



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 161 OF 2019

... Appellant

... Respondent

Mr. A.P. Singh, Advocate for the Appellant.

Mr. Amey D. Deshpande, Advocate for the Respondent.

**CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.**

Reserved on : June 09, 2023.

Pronounced on : September 06, 2023.

JUDGMENT : (Sharmila U. Deshmukh, J.):

1. The appeal takes an exception to the judgment and decree dated 20th March, 2018 passed by the Family Court No.2, Pune, dismissing the appellant's Petition bearing P.A.No.537 of 2015

filed under the provisions of Section 13(1)(i-a) of the Hindu Marriage Act, 1955 seeking dissolution of marriage solemnized between the parties

PLEADINGS:

2. The Petition pleads that on 8th July, 2010, the marriage between the parties was solemnized at Patna, Bihar as per Hindu Vedic Rites and after coming to Pune, the parties entered into a court marriage on 16th March, 2011. On 26th March, 2013, a daughter named Alisha was born. The case of cruelty put forth in the Petition can be summarized as under:

- (a) The Respondent was in constant touch with her mother on mobile; that the Respondent was not doing any household work; that on most occasions the appellant had to leave for his office without food and upon being asked to conduct herself in a proper manner, by the appellant's parents, used to abuse the appellant's parents.
- (b) In the month of March-2011, as the Appellant was unable to attend the respondent's father house warming pooja due to his work commitment, the Respondent abused him and in a fit of anger pressed the appellant's neck and scratched his face with her nails.

- (c) On 30th December, 2012, the Appellant, his parents and brother had gone to a Ganesh Temple and on the way back there was an accident. While Appellant's brother stayed back to resolve the issue, the Appellant and his parents returned back to the house and while they were returning back to the site of the accident, the Respondent obstructed the Appellant from going back to the site of accident and expressed her happiness at the brother meeting with an accident.
- (d) On 31st December, 2012, at about 11:00 p.m. when the Appellant went to his bedroom to sleep, the Respondent and her mother kicked him out of the bed and called the building security guard and threw him out of the house. The next day when the Appellant was sitting in the drawing room the respondent's mother slapped the Appellant and threw his spectacles in presence of the security guard. The Respondent's mother instigated the Respondent not to keep quiet and to break the Appellant's head with cooker.
- (e) At the time of the birth of the daughter on 26th March, 2013, the Appellant had borne the entire expenses of the delivery and had gone to meet the Respondent and the child, however, the Respondent did not permit the Appellant to meet the child and was constantly abusing the Appellant which was silently borne by the Appellant for the sake of his daughter.

3. It is pleaded that on 1st January, 2013, the respondent's brother came to the matrimonial house and the Respondent and her mother left the house taking all the ornaments and other personal belongings with them. Subsequently a complaint was lodged by the Respondent on 9th March, 2013 with Yeravada Police Station, wherein the counsellor tried to resolve the issue between the parties and it was agreed that after six months, the Respondent will return to the matrimonial house, which was not complied with. It is pleaded that the Appellant and his father through the counsellor tried to reconcile the issue, however, the Respondent's father abused the Appellant and his father. It is pleaded that the Respondent through her maternal uncle threatened the Appellant on 4th January, 2013 and thereby has caused mental and physical cruelty to the Appellant.

4. On 12th January, 2014, pursuant to the complaint lodged by the Respondent with Yeravada Police Station, the Appellant handed over the respondent's gold ornaments to the relatives of the Respondent. It is pleaded that on festive occasions as well as on the birthday of the daughter, the Appellant used to send messages, however, the same were not responded by the Respondent and all the

gifts sent by the Appellant to the daughter on the occasion of her birthday on 26th March, 2014 were returned to the Appellant. Subsequently, legal notice for resuming cohabitation on 17th April, 2015 was sent to which reply notice was sent and as the Respondent did not resume cohabitation petition for divorce was filed.

5. In the written statement an objection was raised that as the marriage was registered under the provisions of Special Marriage Act, 1954, the proceedings should be governed by said Act of 1965 and not under the Hindu Marriage Act, 1955. There are counter allegations of cruelty that the parents of the Appellant used to instigate the Appellant to force the Respondent to do all the household work, after she returned home from office and that she faced abuse when she used to contact her family. It is pleaded that on 28th February, 2011 after she returned from the office there was a fight between the Appellant and the Respondent over a minor issue and the Appellant mercilessly assaulted the Respondent and broke her cell phone and spectacles. The Respondent managed to shut herself up in a room and contacted her parents, who reached Pune the next day by flight and, even in the presence of the respondent's parents, the Appellant and his brother abused the Respondent in filthy

language. It is contended that all the call details of the Respondent was sent to the email ID of the Appellant on his request and when she questioned him, he slapped her and abused her. It is contended that the Appellant had taken obscene and objectionable videos of Respondent with the aid of his brother and threatened her that she will be defamed.

6. In the month of July, 2012, the Appellant conceived and even during her pregnancy the Appellant assaulted the Respondent in the month of August, 2012. It is contended that in September, 2012, the Appellant called the respondent's mother to come to Pune to take care of the Respondent during her pregnancy. Even during the stay of the Respondent's mother, the Appellant used to abuse the Respondent and his mother and has assaulted the Respondent. On 30th December, 2012, the Appellant and his family members returned late and after the Appellant's parents left house, the Appellant became restless and started abusing the respondent's mother. At 11:00 p.m. on 31st December, 2012, the Appellant came to the bedroom where the Respondent and her mother was sleeping and started instigating her on some pretext. As the respondent's mother tried to intervene in the quarrel, the Appellant caught hold of the Respondent and her

mother's throat and tried to strangle them. It is contended that the Appellant started assaulting the respondent's mother and dashed her head against wall and punched her in the eye. The Respondent and her mother started screaming for help and on hearing the noise, the security guard came into the flat to their rescue and asked the Appellant to leave them or he will call the police and only then the Appellant cooled down and assured not to beat the Respondent and her mother. This incident was narrated by her the Respondent to her father and on the next day, the respondent's brother came to the matrimonial house and the Respondent and her mother collected their belongings and left. On 4th March, 2013, the Respondent approached the police and filed complaint and upon being called to the police station, the Appellant apologized and assured that he will not commit any mental or physical violence and as such, it was decided that the Respondent will live with her mother for six months after giving birth to her daughter and then she will go back to the matrimonial house.

7. It is contended that even after the birth of the daughter when the Appellant alongwith his parents came to the hospital, there was a quarrel between them and the Appellant and his family

members refused to attend the naming ceremony of the daughter. It is contended that the Appellant told the Respondent that she would be permitted in the matrimonial house only if she breaks all contact with family members and if she is ready to give her entire salary to the Appellant. It is contended that the Respondent tried to reconcile the dispute, however, the Appellant and his family members are not willing to permit and the Respondent and her daughter to reside in the matrimonial house.

EVIDENCE:

8. The Appellant and the Respondent adduced oral and documentary evidence and both parties examined themselves and their respective fathers in support of their case. The parties were extensively cross examined. From the cross-examination of the parties, we find that the substantial portion of cross examination has been dedicated to the issue of the earnings of the respective parties despite the fact that there was no issue of maintenance in the instant case. We also note that the cross examination comprises mainly of suggestions given and denied by the other party and despite the lengthy cross examinations nothing substantially material has been

extracted.

9. The evidence affidavit filed by the Appellant reproduced the contents of the Petition. In the cross examination pertaining to the incident of 28th February, 2011, it is admitted that the parents of the Respondent had arrived the next day by flight and that he did not allow the parents to meet the injured Respondent. He has tried to explain their presence by stating that they always used to come home and he was residing in the house as servant. He has admitted that the respondent's father had asked his father to look into the incident.

10. The Appellant has admitted that that there was house help for washing the clothes, for preparing meal and cleaning the utensils. He has admitted that the Respondent has lodged the complaint in the police station regarding physical beating and he was called for counselling. He has stated that in the month of March-2011, the incident of argument between him and respondent occurred and at that time the respondent's father had throttled his neck. He has admitted that he was taking the information about call details of the respondent without the permission of his wife.

11. As regards the incident which has been taken place on

30th December, 2012, he has admitted that there was a fight which had taken place and that on 31st December, 2012, he had entered the Respondent's bedroom where the Respondent and her mother was sleeping and that the quarrel had taken place. He has stated that the Respondent's mother has kicked him and thrown him out of the bedroom. He had denied the suggestion that he had assaulted and abused and assaulted the Respondent and her mother on the said date. He has admitted that the pleadings in his reply to the domestic violence proceedings that the respondent's mother and her brother had taken him to the room and assaulted him with fists and kicks are false. He has admitted that he did not lodge any complaint with the police.

12. PW-2 i.e. Appellant's father has deposed that the Respondent was not doing any household work; that she was not taking care of the Appellant and many times, the Appellant used to go hungry and that Respondent was always abusing the Appellant. As regards the incident of 30th December, 2012, he has stated that the Respondent and her mother had expressed their happiness at the accident and the Respondent had unnecessarily obstructed the Appellant and had abused him. He has further deposed about the

quarrel which had occurred on the night of 31st December, 2012. He has deposed on 1st January, 2013, the respondent's brother had come to the house and taken the Respondent and his mother alongwith all ornaments and belongings. He has further deposed that when he went to meet with the minor child in the hospital, the Respondent did not permit him to meet the child and the Respondent constantly used to abuse the Appellant and that he is aware of the same. He has also deposed as regards the compromise talks which had taken place in the police station and the return of *stridhan* in the police station.

13. In the cross-examination, he has admitted that both the appellant and Respondent were employed and were not getting time; that there was a maid hired to wash the clothes and another maid for preparing the meal. He has further admitted that the responsibility of all the household work of the house was on the Respondent. He has stated that the Appellant was not getting time and sometimes he used to go for work without having breakfast. He has stated that the Respondent used to make phone calls to her parents throughout the day and the same is the root cause of the dispute.

14. He has further admitted that in March-2011, the Respondent's parents came by flight to Pune. He has further admitted that the Appellant and his brother made video recording of the incidents in the house on mobile. He has further admitted that except the incident of 30th and 31st December, 2012 and except the incident of returning the ornaments as regards the other incidents, the same is based on the information given by the Appellant. He has admitted that after 1st January, 2023, the respondent's father had called them and compromise meeting was held.

15. The Respondent has filed her affidavit in lieu of evidence and has reproduced the contents of her written statement. In the cross-examination, she has admitted that she has not given the reason for the quarrel which led to the abuse of her mother by Appellant on 30th December, 2012. She has stated that her mother might have gone to the doctor after two days of the incident of 31st December, 2012. She has admitted that she has not lodged complaint of obscene and objectionable videos of respondent taken by the Appellant.

16. The Respondent's father has deposed that the Respondent was subject to physical and verbal abuse and domestic violence. He

has further deposed that on 28th February, 2011, the Respondent had informed him that the Appellant had beaten the Respondent mercilessly and had broken her spectacles and mobile. He has further deposed that on the next day he and respondent's mother left for Pune and thereafter the Respondent came out of the room. He has further deposed that in September, 2012, the Appellant requested the respondent's mother to come to Pune to look after the Respondent and that the Respondent's mother during her stay used to do all the household work. He has deposed that during the respondent's mother stay at Pune, the Appellant used to abuse the Respondent and her mother. He has further deposed as regards the incident of 31st December, 2012 and that the Appellant had assaulted and abused the Respondent and her mother. He has deposed that after the incident he got a call from the Respondent at about 11:20 p.m. and as such, he informed his son and next morning his son went to the matrimonial house and brought the Respondent and his mother to his house. He has further deposed about the police complaint as well as the compromise which had taken place and the return of the ornaments in the month of January-2014.

17. In the cross-examination, he has admitted that he has not

filed any medical report to show the injuries sustained by the Respondent and his wife after the incident of 31st December, 2012. The suggestion was given to the respondent's father that he has celebrated the second marriage of the Respondent and that the Respondent has two children which was denied.

FINDINGS OF TRIAL COURT:

18. As regards the registration of the marriage under the provisions of the Special Marriage Act, 1954, the trial Court held that the Appellant should have filed this application under the provisions of the Special Marriage Act, 1954 and has proceeded to decide the petition as the ground of cruelty for divorce is available under the Hindu Marriage Act, 1955 as well as in the Special Marriage Act, 1954.

19. The trial Court observed that in the cross examination the Appellant has given different version of the incident of March-2011; that there is false deposition by the Appellant in domestic violence proceedings about assault by fists and kicks by Respondent's brother; that the security guard was not examined by Appellant as regards the incident on 31st December, 2012 and 1st January, 2013, and, that it is

admitted that the Appellant and his brother were video-graphing the events occurring in the house.

20. The trial Court perused the emails and observed that no genuine and bonafide attempts were made to resume co-habitation and that the case of Appellant was of normal wear and tear and as such dismissed the Petition.

21. Heard Mr. A.P. Singh, learned counsel for the Appellant and Mr. Amey D. Deshpande, learned counsel for the Respondent.

22. Although the challenge was to the dismissal of the divorce petition, submissions were advanced on the issue of maintenance and one page note of argument was tendered giving details about the income of the Respondent and the properties owned by her family and submission was made that divorce ought to be granted on the ground of irretrievable break down of marriage.

23. *Per contra*, the learned counsel for Respondent has confined his submissions to the issue of maintainability and has taken this Court to the certificate of marriage issued under the provisions of Special Marriage Act, 1954 annexed to his Affidavit in reply . He

would contend that the in the petition as well as in the written statement , it is pleaded by both the parties that after the marriage was performed as per Hindu Vedic Rites, the marriage came to be registered under the provisions of Special Marriage Act, 1954. He would urge that as the Petition was filed under the provisions of Hindu Marriage Act, 1955, the same was not maintainable.

24. Considered the submissions and perused the papers and proceedings on record.

25. As issue of maintainability is raised, we have firstly dealt with the said issue. It is not disputed that the Family Court has the jurisdiction to entertain a divorce petition both under the provisions of the Hindu Marriage Act and the Special Marriage Act. It may be noted that "cruelty" is one of the grounds for dissolving a marriage by a decree of divorce which is common to both Hindu Marriage Act and Special Marriage Act, From perusal of the issues framed by the Family Court it is evident that the Family Court has adjudicated the proceedings on the ground of cruelty which is common ground available under provisions of both the statutes.

26. The admitted position is that the marriage between the

parties were first solemnized according to Hindu rites under the Hindu Marriage Act and was thereafter registered as well under the provisions of the Special Marriage Act. The position, in our opinion, is that if the marriage solemnized according to Hindu rites, was thereafter duly registered under Chapter III of the Special Marriage Act, the ongoing matrimonial proceeding should be governed by Section 27 of the Special Marriage Act and not by Section 13 of the Hindu Marriage Act. However, labelling the petition under Section 27 of the Special Marriage Act as one "under Section 13, Hindu Marriage Act" would not affect the maintainability or merits of the petition for divorce, nor the jurisdiction of the Court to grant divorce. The moot point is whether the Petition filed under the provisions of Hindu Marriage Act, 1955 when the same ought to have been filed under the provisions of Special Marriage Act, 1954 can be a ground for non-suiting the Appellant. We have already indicated above that "cruelty" as a ground for dissolution of marriage by a decree of divorce is available both under Section 13(1)(i-a) of the Hindu Marriage Act and under Section 27 (1)(d) of the Special Marriage Act and that the Family Court also has the jurisdiction to entertain a divorce petition under both the Acts. In **N. Mani v. Sangeetha Theatre and Ors.**

reported in **(2004) 12 SCC 278**, the Apex Court observed:

“9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.”

27. In our view, the erroneous labelling of the Petition as one under the provisions of Hindu Marriage Act, 1955 will not result in non suiting the Appellant, particularly when the Family Court has jurisdiction to entertain the Petition under both the statutes.

28. The Appellant seeks decree of divorce on the ground of cruelty and as such it will have to be seen the Appellant has discharged the burden of proof by leading cogent and satisfactory evidence. If we peruse the pleadings , apart from deposing about the general conduct of the Respondent, three incidents of cruelty have pleaded in the petition,the first incident is of the year 2011, that upon the appellant refusing to attend the Respondent’s father’s house warming ceremony, the Respondent assaulted him, the second incident is of 30th December, 2012, that the Respondent and her

mother quarreled and expressed their happiness at the accident of his brother; and the third incident is of 31st December, 2012, that the appellant was assaulted by the Respondent and her mother at night and was thrown out of the house and the next day the appellant was slapped by the Respondent's mother in the presence of security guard.

29. It is settled that to constitute cruelty the conduct of the other party should be such a nature which will satisfy the Court that it has become impossible for the wronged party to live with the other party without mental agony. Cruelty generally does not consist of isolated acts but series of acts spread over period of time. In the instant case the marriage was performed in the year 2010 and matrimonial co-habitation lasted for about two and half years. In this span of two and half years, three incidents of alleged cruelty, apart from general conduct of the Respondent has been set forth as constituting ground of cruelty.

30. The response of the Respondent is that in fact the respondent has been subjected to mental and physical cruelty at the hands of the Appellant. A specific incident has been pleaded that on 28th February, 2011, upon a quarrel between the parties the appellant

had mercilessly assaulted the Respondent which prompted the Respondent to call her parents who arrived on the next day. It is pleaded that on 30th December, 2012, the appellant abused the Respondent's mother and on 30th December, 2012, the appellant picked up a quarrel with the Respondent and when her mother intervened, the appellant assaulted the Respondent as well as her mother and due to the brutal assault, the respondent and her mother was traumatized and screamed for help where the security guard entered into the flat and threatened to call the police. As against the rival allegations of cruelty, the evidence on record will have to be scrutinized to ascertain as to whether the appellant has been able to establish his case and even if established whether the same is sufficient to entitle him to a decree of divorce on the ground of cruelty.

31. Before proceeding further, it would be beneficial to refer to the decision of the Apex Court in the case of **Samar Ghosh vs. Jaya Ghosh**, reported in (2007) 4 SCC 511, wherein illustrative instances are set out in paragraph 101, which reads thus:

“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 sterilization 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.”

32. Coming to the evidence, as regards the incident of March 2011, the appellant had pleaded and deposed that it was the respondent who had assaulted him and in support had produced photographs of injuries on cheeks, forehead and neck. In the cross examination he has stated that in March-2011 there was argument between him and the Respondent and that his father-in-law had throttled his neck. The change in the version of the Appellant has demolished the case of the Appellant as regards the incident of March-2011. Mere production of photographs on record without the incident being substantiated do not corroborate the case of the Appellant. We find from the cross examination the admission of the Appellant which proves the incident of physical assault deposed by the Respondent. The Appellant has admitted that on the next day of the incident of 28th February, 2011, the appellant had not permitted the parents of the Respondent to meet the “injured” respondent. The Appellant has attempted to explain the presence of the Respondent’s parents by deposing that they always used to come, the parents of the Respondent arriving the very next day coupled with the fact that there is no denial that the Respondent was “injured” establishes the incident of assault on on 28th February, 2011.

33. In respect of the incident of 30th December, 2012, the deposition of the Appellant that the Respondent obstructed and abused the Appellant and expressed her happiness at the accident has been corroborated by the evidence of the father of the Appellant. There is nothing elicited in the cross examination. Coming to the evidence of the Respondent in respect of the incident of 30th December, 2012 she has deposed that the Appellant abused the Respondent's mother that he will cut her throat, however, in the cross examination she admits that she has not mentioned the issue of the quarrel when the Appellant abused the Respondent.

34. Considering the evidence on record, it is proved that on 30th December, 2012 there was a quarrel which had ensued. Even if the case of the Appellant as regards the incident is accepted, the deposition is about obstruction of the Appellant and expression of happiness about the accident. It is common occurrence during fights between husband and wife cruel words are exchanged in the heat of the moment without actually meaning the same. In our view, it is a one off incident where the Respondent had expressed ill feelings about the Appellant's brother.

35. Similar is the case of the incident alleged on 31st December, 2012. Different versions are given by both parties but the evidence of the parties establishes that a quarrel had taken place on 31st December, 2012. The deposition of the Appellant as well as the Respondent indicates presence of the security guard of the building. However none of the parties examined the security guard and as such it is a case of word against word. The Appellant's version is that the Respondent and her mother had pushed him from the bed and with the help of the security guard had thrown the appellant from the bedroom and that on the next day when the appellant was seating on the Sofa, the respondent's mother had slapped him and removed his spectacles in the presence of the security guard. The contrary version is that it was the appellant, who had in fact abused and assaulted the Respondent and her mother and due to the brutal assault, they have started screaming for help and the security guard had entered into the house and threatened to call the police.

36. The Appellant's father has admitted that he was not present at the time of the incident of 30th December, 2012. The respondent's father has deposed that at 11:20 p.m. he was informed by the Respondent about this incident and that the respondent's

father had informed his son who reached matrimonial house the next day and took the respondent and her mother from the house. Nothing has been elicited in the cross examination of either of the parties. The deposition of the Respondent's father corroborates the incident of abuse and assault by the Appellant. The Respondent's father has deposed that he was informed about the incident the same night and that he informed his son about the same. The arrival of the Respondent's brother the next day and leaving of the matrimonial house by the Respondent and her mother lends credence to the version of the Respondent. The version of the respondent is also supported by the admission of the appellant that on 31st December, 2012, the Respondent had lodged the complaint against the appellant.

37. As regards the general conduct deposed by the Appellant that the Respondent was in constant touch with her family; that she was not doing the household work and many times the appellant had to leave for his work without food, the appellant's father during the cross-examination has admitted that there was a house help which was hired for doing the household work as well as for cooking the meals. He has further admitted that the appellant and the Respondent

were employed and as such did not have much time. He has further admitted that on many occasions, the appellant used to leave house without taking his breakfast. He has further admitted that the entire responsibility of the house was on the Respondent.

38. On perusal of the admissions which has come on record, the admitted position is that both the appellant and the respondent were employed and as such, expecting the respondent to do all the household work reflects a regressive mindset. In modern society the burden of the household responsibilities have to be borne by both husband and wife equally. The primitive mindset expecting the woman of the house to solely shoulder the household responsibilities needs to undergo a positive change. Also, the marital relationship cannot result in isolating the respondent-wife from her parents and she cannot be expected to sever all ties with her parents after her marriage. Being in contact with one's parents cannot by any stretch of imagination be construed as inflicting mental agony on the other party. In our view, putting restrictions on the respondent to curtail her contact with her parents, has in fact, subjected the Respondent to mental cruelty apart from physical cruelty which has been established by the incident of 28th February, 2011 and 31st December, 2011.

39. What we find on consideration of evidence is that the instances of cruelty are not substantiated by the Appellant by leading cogent and satisfactory evidence. This apart from the fact that in the matrimonial co-habitation of about two and half years, there are three isolated incidents cited, apart from the general conduct of the Respondent. In our opinion, cruelty generally refers to a series of acts occurring frequently which results in causing such mental or physical agony to the wronged party that the Court would be left with no option but to dissolve the marriage, which is not so in the instant case.

40. One of the submissions of learned counsel for Appellant is that the parties have been living apart from about 10 years and there is irretrievable break down of marriage. The provisions of Section 27 of The Special Marriage Act, 1954 set out the grounds for dissolution of marriage and irretrievable break down of marriage does not find place therein. The Apex Court in exercise of its power under Article 142 of Constitution of India has granted decree of divorce by considering that the marriage has been rendered deadwood and there is irretrievable break down of marriage. However, this Court in an Appeal under the provisions of Section 39 of the Special Marriage

Act, 1954 cannot exercise like power and grant divorce on the ground that there is no possibility of reunion.

41. Having regard to the discussion above, Appeal stands dismissed.

(Sharmila U. Deshmukh, J.)

(Nitin W. Sambre, J.)