LAWYER E NEWS

**HIGH COURT OF MADHYA PRADESH**

**Bench: Justice Sushrut Arvind Dharmadhikari and Justice Pranay Verma**

**Date of Decision: 03 October 2023**

FIRST APPEAL No. 1699 of 2019

**CHETAN SAHGAL** .....APPELLANT

**Versus**

**SMT. RICHA SAHGARL SAHGAL** **.....RESPONDENTS**

**Sections, Acts, Rules, and Articles:**

Section 13(1)(ia), 13(1)(ib) of the Hindu Marriage Act, 1955,

Order 41 Rule 27 Code of Civil Procedure(C.P.C.)

**Subject:** Divorce petition based on cruelty and desertion. Dissolution of marriage due to irretrievable breakdown.

**Headnotes:**

Family Law – Divorce – Appeal against the rejection of a divorce petition – Appellant husband seeks dissolution of marriage based on cruelty and desertion – Parties married in 2009 and have lived separately for almost 14 years – Respondent wife filed multiple cases against appellant and initiated various litigation – Irretrievable breakdown of the marriage – Mediation attempts failed – No scope for reconciliation – Dissolution of the marriage granted – Marriage deemed to be beyond repair. [Para 15-26]

**Referred Cases:**

- Sanjay Kumar Singh v. State Of Jharkhand (2022 LiveLaw SC 268)
- Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511
- A. Jaya Chanda v. Aneel Kaur [2005 (1) Supreme 626]
- Prem Narayan Sahu v. Smt. Manorma Sahu (F.A. no. 60/2002, decided on 21/11/2013)
- Dinesh Nagda v. Shanti Bai (2011 (3) JLJ 299)
- Naveen Kohli v. Neelu Kohli (AIR 2006 SC 1675)
- K. Srinivas Rao v. D.A. Deepa (2013 (5) SCC 226)

**Representing Advocates:**

Shri Santosh Kumar Meena, Learned Counsel for the Appellant

Ms. Richa Sahgal, Respondent present in person

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**Hon'ble Shri Justice S.A. DHARMADHIKARI** pronounced the following

**JUDGEMENT**

Heard finally with the consent of both the parties.

The present appeal has been filed by the appellant (husband) being aggrieved by the impugned judgment and decree dated 01.07.2019 passed by the 1st Additional Distrct Judge,Shujalpur, Distt. Shajapur in Case No. 06/2019(HMA), whereby the application seeking divorce under Section 13 of Hindu Marriage Act has been rejected.

**2.** The brief facts of the case are that the appellant and the respondent got married on 12.05.2009 as per Hindu rights and customs in Arya Samaj Mandir, Ujjain. It was an intercaste marriage as appellant and respondent love each other, therefore, the factum of said marriage had not been disclosed by the respondent(wife) to her father. When the appellant (husband) asked about disclosing their marriage to respondent's father, she informed that her father is a renowned Senior Advocate in the City of Indore and is a very short tempered person. At some suitable point of time, she will tell about their marriage to her father. After solemnization of marriage at Arya Samaj Mandir, Ujjain, respondent(wife) went back to her parental house at Indore. Thereafter, she never lived at her matrimonial house and have not cohabited. Whenever, appellant(husband) ask the respondent to come to the matrimonial house, she use to refuse on the pretext that she has not disclosed about their marriage to her father and in case,it came to his knowledge, he will even get them separated and assured that at appropriate time, she will disclose about their marriage to her father. Appellant kept on believing on the false assurance given by the respondent wife for long. However, on gaining knowledge about their marriage, respondent's father got enraged, but later on he accepted their marriage. On the false pretext of arranging a re-marriage of appellant and respondent at Shujalpur on 22.04.2014, respondent's father lodged a report against appellant, his parents and brother u/S 498A of IPC. It is also alleged against the respondent wife that after the factum of marriage came to the knowledge of her father, she use to behave with the appellant and his family members inappropriately and use to belittle them and even at times, she hurled filthy abuses. On some occasion, she even threatened the appellant that her father may sent the appellant to jail by trapping him some false and fabricated cases. Even, respondent wife has

lodged cases against the appellant under Protection of women against Domestic Violence Act and also preferred an application u/S 125 of Cr.P.C. seeking maintenance. She has approached the civil Court also by filing a Civil Suit before the District and Sessions Judge regarding property of the appellant's father. Left by his wife and burdened with multiple litigation slapped on him, the appellant husband has filed the application u/S 13 of Hindu Marriage Act for dissolution of marriage. The said application was dismissed by the 1st Additional District Judge, Shujalpur on various grounds.

**3.** Being aggrieved by the said dismissal, appellant/husband approached this Court by filing the instant appeal.

**4.** This Court after issuing notice to the respondent/wife had appointed Mediator and directed the parties to appear before her on 25.11.2019. However, mediation proceedings did not succeed. Thereafter, this Court had called upon the parties alongwith their parents to explore the possibility of settlement wherein appellant/husband has unequivocally stated that there is no room for any compromise or settlement and he requested that a decision be made in this case on its merits. On the other hand, respondent/wife would like to reside with the appellant.

**5.** Learned counsel for the appellant submitted that the appellant andrespondents are living separately since their marriage in the year 2009 i.e. almost 14 years. Respondent has filed various cases against the appellant as well as his family members. Respondent has even moved to Civil Court by filing civil suit against appellant's father regarding some property. Even otherwise, she remained ex-parte before the trial Court. Despite that, learned trial Court has dismissed his application u/S 13 of HMA.

**6.** On the other hand, respondent/wife supported the judgment and decree passed by the learned Court below.

**7.** Heard, learned counsel for the parties and perused the record.

**8.** During pendency of this appeal, respondent/wife has filed anapplication, I.A. No(s). 1371/2023, 2060/2023, 3264/2023 and 4264/2023 under order 41 rule 27 of the Code of Civil Procedure for taking additional documents on record.

**9.** By filing various applications under Order 41 Rule 27 of CPC , the respondent/wife present in person wants to bring the facts in the knowledge of this Court that the appellant/husband during existence of their marriage, appellant has solemnized second marriage. Alongwith the applications, she has filed affidavits of certain persons alongwith newspaper cuttings as well as a list of registered doctors with Medical Council of Madhya Pradesh to substantiate her claim that the appellant is engaged in medical profession and is a practicing doctor.

**10.** Learned counsel for the appellant has refuted in writing the contents of I.A. No. 1371/2023 by way of filing a reply which is duly supported by an affidavit in which he has affirmed that the present appellant has not remarried and the respondent has falsely alleged that he is having extra marital affair. For the same, some photos and screenshots of whatsapp chats have been filed.

**11.** The respondent has filed rejoinder to the reply disputing the same.

**12.** In order to decide an application under Order 41 Rule 27 CPC, the Apex court in the case of **Sanjay Kumar Singh V State Of Jharkhand reported in 2022 LiveLaw (SC) 268**, has held as under:-

"4. It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronouncement judgment or for any other substantial cause of like nature. As observed and held by this Court in the case of A. Andisamy Chettiar v. A. Subburaj Chettiar, reported in (2015) 17 SCC 713, the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore is, whether the appellate court is able to pronounce judgment on the materials

before it without taking into consideration the additional evidence sought to be adduced."

**13.** Upon perusal of record, it is very much clear that the respondent wife was ex-parte before the learned trial Court due to which she could not produce any evidence on record to rebut the claim of appellant/husband. Therefore, this fact that the appellant has remarried is raised before this Court only in the instant appeal. It is trite that whether the appellant is remarried or not is a fact which needs to be ascertained with the aid of appreciation of evidence and by examining the essential witnesses which could only be done by the trial Court and this Court while exercising appellate powers cannot entertain a new fact which was never placed before the trial Court while passing the impugned judgment. Therefore, as per settled principal of law, an appellate Court cannot travel beyond the pleadings. This Court is of the view that the respondent is unable to show why this Court can rely upon the photographs as well as on the whatsapp chats placed on record as this Court cannot examine the credibility of these documents at the appellate stage. Upon perusal of the documents annexed with the applications, this Court is of the view that they are neither a sine qua non for the removal of the clouds of doubt in the instant matter nor have a direct and important bearing on the main issue in the suit. Hence, all the IAs' i.e. I.A. No(s). 1371/2023, 2060/2023, 3264/2023 and 4264/2023 stand rejected.

**14.** It is an admitted fact that though the appellant and respondent have solemnized marriage in the year 2009, but as per the evidence available on record, respondent has never lived with the appellant.

**15.** The appellant/ husband filed an application before the learned trial court for divorce against respondent/wife, on the basis of two grounds viz- cruelty and desertion, as provided u/s 13(1)(ia) and 13(1)(ib) respectively. It is apposite to discuss the relevant part of the provision of the Hindu Marriage Act, 1955, i.e. Section 13, which is reproduced as under:-

"13. Divorce.- (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—
[(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or (i a) has, after the solemnization of the marriage, treated the petitioner with cruelty; or (i b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]..."

**16.** Cruelty has not been defined under the Act. All the same, the context where it has been used, which is as a ground for dissolution of a marriage would show that it has to be seen as a human conduct and behaviour in a matrimonial relationship. While dealing in the case of **Samar Ghosh Vs. Jaya Ghosh** reported in **(2007)4 SCC 511**, the Apex Court opined that cruelty can be physical as well as mental:

> If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.
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> Cruelty can be even unintentional:
>
> The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.

**17.** The Apex Court though did not ultimately give certain illustrations of mental cruelty. Some of these are as follows:

> (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.
>
> (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 orwife after marriage not to have child from the marriage may amount to cruelty.
>
> (xiv) **Where there has been a long period ofcontinuous 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.**

**18.** In respect of cruelty, the Apex Court in the case of **A. Jaya Chanda V Aneel Kaur** reported in **[2005 (1) Supreme 626]**, has held as under:-

> "12. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

**19.** In the case of **Prem Narayan Sahu V Smt. Manorma Sahu [F.A. no. 60/2002, decided on 21/11/2013]**;, the court has held as under:-

> "6. As regards the allegation of desertion, the wife has admitted in para 10 of her evidence that she has not gone to her matrimonial home since 1986. The husband had sent a legal notice dated 25.3.1986, Ex.P1, to the wife to return home but to no avail. It is, therefore, clearly established that the wife is living separately from her husband since last 27 years. As already stated above, after about five months from the date of passing of ex-parte decree of divorce in favour of husband, he remarried to a widow Saroj with whom he has two children. The marriage of the husband with wife has irretrievably broken down. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. In K. Srinivas Rao (supra) the Supreme Court has held that this is because marriage involves human sentiments and emotions and if they are dried up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree. The husband is, therefore, entitled for divorce on the ground of desertion also. We accordingly set aside the judgment and decree passed by the trial court and allow the husband's petition for divorce.

**20.** In the case of **Dinesh Nagda V Shanti Bai** reported in **2011 (3) JLJ 299**, a coordinate bench of this court has held as under:-

> "20. So far as the issue of desertion is concerned, Section 13(1)(ib) of the Act requires desertion for a continuous period of not less than two years immediately preceding the presentation of the divorce petition. In the present case, the respondent Shantibai has admitted that she is living separately with her parents since 1995-1996 (since 9-10 years prior to giving the affidavit before the trial Court, on 26/7/2005). The statement of the appellant also indicates that the respondent is living separately with her parents since 1995-96. The appellant has stated that he had no marital relation with the respondent since last 10-11 years. He has stated that for that reason he is having "dry life" for last several years. The aforesaid position is also reflected from the statements of the other witnesses. The respondent's plea that she is living separately on account of the second marriage of the appellant cannot be accepted because the respondent has failed to produce any reliable evidence establishing the second marriage of appellant with Radhabai. The reliance on the affidavit (Ex.D.15) given by Radhabai does not establish second marriage since she has only stated that she is living in the appellant's protection for certain reasons, but she has not stated that she is living as wife of the appellant. Though the respondent has stated that she is ready to live with the appellant, but the father of the respondent has categorically stated that it is not possible for the respondent to live with the appellant. The respondent has failed to establish any reasonable cause for living separately for last about 15 years.Thus, it is clear that the respondent has deserted the appellant and ground for divorce under Section 13(1) (ib) of the Act is made out.

**21.** The Apex Court in the case of **Naveen Kohli Vs. Neelu Kohli** reported in **AIR 2006 SC 1675** held that repeated filing of criminal cases by one party against the other in a matrimonial matter would amount to cruelty and the same was reiterated by another judgment of Apex Court in the case of **K. Srinivas Rao Vs. D.A. Deepa** reported in **2013(5) SCC 226.**

**22.** Another aspect which can be considered is the fact that appellant and respondent are living separately since their marriage and have not cohabited. There is absolutely no scope of reconciliation between the parties. An irretrievable marriage is a marriage where husband and wife have been living separately since a long period of time and there is absolutely no chance of their living together again. Even otherwise multiple Court battles between them and the repeated efforts to settle the disputes amicably by way of mediation have also failed which clearly indicates towards the situation that no bond now survive between them, it is a marriage which has been broken down irretrievably. Moreso, it is not possible in every case to pin point an act

of 'cruelty' or blameworthy conduct of the spouse. The nature of relationship, the general behaviour of the parties towards each other or long separation between the two are relevant factors which a Court must take into account.

**23.** Appellant and respondent have solemnized marriage in the year 2009 and are living separately since then only. Now, after multiple litigation, the matrimonial bond is completely broken and is beyond repair. If such a relationship which is merely on papers continues, the same may cause cruelty to both the sides.

**24.** In the instant case, where marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation with multiple Court cases between the parties, then continuation of such a marriage would only lead to infliction of cruelty by either of the parties to each other. It is also not out of place to mention here that dissolution of the marriage in the instant case would affect only the two parties as there is no child out of the wedlock.

**25.** In the given facts and circumstances as well as in the light of the judgment passed by the Apex Court in the case of **Naveen Kohli(supra),** we set aside the judgment and decree dated 01.07.2019 passed by the learned Court below and grant a decree of divorce to the appellant/husband. Their marriage shall stand dissolved. The appeal is allowed. No order as to cost.

**26.** Let a decree be drawn accordingly.