sections 498-A, 323, 294, 506 of IPC and after trial, he was acquitted of all the charges. This apart, the wife also made a report against the husband and his parents under Protection of Women from Domestic Violence Act. It is also admitted position that the wife filed divorce petition under section 13 of the Hindu Marriage Act which was dismissed for want of prosecution. It is also admitted by the wife that no application under section 9 of the Hindu Marriage Act for restitution of conjugal rights was filed by her. It is not disputed that the wife is working as Panchayat Secretary and is also getting Rs. 7,000/- per month as maintenance. Therefore, in the given facts and circumstances of the case, the conduct of the wife, in light of the judgments of Hon'ble Supreme Court as mentioned above, the act committed by the wife against the husband amounts to cruelty and it stands proved that she is living separately from the husband since 2014 without any just and reasonable cause. They are seems to be no possibility of their re-union. In these circumstances, this Court finds no illegality or

perversity in the impugned judgement of the Trial Court granting decree of divorce in favour of the husband.”

18. If the facts of the present case are examined in the light of the law laid down by the Hon’ble Supreme Court in the aforesaid judgments, it would come out that the parties, who have been living separately since 2010, if compelled to live together, would become a fiction supported by a legal tie and it would show scant regard for the feelings and emotions of the parties. This, in itself would amount to mental cruelty to both the parties.

19. It may further be noticed that on the one hand, the wife is defending the judgment and decree passed by the learned trial Court, but on the other hand, the mediation between the parties remained unsuccessful. It does not, thus, appeal to the common prudence, as to what would be the gain to the respondent-wife by keeping this dead relationship alive.

20. Still further, there is nothing on record to indicate that since the date of filing of the divorce petition by the appellant-husband, the respondent-wife had made any effort to join his company or came back to the matrimonial home and/or had filed any petition under Section 9 of the Act for restitution of conjugal rights.

21. In view of the above, considering the totality of the facts and circumstances of the case, we hold that the marriage between the parties has become unworkable and has reached the stage of beyond repair and if the parties are called upon to stay together, it may lead

to mental cruelty to both of them. Question No.1 is answered in affirmative.

22. Consequently, the present appeal is allowed. The impugned judgment and decree passed by the learned trial Court, is set aside and the marriage between the parties is dissolved by a decree of divorce. Question No.2 is answered, accordingly.

23. Further, the respondent-wife will also be at liberty to make an application under Section 25 of the Hindu Marriage Act seeking permanent alimony. If any such application is filed by the respondent-wife, the same shall be considered and decided by the Court concerned, in accordance with law, preferably within a period of 06 months from the date of filing thereof.

24. Decree sheet be prepared accordingly.

25. Pending application(s), if any, shall also stand disposed of.

**[SUDHIR SINGH]
JUDGE**

**[SUKHVINDER KAUR]
JUDGE**

24.02.2025
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No