



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 10th October, 2023

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Pronounced on: 2nd April, 2024

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MAT. APP. (F.C.) 153/2022 & CM APPL. 42112/2022

..... Appellant

Through: Ms. Geeta Luthra, Senior Advocate
along with Ms. Kamakshi Gupta and
Mr. Manas Agrawal, Advocates.

Versus

..... Respondent

Through: Ms. Reena Jain Malhotra, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

Marriage, personified as the essence of togetherness, blooms on the fertile soil of mutual support, devotion and allegiance. However, repeated acts of separation, akin to a relentless storm, only uproot this foundation, scattering seeds of discord that threaten the sanctity of the union. Amidst the tempest of distance and abandonment, this bond breaks beyond repair, leaving behind irreparable scars on the landscape of trust and commitment.

1. The Appeal under Section 19 of the Family Courts Act, 1984, has been filed by the appellant, against the Judgment dated 11.04.2022 passed by the learned Principal Family Judge, Family Court, Delhi *vide* which the Petition for divorce bearing H.M.A. No. 166/2017, filed by the petitioner under Section 13 (1) (i-a) and 13 (1) (i-b) of the Hindu Marriage Act, 1955,



has been dismissed.

2. Briefly stated, the appellant/petitioner, who was a qualified MBBS Doctor, got married to the respondent, who was also an MBBS Doctor, on 22.02.1992, according to the Hindu Customs and Rites. They were blessed with one daughter on 09.05.1994 and one son on 11.12.2002. The life story of the appellant/petitioner and the respondent, spans over about 19 years when they eventually separated on 10.06.2011.

3. Essentially, the facts are not disputed though both appellant/petitioner and respondent, have seen each incident in their own perspective. The appellant/petitioner had claimed that the respondent possessed an intemperate and volatile nature, who inflicted a vast panoply of cruelties upon the appellant/petitioner and deserted him on at least seven occasions, including the last and final desertion on 10.06.2011. This fact is not denied by the respondent though she had her own explanation for each occasion, when she left the matrimonial home.

4. It is claimed that since the day of their marriage, the appellant/petitioner was conveyed that she wanted to marry another person. The appellant/petitioner has alleged that the respondent and her family members started falsely claiming that the appellant/petitioner had no intention whatsoever to go for Honeymoon. While they were to go to Goa from 25.02.1992 to 05.03.1992, the petitioner's father suffered from a heart-attack and had to be admitted to ICU, one day prior i.e. on 24.02.1992, on account of which the Honeymoon had to be cancelled.

5. While the respondent has not denied the illness of the father-in-law or of their trip being cancelled but had asserted that the money for the Goa trip had been funded by her father and ironically, from the refund of the tickets,



which also was facilitated by her father, the petitioner's father purchased a Kinetic Honda Scooter instead of returning the money.

6. The petitioner/appellant had alleged that soon after the marriage, he got service in Deepak Memorial Hospital, where he was getting Rs.2,100/- per month being a duly qualified Surgeon but the respondent was earning more salary, on account of which he was humiliated and the rumours were spread in the family that the petitioner was less educated than the respondent. The respondent on the other hand has asserted that both were similarly qualified and there was no question of the family being disgruntled by the alleged financial disparity in the salary of the appellant and the respondent.

7. The appellant had also asserted that in March, 1992, the father of the respondent had called the father of the appellant, to inform him that his daughter would not be sharing her salary and it shall not be thrown in a common pool to be used for sharing the household expenses of the parties. He also threatened that the family must accept this situation or else the family would be implicated in a false dowry cases. In regard to the sharing of the salary of the parties, the respondent has asserted, which is eventually not denied by the petitioner that soon after the marriage, a joint account of the parties was opened and both would credit their salary in the same account. This explains the background in which the respondent's father had called the petitioner's father, to warn him against sharing of the salary by both the parties.

8. It is further asserted that there was unnecessary interference of respondent's family in their household decisions, which led to frequent quarrels *inter se* the parties and when the appellant tried to persuade her to



reduce this interference, the respondent and her family criticised him. On his return from the hospital, the appellant frequently found the respondent either on phone or not at home. The appellant had asserted that being a surgeon, he used to start his day early in the morning for the hospital and had to maintain a regulated life. The respondent, however, had an expectation of the appellant attending all the small and big functions of her family and her extended family which resulted in disruption of appellant/petitioner professional schedule causing him embarrassment at place of work. On one occasion in May, 1992, the respondent became unhappy about the amount of *shagun* that was given by the petitioner's family to her cousin, namely, Mr. Naresh, on his marriage. The matter got escalated to an extent that her cousin Mr. Naresh, intervened and threatened to teach appellant/petitioner a lesson by kidnapping and murdering him.

9. He further claimed that the respondent had no respect for the appellant, who along with her brothers and family members, would mock the appellant/petitioner and degrade the profession of medicine and claimed that doctors being always poor and struggle hard to make their ends meet. They were all business people, who claimed to be earning crores of rupees, while termed appellant as a pauper, who would never been able to achieve similar financial success.

10. The appellant had claimed that the respondent never wanted to share the financial burden. Every time he was in need of money, she did not come forth to help them sail through the financial crunches. One such instance was when he had gone to Zurich, Switzerland, for his fellowship in February, 2009, he was short of money but the respondent did not help him. The appellant further asserted that when the parties separated, she claimed the



return of Rs.1.5 Lacs to Rs.2 Lacs, which she had allegedly spent on buying clothes, etc. The respondent, has also asserted and thereby admitted that before going to Zurich, she had spent Rs.1.5 Lacs to Rs.2 Lacs, for buying clothes and other items for the appellant, for his stay in Zurich.

11. The appellant has asserted that he could not take the respondent along with him because of the heavy involvement of finances, on which he was routinely cursed by the appellant, who started a campaign of vicious arguments and fights over the telephone, which caused him great distraction and agony, in pursuing his Fellowship. In June, 2009, in order to compensate his inability, to call them to Zurich, he arranged for a two-weeks trip to Singapore, with the respondent and both the children.

12. The respondent has admitted that the trip to Singapore, was organized in June 2009, but she claimed that was essentially because his relative was living in Singapore and they were all supposed to stay in their house.

13. The appellant also asserted that because of the constant distractions, he was compelled to return to India in July, 2009, leaving his Fellowship incomplete. The respondent has refuted this claim by asserting that the appellant had eventually being able to return to Zurich and he completed his Fellowship in August, 2009.

14. ***The appellant has claimed that the behaviour of the respondent had always been erratic and in their 19 years of married life, there are at least six occasions, when she left the company of the appellant and finally left the matrimonial home on 10.06.2011.***

15. The ***first separation*** by the respondent was in October/November 1992. The appellant claimed that on all major festivals, they used to be a major discord between the parties. After Diwali in 1992, they both had a



major argument as the respondent was not satisfied with the gifts given to her siblings. Later, she in fit of rage telephoned her elder sister, Ms. Poonam, who came to their house and stretched the matter out of proportion; later she staged the *dharna* on the road outside the petitioner's house causing him lot of embarrassment. The respondent along with her sister, left the matrimonial home by stating that she would never return back. Eventually, on the intervention of Doctor Upasana, sister of the appellant, the respondent returned on 25.12.1992.

16. The respondent has not denied this separation period but has rather stated that the appellant had a cold attitude against the respondent and her family members and always refused to attend any family functions. She has also admitted that the appellant was reluctant in giving her money for buying gifts and she was forced to arrange money from her parents for even small token gifts to be given on such occasions. In her version, she has explained that on Diwali she was expected to give gifts to her sister-in-law and on her failure to do so, she was humiliated by the appellant's family members. Additionally, it was the mother-in-law who used to keep all the gifts received by the respondent on many occasions and she was asked to beg for them, which the respondent found disrespectful and insulting. She has further explained that she was dropped by the appellant to her parental home, in the last week of December 1992, for no reason and admittedly with the interference of the family members and Dr. Upasana, her sister-in-law, the matter was sorted out by holding several reconciliatory meetings, after which she returned to her matrimonial home.

17. The *second separation* happened in March, 1994, when the respondent was pregnant with their first child. She deserted the appellant



and went to live with the parents, on the pretext of studying and being in advanced pregnancy. Later, she refused to return to the house of the appellant, despite his frequent visits and requests but the family of the respondent kept complaining about appellant and his mother. According to the appellant, a prank call was made to him on 02.05.1994, telling him that the child has been born but when he along with family members reached the hospital, he found none present. This act was only to torture the appellant.

18. Subsequently, one week later, the daughter was born on 09.05.1994 and the appellant went to the hospital, to plead with her to return to the matrimonial home but he was not even allowed to touch his daughter for three months during which time, the respondent remained in her parental home when he was not even allowed to see the daughter. The efforts of reconciliation were made by the appellant and was eventually respondent was prevailed upon by the family members of the appellant, to return back to the matrimonial home. The parents had even apologised for the sake of peace and to bring back the respondent in the matrimonial home. She finally returned to the matrimonial home along with the daughter, on 06.07.1994.

19. The respondent has not denied this second separation but has explained that in March, 1994, about two months before the birth of elder daughter, the appellant picked up the fight as the respondent wanted to appear for her DNB Examination, which was not to the liking of the appellant since he did not want her to rise in her career. He left the respondent outside her parental home where she had to wait for hours for her parents to return and let her in the house. Though, she has claimed that despite being informed, appellant had come to see the daughter on her birth in the hospital only for 15 minutes and not visited thereafter, but she has



admitted that on account of her examination, she stayed back to be able to study properly as the atmosphere in the house of the appellant, was hostile and not conducive for her to study. She has admitted that finally in August, 1994, i.e. after about six months, she returned back to the matrimonial home, though according to her, it was only because of the efforts of her family that she was able to re-join the appellant.

20. The *third incident of separation* happened in the year 1997, when the respondent left on the occasion of her brother's marriage. During this period of separation, the appellant claimed that the respondent's father along with his relatives barged into their house and levelled wild allegations, with an intention to tarnish and ruin the image of the appellant and his family members. According to the appellant, she imposed a condition that she would return only if a separate accommodation was arranged and the appellant undertook not to visit his parental home again. The appellant arranged a flat on rent in Geetanjali Apartments, I.P Extension, Delhi, to facilitate the return of the respondent to the matrimonial home, but according to him, the respondent refused to return since he was not able to give the assurance that he would not visit his parents. These acts became deleterious to the health and career of the petitioner.

21. The respondent, however, has claimed that it is not in her knowledge that the appellant had arranged a flat in Geetanjali Apartments as she was never informed about it. After several months of separation and on account of conciliatory meetings between the family of the appellant and the respondent, she returned to matrimonial home. The appellant had given false re-assurances to the respondent that she would not face any adversity but every time, the promise was broken and she was subjected to a life of



humiliation.

22. According to the appellant, the respondent *deserted him for the fourth time* in December, 1999, when the appellant was offered a lucrative job in Jalandhar, Punjab but he had an inclination of pursuing his career in academics and was not inclined to take up the job. The respondent felt that it was a better career prospect and got adamant that the appellant should take up the job. Serious differences arose between the parties and the respondent left the matrimonial home. While leaving, she abused the appellant's father as "*dacoit in the clothes of a safedposh*", which his father could not take lightly since he was a well-respected doctor in the community and the senior of the family. The respondent left in rage soon after which the father of the appellant suffered heart attack and had to be admitted in G.B. Pant Hospital, where he underwent Angioplasty. The appellant has asserted that she failed to visit them in the hospital.

23. The respondent has admitted about the job opportunity of the appellant in Punjab and his disinclination to take it up. She, however, asserts that she did not question his decision to pursue his career in academics. She has asserted that it was the appellant used to pick fights on trivial issues at the instigation of his mother and every time, she was told to go back to her parental home as the matrimonial home did not belong to her. She admitted that on one of such occasions, she along with her daughter was dropped at her parental home, where she stayed for several months. She also admitted that the father of the appellant, underwent Angioplasty in G.B. Pant Hospital but asserted that on coming to know about the same, she along with her parents, went to the hospital and remained there through out the time that the procedure was carried out and left only after ensuring that the condition of



the father-in-law, was well. It is asserted that the facts have been twisted by the appellant. This period of separation is also admitted by the respondent.

24. The *fifth incident of separation* happened in June, 2006. The appellant has asserted that the respondent on her father's advice, who was a self-styled Astrologer and a *Vastu* specialist, insisted on the demolition of the two toilets to be demolished. The appellant had opposed her suggestion as there were only three toilets in the house and demolition of two would have caused great inconvenience. After weeks of festering arguments, she deserted the matrimonial home from June, 2006 to 04.03.2007, that is for about ten months.

25. The respondent has admitted this period of separation though she has claimed that she was dropped at her parents' home by the appellant, at the instigation of his mother, after picking up a massive fight with her and hitting her badly. They both realised his mistake and the appellant arranged counselling sessions with Doctor Sanjay Chugh, which were attended by both the parties. She further admits that she eventually returned back home after nine months of separation.

26. Again, for the *sixth time*, in February, 2011, the altercation happened as according to the appellant, when the daughter questioned the respondent for coming late in the night since she had to complete her project work, the respondent flew into her rage and told her that she had to mind her own business. On the same day, in the night at 8:00 p.m., the appellant had got a frantic call from the respondent that she was going to end her life and switched off her mobile. The appellant went into a frenzy as her mobile phone was switched off and her family members had no information about her whereabouts. In his state of panic, he went to Police Station Vivek



Vihar, Delhi and finally she was traced sleeping in her car, in Surajmal Vihar, public park in a drunk state.

27. This incident is again admitted by the respondent, who had stated that all her endeavours to save her marriage since beginning were snow balling and she had reached her saturation point and could not bear the burden of the marriage alone like taking care of the children during their illness, their education and also to bear the brunt of endless stream of relatives aside from her own tedious hospital duties and bearing the insult, abusive language and physical violence and long periods of separation from the appellant. She was getting into depression and it was in this unbearable moment after about 20 years of marriage, when she was unable to bear it any further, she chose to go to the park and sit there aloof for some time. The appellant created a scene and called the police only to prove her wrong. He was always looking for situations where he could put down the respondent, despite all her efforts to save their marriage.

28. According to the appellant, *the final withdrawal* from their matrimonial relationship happened on 10.06.2011, when the respondent in the absence of his parents, who had gone to the Vrindavan and appellant was in hospital, she finally left him without any reason and notice. When the appellant was performing his surgery, he received a frantic call from the respondent, at about 3:00 p.m., insisting that he must return back home urgently; leaving his surgery, he returned back home to find that the respondent had called three Tempo vehicles and had packed all her belongings and was sitting with her brother, sister and their children after having had a sumptuous lunch while the children were dancing to T.V. music. She informed the appellant that she was finally leaving the



matrimonial home and then conducted a ceremony in the nature of funeral rites for the appellant, in the kitchen stating that he was dead for her. She also tied a “*Rakhi*” on his hand and told him that henceforth, he was like a brother to her and forbade him from even touching her ever. After performing these bizarre ceremonies, she along with her family members left the matrimonial home.

29. The respondent has also admitted that she finally left the matrimonial home on 10.06.2011. However, she claimed that what transpired on the said date, was the result of pre-planning by the appellant and his family members. His parents intentionally went to Faridabad, to the mother-in-law’s brother’s house along with the minor son, so that they could not be blamed for the incidents. It is admitted that the respondent had called her brother, sister and Bhabhi anticipating that there may be some problem between her and the appellant. When he came back in the afternoon, he made several complaints to her family members and used foulest language against all of them, which she could not tolerate any further. The respondent submits that he informed her that he wanted to lead a life of celibacy and that he had no interest in her and had also said that he had better options outside. According to the respondent, she was threatened to leave the matrimonial home or else he would ensure that she could not continue to live there. She asserted that she was thrown out of her matrimonial home and she had to leave her daughter who was studying in Class 12th, behind as her School was in the vicinity. This was admittedly the final day when the respondent left the matrimonial home.

30. The appellant has further asserted that the respondent not only deserted the matrimonial home but also left the children behind, who



suffered terribly because of the extra-ordinary behaviour of the respondent. The daughter was preparing for her MBBS Entrance Examination, while the son was of the tender age of 8 years. The acts of the respondent, not only amounted to perpetuating cruelty towards the appellant, but were extremely damaging for the health, education and mental well-being of the children, who were extremely disturbed by such acts and unconscionable conduct of the respondent.

31. The appellant has also asserted that he made an endeavour to resolve the matters in December, 2011, but did not succeed. Admittedly, the parties met at Oberoi Maidens, Civil Lines, New Delhi, but the respondent conveyed her intention of divorce. The appellant has asserted that even thereafter, he made several attempts of re-conciliation but were all met with scornful rejection. In January, 2012, intervention was sought of two intermediaries but it also proved unfruitful. Thereafter, in May 2013, the appellant suffered serious spinal disorder and had to undergo spine surgery twice, despite which the respondent did not show even an ounce of sympathy or care towards his health.

32. The respondent, however, has asserted that on coming to know about his medical condition, she had been in the hospital and had taken all the care though she asserted that she never came to know about the second surgery.

33. The re-conciliatory attempts were also made in September, 2013, through Dr. Sita Ram Aggarwal, a prominent physician of Ashok Vihar but he was also not able to prevail. The appellant had thus, asserted that the conduct of the respondent had reached a point of no return and had caused him great physical, mental cruelty and agony. Despite three and a half years of separation and of the respondent having deserted him and the children,



she failed to return despite all the conciliatory efforts.

34. The appellant filed the present Petition for divorce on the grounds of cruelty and desertion.

35. The *respondent in her response*, has not denied that meetings were held for re-conciliation but has claimed that she was surprised as the appellant was arranging the meetings only to expedite the divorce and no successful re-conciliation could take place *inter se* the parties.

36. The respondent had also asserted that the appellant always acted on the instigation and advise of his mother, who used to unnecessarily interfere in all the affairs of their matrimonial life. She asserted that the appellant's relatives used to frequently visit their house and it was the mother-in-law, who was the decisive factor of who would stay and for how long, in their home. Whenever she objected to any such decision, the mother-in-law would insult and abuse her in front of all the family members. In all this, the appellant maintained a cold attitude towards her. She claimed that all the gifts that she received at the time of her marriage or subsequently, were taken away by the mother-in-law, who gave it to the sister of appellant, who had got married recently. She even subsequently took away all the gifts that the respondent got. Despite such humiliating conduct of the mother-in-law, she still suffered the humiliation and degradation and tried to settle in the matrimonial home.

37. The respondent also alleged that the mother of the appellant was in occult science while the father-in-law used to follow *Vastu* Shastra, which is nothing but another aspect of occult science. The mother-in-law somewhere in the year 1993, had an argument with the appellant and she consumed minimal amount of *Bygon* just to scare the appellant that she was



committing suicide; such act of her was because of her temperamental nature and her high ego. The appellant immediately returned from his hospital and the mother-in-law was taken to the hospital, where she recovered.

38. The respondent also claimed that the mother of the appellant had a habit of pulling her hair, beat her chest, bang her head on the wall, to show how dissatisfied she was, only to seek the attention of the appellant. The respondent despite not being at fault, apologised only to satisfy her ego and to maintain matrimonial harmony. The respondent also claimed that she was made to do the entire household works, take care of the children alone, with no support from the appellant. She however, forgot her own problems and tried to fulfil her responsibilities towards the family; be it taking care of the visitors and managing sickness of the children and family members. She asserted that despite such atrocities meted out to her over a period of time, she suffered them all in a hope of saving her matrimonial life.

39. On the basis of the pleadings, the *following issues* were framed on 06.04.2018, which are as under:-

- " (1) Whether Appellant was subjected to physical and mental cruelty in the hands of the Respondent? OPP*
(2) Whether petition is maintainable due to various legal obligation raised by the Respondent in preliminary objections of written statement? OPR
(3) Whether Appellant is entitled to the decree of divorce as prayed for? OPP
(4) Relief. "

40. **The appellant has examined** himself as *PW-1* and further examined *PW-2* Doctor Shyam Gupta, his father, *PW-3* Mr. Dharmvir Gupta, his paternal Uncle, *PW-4* Dr. Narendra Kumar, Maternal Uncle, *PW-5* Dr.



Sanjeev Joshi and **PW-6** Dr. J.S. Bhogal, his friends and **PW-7** Dr. Upasana Gupta his sister. In support of his assertions, he also examined **PW-8** Dr. Vimal Kumar Nakra, to produce the medical records of treatment of his mother at Deepak Memorial Hospital. **PW-9** Mr. Kapil Panwar, Deputy Manager with Fortis Hospital, to brought the employment record of the appellant from 05.07.2004 to 24.05.2012. **PW-10** Mr. Kuldeep Kumar, brought the employment record from the G.B. Pant Hospital from 13.05.1996 to 05.05.1999. **PW-11** Mr. Vikas produced the discharge summary of the appellant from Fortis Hospital, for the treatment undergone by him in June, 2016. **PW-12** Mr. Sunil Kimar brought the Discharge Summary of Max Hospital, Dehradun of May and June, 2013. **PW-13**, the Sole Proprietor of M/s Mazedaar Trips, brought the bills of cancellation of tickets from Delhi to Geneva and back from Zurich to Delhi. **PW-14** Dr. Amit Jindal proved the Discharge Summary and Bills of the treatment undergone by the appellant at Sir Ganga Ram Hospital. **PW-15** UDC, AIIMS brought the Appointment Letter of the appellant as Assistant Professor Neuro Surgery on 28.03.2001.

41. The respondent examined herself as **RW-1**. She also examined **RW-2** Mr. Manish Mittal, her brother in support of her assertions.

42. **The learned Family Judge**, took each incident separately and minutely analysed them to conclude that the petitioner/appellant failed to prove the allegations as made in the petition Thus, he concluded that there was no cruelty committed by the respondent and that the respondent was not responsible for desertion and it is rather the petitioner/appellant whose conduct shows reasonable cause for the respondent to have left the matrimonial home. The Divorce petition was accordingly, dismissed.



43. **Aggrieved, by the denial of Divorce, the petitioner/appellant has filed the present Appeal.**

44. **Submissions heard and record perused.**

45. The canvas of the life of the parties, has been painted over a period of about 20 years in myriad colours, hues and shades but unfortunately, the picture which has finally emerged is not as beautiful/appealing/prepossessing as may have been expected by both the parties when they entered into the bond of matrimonial in the year 1992. In this life story of the parties spanning over 20 years, there are bound to be ups and down as they travelled together in their life but unfortunately, as has been brought from the pleadings of both the parties, which essentially are not under challenge, the both were not able to walk together in harmony and enjoy their matrimonial bliss.

Cruelty:

46. Admittedly, in this period of about 19 years, the parties had differences and there were seven acts of separation, each of about 3 to 10 months, which may add up to about 23-25 months in all. Each incident of separation which led to separation, has not been denied by the respondent. The narration of each incident as detailed above would show a somewhat unreasonable attitude of the respondent.

47. ***First incident of Separation (October/November 1992 – 25.12.1992)***

- The first incident of separation of two months in October, November, 1992, happened on the pretext of sufficient gifts not having been given to the respondent's siblings on the occasion of Diwali. While the respondent has admitted that she had left the matrimonial home but has not been able to give any cogent explanation.



48. ***Second incident of Separation (March 1994 – 06.07.1994)*** - The second occasion of separation was in March, 1994, when she separated for about four-five months. She at the time of her first pregnancy, chose to stay at her parental home for this period solely on the pretext of preparing for her DMV Examination. Again, no cogent explanation has been forthcoming from the respondent as to what prevented her from returning to the matrimonial home, once her examination was over. A vague plea has been set-up by her that the atmosphere in the appellant's house was hostile and not conducive.

49. ***Third incident of Separation (Dec 1997 for few months)***- The third incident of separation happened in December, 1997. No explanation has been given by the respondent except that there was undue interference of the mother-in-law. She has admitted that re-conciliatory meetings were held and she came to know that the appellant had arranged for a flat in Geetanjali Apartments. According to the appellant, he was compelled to arrange a flat only because the respondent had issues with his mother and was not willing to return into the matrimonial home, where his mother was also residing. Though, the respondent has denied that she ever insisted on separate residence but the very fact that the appellant arranged a separate residence lends credence and truthfulness to his claim that the respondent wanted an accommodation separate from his mother.

50. The respondent in her entire Written Statement has in fact, blamed her mother-in-law, for all the acts. It is her consistent stand that the mother-in-law used to take away the money or instigate the appellant against her. She herself has admitted that from time to time, she left the matrimonial home on account of her discomfort in the matrimonial home. The respondent has not been able to explain any cogent reason which made her feel stifled,



scuttled, suffocated/choked or restricted in her activities.

51. The fact that the respondent was not happy with the mother-in-law, is also borne out from her own admission that while she and the appellant along with her daughter, were posted in Sanjay Gandhi Post-Graduate Medical Institute, Lucknow from January 1995 till May 1995, and had their own independent abode in Lucknow, away from the matrimonial home, those were the happiest days of her life. It is quite evident that the respondent found it difficult to live with the matrimonial home along with the mother-in-law and she had this feeling that mother-in-law was controlling the son and interfering in their day-to-day affairs.

52. On a comprehensive reading of the entire defence set up by the respondent, it is absolutely evident that because of the differences and the issues with the mother-in-law, the respondent found it not easy to adjust in the matrimonial home for some reasons or the other which became a cause for her to leave the matrimonial home, time and again.

53. ***Fourth incident of Separation (December 1999- May 2000)*** - When the parties separated again for *about five months*, in December, the dispute was about the appellant not being inclined to take up a lucrative job in Jalandhar but to continue his career in academics in Delhi. Again, there is no cogent explanation forthcoming from respondent to have left the matrimonial home during this period.

54. ***Fifth incident of Separation (June 2006 - 04.03.2007)*** –Again, the parties separated in June 2006 for *about ten months* and apparently the issue was that the respondent was unable to get the two toilets demolished, which according to her were located in accordance with *Vastu*. No cogent explanation for such long separations is forthcoming from the respondent



except a general complaint of the behaviour of the appellant or his acting on the instigation of his mother.

55. *Sixth Incident of Separation (February 2011 for a few months)* -

Similarly, the sixth separation, the respondent herself has admitted that she felt suffocated and stifled because of the home environment, which led to an episode of depression and she went to the park to spend some time alone. There is again nothing forthcoming to put the blame on the appellant to show that he was acted with cruelty towards the respondent.

56. *Final Act of Separation (10.06.2011)* - Admittedly, the respondent left on 10.06.2011. There is no denial that on that day, the parents of the appellant were not at home and the appellant had gone to his hospital on duty. The respondent also does not deny that she had called her brother, sister and *bhabhi* to her house. Even if she is disputing that the children had not been called but the fact remains that she herself states that she had a premonition of some mishap for which reason she had called her own family members with whom she left. Again, her own admission that she had reached a point when she finally left on 10.06.2011, shows that she was not happy with the home environment and left the house. It cannot be overlooked that she left her two children behind with the appellant.

57. It is pertinent to refer to the testimony of the appellant, who has deposed that on the said date, the respondent performed his last rites in the kitchen and also tied a “Rakhi” on his hand while telling him that henceforth, he would be like a brother to her and she abandoned the relationship of husband and wife. The truthfulness of this can be inferred from the explanation of the respondent that the appellant had a long time back, taken a vow of celibacy and had also told her that she was not



interested in her and there was much opportunity available outside. The explanation of the respondent again speaks volumes about her rejection and abandonment of the matrimonial relations.

58. It has been observed by the Apex Court in the case of Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511, that a prolonged period of continuous separation could lead to the irreparable breakdown of the matrimonial bond, constituting mental cruelty and cessation or deprivation of cohabitation and conjugal relationships, is an act of extreme cruelty.

59. The entire compendium of the evidence, as led by the respondent does not bring forth any act of cruelty on the part of the appellant; rather the entire evidence shows that the respondent was dissatisfied, unhappy with the conduct of her mother which made her so unhappy in the matrimonial home that she felt lack of space, control and respect in the house and she left the matrimonial home. It is a clear case where the respondent left the matrimonial home, from time to time, without there being any act or fault on the part of the appellant. Such withdrawal by the respondent from time to time, are acts of mental cruelty to which the appellant was subjected, without any reason or justification.

60. The learned Family Judge has dissected each incident individually and separately but life is not made up of isolated incidents. Each day experience adds up to the next day and the entire period of matrimonial relationship has to be considered as a whole. Instances of cruelty are not to be taken in isolation, but cumulative effect of facts and circumstances emerging from evidence, has to be taken into consideration to draw a fair inference whether a spouse had been subjected to mental cruelty due to conduct of other spouse as held by the Supreme Court in Parveen Mehta Vs.



Inderjit Mehta (2002) 5 SCC 706. Similar observations have been made in Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511 and Gurbux Singh v. Harinder Kaur, (2010) 14 SCC 301, that while looking at the acts of mental cruelty, the court must look at the married life as a whole and not merely at a few isolated incidents.

61. We, thus, find that the learned Family Judge has erred in analysing the life of the parties by taking a myopic view and by considering each incident as an independent window, when in fact it is the journey of the parties through their matrimonial life, which is determinative of their compatibility, progressiveness and growth. We find that there is overwhelming evidence to show that it is the respondent, who subjected the appellant to a life of uncertainty with there being no settlement and mental peace in the matrimonial life, despite 20 years of being spent together. **It's a case of mental agony to the appellant entitling him to a divorce, on the ground of cruelty under S. 13(1)(ia) of the Act.**

Desertion:

62. The appellant has also sought divorce on the ground of desertion. As defined and explained by the Apex Court in the case of Bipinchandra Jai Singhbai Shah v. Prabhavati, AIR 1957 SC 176, the essential ingredients for proving the ground of desertion are *Factum deserendi* i.e. the factum of separation and *Animus deserendi* i.e. an intention to desert the respondent for a permanent period. Additionally, the Desertion should have been without any reasonable cause and for a period of more than two years before filling of the petition.

63. In the present case, the Petition has been filed on 28.11.2014, after about three and a half years of the respondent leaving the matrimonial home



on 10.06.2011 and the acts of separation are admitted by both the parties. The appellant has explained the incident of 10.06.2011 as referred above, which again is reflective of an intent of abandonment and rejection of matrimonial relationship.

64. Further, the evidence as of record proves that the respondent had no intention of continuing in the matrimonial relationship. This is also evident from the fact that no serious conciliatory efforts were made by her, to return to matrimonial home. The efforts were made by the appellant through family friends and relatives, but admittedly did not succeed. *It is, therefore, proved that the respondent has deserted the appellant without any reasonable cause and is entitled to divorce, on the ground of desertion.*

Conclusion:

65. We, from our above detailed discussion, hereby conclude that the learned Family Judge, fell in error in dismissing the Divorce Petition. **We hereby set aside the impugned judgment dated 11.04.2022 and allow the divorce on the ground of cruelty and desertion, under Section 13 (1) (i-a) and 13 (1) (i-b) of the Hindu Marriage Act, 1955.**

66. The appeal is accordingly allowed. Pending application(s) also stands disposed of.

67. Decree sheet be drawn accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

APRIL 2, 2024/RS