

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/11/2006

CORAM:

THE HONOURABLE MR. JUSTICE R. BALASUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE V. DHANAPALAN

C.M.A. (NPD-B) No.1558 of 2000

and

C.M.P. No.21256 of 2004

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A. Viswanathan .. Appellant

Versus

G. Lakshmi @ Seetha .. Respondent

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Civil Miscellaneous Appeal filed under Family Courts Act, 1984, against the judgment and decree passed in F.C.O.P. No.215 of 1997 by the I Additional Judge, Family Court, Madras on 23.04.1999.

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For appellant : Mr. S. Parthasarathy, Senior Counsel for Mr. V. Shankar

For respondent : Mr. S.V. Jayaraman, Senior Counsel for Mr. R. Nandakumar

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J U D G M E N T

(Judgment of the Court was delivered by V. DHANAPALAN, J.)

This Civil Miscellaneous Appeal is directed against the decree and judgment dated 23.04.1997 passed by the I Additional Principal Judge, Family Court, Madras in FCOP No.215 of 1997.

2. The appellant and the respondent are husband and wife respectively. The appellant had filed a petition for dissolution of marriage between them by a decree of divorce on the ground of cruelty under Section 13(1) (i-a) of the Hindu Marriage Act, 1955. The Family Court, after comprehensively dealing with the matter, dismissed the petition holding that the respondent has not treated the petitioner with cruelty and rejected the appellant's prayer to dissolve the marriage which took place on 23.08.1992. The appellant, aggrieved by the judgment of the Family Court, has preferred the present appeal on various grounds.

3. The appellant's case in brief is as under:

a. The appellant married the first respondent on 23.08.1992 according to Hindu rites and customs. Subsequently, the marriage was registered at Adyar Registrar's Office on 25.01.1993. Prior to this marriage, the appellant married one Shantha in the year 1961 and lived with her for 30 years. There was no issue out of the appellant's first wedlock and hence, the appellant and his first wife a three month old boy Sivakumar, by following due legal procedure of adoption on 02.11.1978. The said Shantha died in the year 1991. At the time of filing the petition, the adopted son was studying B.Com. The appellant's mother was also residing with them. After the death of his first wife, the present married the respondent herein. b. The second marriage life of the appellant was smooth till 1994 and thereafter, since early 1995, the respondent's attitude towards the appellant, his mother and son changed. In course of time, the respondent started beating the appellant and his son with whatever item she could lay her hands upon. She, at times, bit the appellant, spit on the face of the appellant, his mother and son. All of a sudden, during nights, she became hysterical, woke up the appellant and his son Sivakumar and without any reason wallop them. She also asked the appellant to get rid of his son Sivakumar and demanded him to transfer all his belongings in her name but the appellant did not heed to her request explaining that as long as he is alive, he would hold the properties and the question of inheriting the property could be discussed later. Provoked by this, she abused the appellant in public places like temples and relatives' and friends' houses. Many close friends like Kalyani Easwaran and P.N. Kumar would bear testimony to the inhumane and intolerable behaviour of the respondent towards the appellant, his aged mother and his son. c. The appellant is the Managing Director of Reliance Foods Pvt. Limited carrying on business in sports goods and equipments and there were three persons working under him in the showroom. In addition to this, the appellant is also running a consumer products distributing agency in the name of Reliance Agencies in which also, three persons were employed.

d. While so, the respondent started a new practice of coming to the business spot and unnecessarily picking up quarrel with the appellant in front of the staff and customers and cause embarrassment to him. She interfered with the working of the staff using foul language against them and also threatened to send them out of employment. The staff members appealed for better behaviour of the respondent but in vain. The appellant tolerated all the humiliations for a period of two years and a stage came for the appellant that it would not be possible for him any more to live with the respondent. The appellant with the knowledge that the respondent was a twice divorced woman, married her with the hope that during his advancing years, she would be a source of comfort and relief to him. To his misery, his life became miserable and he lost his peace and happiness completely. He had developed a feeling of insecurity for him, his mother and his son and he was left with no other alternative except to leave the respondent and accordingly, left the matrimonial home. Unable to bear the cruelty inflicted by the respondent on the appellant, his mother and son too left the matrimonial home and started living separately and therefore, the appellant filed a petition seeking a decree of divorce on the ground of cruelty.

4. In response, the respondent filed her counter and her case, in nutshell, is as follows:

a. After the appellant's marriage with the respondent, one lady by name Vasantha, employed under the appellant, used to come frequently to their house when the respondent was away at her office. The appellant and Vasantha used to move intimately. When the respondent came back from her office early, the appellant and the said Vasantha used to ignore the respondent and happily take their food and go away in the car. When questioned, she was beaten up by the appellant. The appellant used to indulge in teasing the respondent always and he used to compare her with their dog. At the early stages, the respondent used to keep quiet. But, eventually, when the visits of Vasantha started to boss over the respondent, she started revolting as a result of which frequent quarrels arose between the appellant and the respondent. b. The appellant always used to find fault with the action of the respondent without any reason. It is only the appellant and his son who would beat her. She is neither hysterical nor would beat and spit on the faces of the appellant, his mother and son. Although the appellant's son is aged 15 to 16 years, he would sleep with the appellant and the respondent and misbehaved with the respondent. Her efforts to correct him failed and the appellant instead of reprimanding

his son, would turn to the other side of the bed. The respondent had also informed this to her mother-in-law but she did not believe this. The respondent had no intention of chasing away the appellant's son as falsely alleged and on the other hand, she used to treat him as her own son and advised him properly and tried to change him. c. She was a State Government employee at the time of marriage with the appellant and was earning Rs.4,000/- per month. She used to give her entire salary to the appellant and at the instance of the appellant, she took voluntary retirement from service during February 1995 and she had received the retirement amount of Rs.1,30,000/- which was also given to him. The Provident Fund loan for Rs.20,000/- and Sriram chit amount of Rs.10,000/- were also handed over to the appellant. She was never interested in money or property and all that she needed was a happy married life and therefore, there is no question of the respondent asking the appellant to transfer all his belongings in her name. She never insulted the appellant in public places and it was only the appellant who used to tease the respondent and harass her in places and in the presence of office staff of the respondent and also used to beat her. Due to the appellant's intolerable behaviour, her ears and eyes were damaged and she became alright after medical aid. Whenever the respondent called the appellant over phone, Vasantha used to answer the call and tell her that the appellant had gone out and upon insistence, she would give the line to the appellant. On the allegation that she visited the appellant's shop, it is the respondent's reply that she had to been to the appellant's shop only once on her way back to home and that only at the request of the appellant to check up certain matters in the office. d. Further, one Lakshmi, sister of Vasantha was working in that shop and the respondent had approached Lakshmi and requested her to appraise her of the mode of accounting so that she could also attend to accounts work at times. Initially, she had obliged but later on, she had refused stating that it was not her concern. The respondent was taken back on this issue but the appellant kept quiet. She had also requested the said Lakshmi to behave with respect but unfortunately, Lakshmi refused to accede to the request and instead, she tried to assault the respondent. A big scene was created and the appellant just kept quiet as a mute spectator witnessing the scene. The respondent tolerated all the humiliations she has been subjected to and it was not the appellant who was put to any humiliation and she never acted violently with the appellant. e. On 01.02.1997, the appellant left for his office shop along with his son, in the afternoon of the same day, when the respondent was waiting for the appellant's arrival, she was shocked to receive a letter from the appellant stating that he, his son and his mother were subject to physical and psychological harassment and cruelty by the respondent and therefore, they were unable to withstand her hostile attitude towards them any more and they were compelled to move out of the house. He has also informed that he has removed from the house, a part of the gold jewellery, yet, the respondent is still willing to live with the appellant and she is willing to even condone the acts of cruelty and mental harassment meted out to her. f. She had tried her level best to bring harmony in their life. But, unfortunately, the appellant did not respond to the same. Even after the above petition was filed, she had tried her maximum for re-union with a fond hope that she could still happily live with the appellant. As soon as the case was adjourned, the appellant refused to contact the respondent and all her attempts to bring re-union failed in spite of her best efforts and therefore, she filed her counter statement. g. When Vasantha resigned, the appellant insisted the respondent to resign her job and asked her to be his partner. But, subsequently, he had taken away all her Share Certificates and other documents and valuables without her knowledge with mala fide intention and absolutely, no grounds were made out for divorce and hence, the FCOP had to be dismissed.

5. The appellant filed a reply to the counter statement of the respondent in and by which, he denied the allegations about the illicit relationship with Vasantha and according to him, Vasantha had resigned way back in 1995 and therefore, the respondent's allegations about Vasantha are false. As for the respondent's allegations about his son, it was the case of the appellant that it was his son who had tolerated the insult and the sort of allegations contained in the counter statement which embittered the relationship of the respondent and his son. On the financial aspect, it was the contention of the appellant that the respondent had fraudulently withdrawn cash to the tune of Rs.33,000/- from his account on two occasions namely on 11.02.1997 and 14.02.1997. It was also the appellant's contention that the respondent was a divorcee twice and both the marriages did not last longer. Further, the appellant has filed a rejoinder in which he had stated that monies of the respondent had been duly invested and he was even willing to produce records for the same.

6. Before the Family Court, four witnesses were examined on behalf of the appellant and in addition, six documents were marked as documentary evidence. On the side of the respondent, four witnesses were examined and as many as fifty documents were marked.

7. The Family Court, after analysing the oral and documentary evidence and after framing certain points for consideration, observed that the onus was on the appellant to prove his case and also held that the acts of cruelty must be specifically pleaded and specific instances of the conduct must be described. It further observed that the earlier divorces of the respondent were justified and dismissed the original petition filed by the appellant based on the above grounds.

8. Heard Mr. S. Parthasarathy, learned Senior Counsel for Mr. V. Shankar, counsel for the appellant and Mr. S.V. Jayaraman, learned Senior Counsel for Mr. R. Nandakumar, learned counsel for the respondent.

9. Mr. S. Parthasarathy, learned Senior Counsel has contended that (i) instances of physical cruelty were set out in the petition and corroborated by evidence of independent witnesses and neighbours, (ii) P.W.2 had explained the specific instances of physical cruelty and P.W.3, who is a customer in the appellant's shop had categorically narrated the instances how the appellant was abused in the presence of other customers and this had been corroborated by the respondent in her examination wherein she had deposed that the scuffle took place in the business premises and P.W.4 who is a family friend of appellant had narrated specific instances of physical cruelty which he had witnessed and the same was properly pleaded and proved by evidence;

10. Secondly, the learned Senior Counsel has contended that allegation of infidelity of appellant and alleged misbehaviour of Sivakumar constitute the cause of mental cruelty. In support of his arguments, he has pointed out the respondent suspected the relationship between the appellant (now aged about 72 years) and his employee Vasantha and that the friction in their matrimonial life was mainly on account of this but it has not been established by way of any cogent evidence and there is no proof for the same as the said Vasantha had resigned her job way back in 1995 when the trouble started developing between the appellant and the respondent.

11. Thirdly, it is his contention that the Family Court has failed to see the past conduct as can be culled out from the documents filed and relied by the respondent and for this, the Senior Counsel has submitted that the instances that the respondent had two failed marriages ending in divorce themselves would act as ample proof to show that the respondent was a troublesome character.

12. The fourth contention of the learned Senior Counsel is that the respondent has been contradictory averments both in her counter affidavit and also in her deposition. To substantiate his argument, he has pointed out the various proceedings initiated by her and her contradictory statements with regard to the same which would only go to prove that she had given both mental and physical torture to the appellant.

13. Mr. Parthasarathy's final contention is that the relationship between the appellant and the respondent has been damaged beyond redemption and the marriage is irretrievably broken. He has pointed out that numerous suits and police complaints have been lodged by her. The appellant had at one instance given police complaint on 30.01.1997 informing them about the harassment suffered by him and his immediate family member at the hands of the respondent. Also, the respondent has given a police complaint wherein his son was summoned for enquiry on numerous occasions. There was even a threat of arrest during those enquiries. The appellant, his son and the mother were put to constant harassment on account of the police complaint. The respondent too had filed a suit in the City Civil Court for permanent injunction in respect of the suit schedule property which admittedly belonged to the appellant's son.

14. In support of his arguments, the learned Senior Counsel has relied on some of the decisions of the Supreme Court and various High Courts as well and they are as under:

a. The decision of the Supreme Court reported in (1975) 2 SCC 326 in the case of Dr. N.G. Dastane vs. Mrs. S. Dastane: (Paras 54,55 and 56)

"Before us, the question of condonation was argued by both the sides. It is urged on behalf of the appellant that there is no evidence of condonation while the argument of the respondent is that condonation is implicit in the act of cohabitation and is proved by the fact that on February 27, 1961, when the spouses parted, the respondent was about 3 months pregnant. Even though condonation was not pleaded as a defence by the respondent, it is our duty, in view of the provisions of Section 23(1)(b), to find whether the cruelty was condoned by the appellant. That section casts an obligation on the court to consider the question of condonation, an obligation which has to be discharged even in undefended cases. The relief prayed for can be decreed only if we are satisfied "but not otherwise", that the petitioner has not in any manner condoned the cruelty. It is, of course, necessary that there should be evidence on the record of the case to show that the appellant had condoned the cruelty. Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation, there must be, therefore, two things: forgiveness and restoration. The evidence of condonation in this case is, in our opinion, as strong and satisfactory as the evidence of cruelty. But that evidence does not consist in the mere fact that the spouses continued to share a common home during or for some time after the spell of cruelty. Cruelty, generally, does not consist of a single, isolated act but consists in most cases of a series of acts spread over a period of time. Law does not require that at the first appearance of a cruel act, the other spouse must leave the matrimonial home lest the continued cohabitation be construed as condonation. Such a construction will hinder reconciliation and thereby frustrate the benign purpose of marriage laws. The evidence of condonation consists here in the fact that the spouses led a normal sexual life despite the respondent's act of cruelty. This is not a case where the spouses, after separation, indulged in a stray act of sexual intercourse, in which case the necessary intent to forgive and restore may be said to be lacking. Such stray acts may bear more than one explanation. But if during cohabitation the spouses, uninfluenced by the conduct of the offending spouse, lead a life of intimacy which characterises normal matrimonial relationship, the intent to forgive and restore the offending spouse to the original status may reasonably be inferred. There is then no scope for imagining that the conception of the child could be the result of a single act of sexual intercourse and that such an act could be a stark animal act unaccompanied by the nobler graces of marital life. One might then as well imagine that the sexual act was undertaken just in order to kill boredom or even in a spirit of revenge. Such speculation is impermissible. Sex plays an important role in marital life and cannot be separated from other factors which lend to matrimony a sense of fruition and fulfillment. Therefore, evidence showing that the spouses led a normal sexual life even after a series of acts of cruelty by one spouse is proof that the other spouse condoned that cruelty. Intercourse, of course, is not a necessary ingredient of condonation because there may be evidence otherwise to show that the offending spouse has been forgiven and has been received back into the position previously occupied in the home. But, in circumstances, as obtain here, would raise a strong inference of condonation with its dual requirement, forgiveness and restoration. That inference stands uncontradicted, the appellant not having explained the circumstances in which he came to lead and live a normal sexual life with the respondent, even after a series of acts of cruelty on her part. b. The Supreme Court, in its judgment reported in (1994) 1 SCC 337 in the case of V. Bhagat v. D. Bhagat (Mrs.) has held as under: (Paras 16 & 17)

"Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and

circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made." At this stage, we may refer to a few decisions of this Court rendered under Section 13(1)(ia). In Shobha Rani v. Madhukar Reddi, Justice K. Jagannatha Shetty, speaking for the Division Bench, held: (SCC pp:108-09, paras 4 & 5)

"Section 13(1)(ia) uses the words 'treated the petitioner with cruelty'. The word 'cruelty' has not been defined. Indeed, it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem to determine it. It is a question of fact and degree. If it is mental, the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, 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, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in Sheldon v. Sheldon, 'the categories of cruelty are not closed'. Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings, there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty" c. Yet another decision of the Supreme Court reported in (2002) 2 SCC 296 in the case of G.V.N. Kameswara Rao v. G. Jabilli, it was held as follows: (Para 18)

"We do not think that this is a case, where the appellant could be denied relief by invoking Section 23(1)(a) of the Hindu Marriage Act. On the other hand, various incidents brought out in the evidence would show that the relationship between the parties was irretrievably broken, and because of the non-cooperation and the hostile attitude of the respondent, the appellant was subjected to serious traumatic experience which can safely be termed as "cruelty" coming within the purview of Section 13(1)(i-a) of the Hindu Marriage Act. Therefore, we hold that the appellant is entitled to the decree for dissolution of marriage under Section 13(1)(i-a) of the Hindu Marriage Act. However, we make it clear that any order of maintenance passed in favour of the respondent will stand unaffected by this decree for dissolution of the marriage. We also make it clear that if any rights have been accrued to the respondent in the joint assets of both, she would be at liberty to take appropriate action to enforce such rights. The appeal is allowed...." d. In its judgment in the case of Parveen Mehta vs. Inderjit Mehta reported in (2002) 5 SCC 706, the Supreme Court has held as below: (Para 21)

"Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the

two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty, it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other." e. In the case of Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate reported in (2003) 6 SCC 334, it was held by the Supreme Court as below: (Para 7)

"The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portion is of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible. f. The ruling of the Supreme Court reported in (2005) 2 SCC 22 in the case of A. Jayachandra vs. Aneel Kaur (Paras 15, 16 & 17)

". . . Though the respondent tried to show that they were simple and harmless advice, yet on a bare reading thereof, it is clear that there were clear manifestations of her suspecting the husband's fidelity, character and reputation. By way of illustration, it may be indicated that the first so-called advice was not to ask certain female staff members to come and work on off-duty hours when nobody else was available in the hospital. Second was not to work behind closed doors with certain members of the staff. Contrary to what she had stated about having full faith in her husband, the so-called advices were nothing but casting doubt on the reputation, character and fidelity of her husband. Constant nagging on those aspects, certainly amounted to causing indelible mental agony and amounts to cruelty. The respondent was not an ordinary woman. She was a doctor in the hospital and knew the importance of the nature of duty and the necessity of members of the staff working even during off-hours and the working conditions. There was another instance which was specifically dealt with by the trial court. Same related to the alleged extra-marital relationship of the appellant, with another married lady who was the wife of his friend. Though the respondent tried to explain that she was not responsible for making any such aspersions, the inevitable conclusion is to the contrary. The matter can be looked at from another angle. If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct. In the instant case, after filing of the divorce petition, a suit for injunction was filed, and the respondent went to the extent of seeking detention of the appellant. She filed a petition for maintenance which was also dismissed. Several caveat petitions were lodged and as noted above, with wrong address. The respondent in her evidence clearly accepted that she intended to proceed with the execution proceedings, and prayer for arrest till the divorce case was finalised. When the respondent gives priority to her profession over her husband's freedom, it points unerringly at disharmony, diffusion and disintegration of marital unity, from which the Court can deduce about irretrievable breaking of marriage. Several decisions, as noted above, were cited by learned counsel for the respondent to contend that even if marriage has broken down irretrievably decree of divorce cannot be passed. In all these cases, it has been

categorically held that in extreme cases, the court can direct dissolution of marriage on the ground that the marriage had broken down irretrievably as is clear from para 9 of Shyam Sunder case. The factual position in each of the other cases is also distinguishable. It was held that long absence of physical company cannot be a ground for divorce if the same was on account of the husband's conduct. In Shyam Sunder case, it was noted that the husband was leading adulterous life and he cannot take advantage of his wife shunning his company." g. In its decision reported in (2005) 7 SCC 353 in the case of Durga Prasanna Tripathy v. Arundhati Tripathy, the Supreme Court held as under: (Paras 21,27 & 28)

"In our view, that 14 years have elapsed since the appellant and the respondent have been separated and there is no possibility of the appellant and the respondent resuming the normal marital life even though the respondent is willing to join her husband. There has been an irretrievable breakdown of marriage between the appellant and the respondent. The respondent has also preferred to keep silent about her absence during the death of her father-in-law and during the marriage ceremony of her brother-in-law. The complaint before the Mahila Commission does not implicate the appellant for dowry harassment though the respondent in her evidence before the Family Court has alleged dowry harassment by the appellant. It is pertinent to mention here that a complaint before the Mahila Commission was lodged after 7 years of the marriage alleging torture for dowry by the mother-in-law and brother-in-law during the initial years of marriage. The said complaint was filed in 1998 that is only after notice was issued by the Family Court on 27.03.1997 on the application filed by the appellant under Section 13 of the Hindu Marriage Act. The Family Court, on examination of the evidence on record, and having observed the demeanour of the witnesses concluded that the appellant had proved that the respondent is not only cruel but also deserted him for more than 7 years. The desertion as on date is more than 14 years and, therefore, in our view, there has been an irretrievable breakdown of marriage between the appellant and the respondent. Even the Conciliation Officer before the Family Court gave its report that the respondent was willing to live with the appellant on the condition that they lived separately from his family. The respondent in her evidence had not disputed the fact that attempts have been made by the appellant and his family to bring her back to the matrimonial home for leading a conjugal life with the applicant. Apart from that, relationship between the appellant and the respondent have become strained over years due to the desertion of the appellant by the respondent for several years. Under the circumstances, the appellant had proved before the Family Court both the factum of separation as well as animus deserendi which are the essential elements of desertion. The evidence adduced by the respondent before the Family Court belies her stand taken by her before the Family Court. Enough instances of cruelty meted out by the respondent to the appellant were cited before the Family Court and the Family Court being convinced granted the decree of divorce. The harassment by the in-laws of the respondent was an afterthought since the same was alleged after a gap of 7 years of marriage and desertion by the respondent. The appellant having failed in his efforts to get back the respondent to her matrimonial home and having faced the trauma of performing the last rites of his deceased father without the respondent and having faced the ill-treatment meted out by the respondent to him and his family had, in our opinion, no other efficacious remedy but to approach the Family Court for decree of divorce. The decision reported in Romesh Chander v. Savitri is yet another case where this Court in its powers under Article 142 of the Constitution directed the dissolution of the marriage subject to the transfer of the house of the husband in the name of the wife. In that case, the parties had not enjoyed the company of each other as husband wife for 25 years, this is the second round of litigation which routing through the trial court and the High Court has reached the Supreme Court. The appeal was based on cruelty. Both the courts below have found that the allegation was not proved and consequently, it could not be made the basis for claiming divorce. However, this Court after following the earlier decisions and in exercise of its power under Article 142 of the Constitution directed the marriage between the appellant and the respondent shall stand dissolved subject to the appellant transferring the house in the name of his wife within four months from the date of the order and the dissolution shall come into effect when the house is transferred and possession is handed over to the wife. The facts and circumstances in the above three cases disclose that reunion is impossible. The case on hand is one such. It is not in dispute that the appellant and the respondent are living away for the last 14 years. It is also true that a good part of the lives of both the parties has been consumed in this litigation. As observed by this Court, the end is not in sight. The assertion of the wife through her learned counsel at the time of hearing appears to be impractical. It is also a matter of record that



dislike for each other was burning hot." h. The decision of the Supreme Court reported in (2006) 4 SCC 558 in the case of Naveen Kohli v. Neelu Kohli wherein the Supreme Court held as under: (Paras 48 and 64)

"The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.

In Durga Prasanna Tripathy v. Arundhati Tripathy, this Court further observed that marriages are made in heaven. Both parties have crossed the point of no return. A workable solution is certainly not possible. Parties cannot at this stage reconcile themselves and live together forgetting their past as a bad dream. We, therefore, have no other option except to allow the appeal and set aside the judgment of the High Court and affirming the order of the Family Court granting decree for divorce." i. Also in the judgment reported in AIR 1989 Cal 120 in the case of Harendra Nath Burman vs. Smt. Suprova Burman & another, the High Court of Calcutta held as follows: (Para 18)

"As we cannot but note, scurrilous, vituperative and scandalous allegations have been freely made by both the spouses against each other and since we found them to have been made by the parties without any justifiable foundation, we would have no hesitation in coming to the conclusion that the marriage has broken down irretrievably and irreparably beyond all prospects of resuscitation or restoration. But as pointed out hereinbefore, however desirable it may be, irretrievable breakdown, by itself and without more, has not, as yet been made a ground of divorce and the Court must find out one or more of the grounds as specified in S.27 of the Special Marriage Act, unless the parties choose to proceed for divorce by mutual consent under S.28 of the Act. Since we have found out such a ground namely, cruelty by the wife-respondent, we would decree divorce and (borrowing from the the Supreme Court decision in Saroj Rani (AIR 1984 SC 1562) (supra), we would say that we do so without any "mental compunction", as we have also found the marriage to have been wrecked beyond repair. j. Further, the High Court of Calcutta, in its judgment reported in AIR 1986 Calcutta 150 in the case of Nemai kumar Ghosh v. Mita Ghosh, has observed as follows: (Paras 7 & 8)

"It is pertinent to refer in this connection to the provisions of S.13(ia) of the Hindu Marriage Act. The word 'cruelty' has not been defined in the Act but it has been well settled by several decisions of this Hon'ble Court as well as by the Supreme Court that this cruelty refers not only to physical cruelty, but also to mental cruelty. It is also very relevant to refer to S.23 of the said Act. Satisfaction as used in S.23 is not that satisfaction as required in a criminal proceeding, but it refers to the proving of the case by evidence adduced and also by the surrounding circumstances as appear from the case itself. . . . On a conspectus of all these decisions cited hereinbefore, it is now well settled that if any imputations against the character of any spouse is alleged either by the wife or by the husband without any foundation and the same is based on mere suspicion, even in such cases, such baseless allegations of illicit relationship amount to mental cruelty and it will be a valid ground for passing a decree of divorce under the provisions of Section 13(ia) of the Hindu Marriage Act. We have already held hereinbefore on a consideration of the evidence on record that the respondent wife, since after her marriage with the appellant, became suspicious about his character and used to doubt that the appellant was in illicit connection with his own sister-in-law (elder brother's wife). This has caused serious mental pain and agony to the appellant inasmuch as it has been stated by the appellant and also pleaded in his petition that he held his sister-in-law in high esteem like his mother and it was under her care and affection that he was brought up and it was she and his elder brother who arranged his marriage with the respondent. In such circumstances, we are constrained to hold, considering the social status of the appellant who is now working as an officer, i.e. Branch Manager of the United Commercial bank, that this behaviour on the part of the respondent amounted to mental cruelty and it gives sufficient reasons for the appellant to think that it would not be safe for him to live with the respondent...."

15. Per contra, Mr. S.V. Jayaraman, learned Senior Counsel for the respondent has submitted that the Family Court has given cogent and convincing findings observing that the acts of cruelty have not been specifically pleaded and no specific instance has been described and the appellant has not given any specific instance of

the respondent's conduct in detail in the petition. It is his further contention that the Family Court has rightly observed that from previous divorces, the respondent had not claimed any money and therefore, she is not after money and the earlier divorce of the respondent is justified.

16. Mr. Jayaraman has assailed the depositions of P.W.2 and P.W.4 as the assault with cricket was not pleaded in the petition and also P.W.2's contention as she could not remember the date of the accident and the deposition of P.W.3 as well who is a customer on the ground that he has not produced any purchase bill to prove that he is a customer. According to him, P.W.4 is only an interested witness and the same has to be rejected and there is no cogency in the evidence of these witnesses.

17. The learned Senior Counsel has strenuously contended that R.W.4's deposition in respect of Vasantha with whom the appellant has allegedly had illicit relationship is accepted by the Family Court as also the allegation of the respondent in respect of appellant's son Sivakumar. Even after filing the petition, the efforts for re-union by the respondent had not materialised because of the appellant's attitude. The Family Court has observed that the conciliation efforts failed as the appellant was not prepared to live together though the respondent had expressed her willingness and therefore, the conclusion of the Family Court and the contention of the respondent are properly taken into consideration and the petition has been rightly dismissed. According to the learned Senior Counsel, there is no material irregularity or perversity in the orders of the Family Court and therefore, in the absence of any grounds for dissolution of the marriage and to grant divorce, the petition filed by the appellant has been rightly dismissed by the Family Court.

18. For his part, Mr. Jayaraman has relied on the following judgments in support of his contentions:

a. The judgment of the Punjab & Haryana High Court reported in II (1983) D.M.C. 348 in the case of Vijay Kumar vs. Rita Kumari (Para 3)

"After hearing the learned counsel for the parties, I am of the view that this appeal deserves to be dismissed. There is no proof on the record about the mis-behaviour of the wife with the husband, his parents or friends etc. and general allegations have been made and evidence also of general type has been produced. No definite instances were either pleaded or proved. Father of the husband appeared as a witness. Even he could not state as to how the wife use to mis-behave or maltreat. Even the husband, in his statement, could not specify or highlight the real facts. No other relation, friend or neighbour has been produced in support of the husband. Accordingly, I am in agreement with the Court below that the husband has miserably failed to prove if any justifiable ground of mental cruelty on account of mis-behaviour of the wife was made out. Mr. D.N. Awasthy, appearing for the husband had to concede frankly that in fact, there is no reliable evidence available on the record in support of the pleas raised by the husband." b. The Delhi High Court, in its decision reported in I (1984) DMC 229 in the case of P.D. Sharma vs. Savinder Sharma has ruled as follows: (Paras 30, 31 & 32)

"... In the present case, I have come to a definite conclusion that the respondent was fully justified in making accusations regarding the illicit intimacy of the appellant with Surrender Kaur Ahuja and as such, this act of the respondent can neither be held to be a cruelty nor can be held to be a valid excuse for the appellant to leave the matrimonial home and desert the respondent. In act, it is the appellant who is guilty of deserting the respondent and the cause of action, if any accrues to the respondent. It is true that the parties have not lived together since 1969 and the marriage itself has gone to rocks and there is absolutely no hope of its revival. In spite of efforts having been made by the learned Trial Judge as also be me, the respondent-wife was not willing to be called a divorcee and her plea was that she does not want her children to be without a father. In my opinion, she was fully justified in taking such a stand and the appellant cannot be allowed to take advantage of his own wrongs. For the reasons recorded above, I do not find any merit in this appeal, which is dismissed with costs...."

c. In its decision reported in II (1987) DMC 364 in the case of Kanai Lal Majumdar vs. Smt. Rama Majumdar, the High Court of Calcutta, has held as under: (para 13)

"...Even assuming that actually there was no such unbecoming affair between the petitioner and the girl, that somehow or other, he was in touch with that girl seems to be evident. If merely upon that basis, the respondent made some accusations, that would not be considered as acts of cruelty. This taking a most liberal view of the evidence adduced by the petitioner, we find that there is some ground for the allegations as to the affairs with some lady. In such circumstances, even if the respondent became ill-tempered on occasions, that would not be considered as cruelty on her part. Neither such occasional frenzies, if any, on her part, should compel the petitioner to leave the matrimonial home. There was, therefore, no question of constructive desertion by the wife. The grounds of cruelty and desertion are not established."

19. Now, let us proceed to examine the facts of the case in the light of the settled proposition of law which has been crystallised by a series of judgments relied on the by both sides as referred to above.

20. It is seen that the petition for divorce was filed primarily on the ground of cruelty. It is worthwhile to note that prior to 1976 Amendment in the Hindu Marriage Act, 1955, cruelty was not a ground for divorce under the Hindu Marriage Act. In 1976 Amendment Act, cruelty was made a ground for divorce. Hence, it is unnecessary for a party claiming divorce to prove that the cruel treatment is of such nature as to cause apprehension, a reasonable apprehension that it will be harmful or injurious for him or her to live with the other party. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions and their culture and human values to which they attach importance.

21. We have given careful consideration to the rival submissions made by the learned Senior Counsel on either side and have also scrutinised the oral and documentary evidence in support of their contentions. From an analysis of the same, it is seen that divorce was sought by the appellant on the ground of physical and mental cruelty. P.W.2, a neighbour of the appellant has deposed some specific instances which are pleaded about physical cruelty. Similarly, P.W. 3 who is a customer to the appellant's shop has narrated the scuffle which took place in the business premises. He has specifically deposed and the same has been pleaded by the appellant. P.W.4, a family friend of the appellant has narrated some of the specific instances of physical cruelty which he had witnessed and it has also been pleaded. Further, it is admitted by the respondent that the relationship between the appellant and his employee Vasantha which had been suspected by the respondent, created friction in their matrimonial life and this suspicion by the respondent has not been properly substantiated by her with any clinching evidence. Unfounded and baseless allegations made by the respondent, time and again, do constitute an act of mental cruelty. R.W.4, Arjunan has deposed on the respondent's allegation about the relationship of the appellant with Vasantha. But, in his cross examination, he has stated that he had seen the appellant roaming with Vasantha but later on, he has stated that he came to know only from Vasantha's husband about certain disputes in Vasantha's family because of her intimacy with the appellant and he has no direct knowledge of the same. In his deposition, he has certified that the appellant is a gentleman and not a womanizer. But, he contradicts himself by stating that he knew about the divorce proceedings while later he states that he is not aware of the divorce proceedings. Therefore, his contradictory evidence which has been accepted by the Family Court cannot merit acceptance.

22. Next, the alleged misbehaviour of the adopted son of the appellant has no basis and hence, this baseless allegation constitutes an act of mental cruelty as the only complaint is that the appellant's adopted son put his legs on the respondent while sleeping between the appellant and the respondent. This is an unfounded complaint which shows the audacity of the respondent in making baseless allegations. This is because it is quite natural for a person to put his leg or hand on the person sleeping nearby and this reflex action cannot be construed in a negative spirit as done by the respondent in view of the fact that the respondent herself has stated that she treats the appellant's son as her own son.

23. Yet another instance of respondent's allegation was that the appellant was responsible for the death of his first wife. But, it is seen from the evidence that they had lived happily for 30 years and she had died only due to cardiac arrest and this specific allegation by the respondent also does constitute an act of mental cruelty. The various baseless allegations made in the written statement filed in matrimonial proceedings would certainly constitute acts of mental cruelty as seen from the number of decisions of the Supreme Court and High Courts supra.

24. It can be clearly seen that the acts of cruelty had become routine day-to-day affairs and not an isolated affair since 1995 and were not restricted to isolated instances. This has not been rightly assessed by the Family Court. The material facts as to cruelty have been pleaded and the insistence of the Trial Court is for pleading evidence which is legally impermissible. It is only that all material factors needed to clothe the cause of action have to be pleaded while material particulars need not be pleaded.

25. On the aspect of past conduct of the respondent, admittedly, she had two failed marriages ending in divorce. Both the marriages did not last for any considerable period of time. The documents in Ex.R.3 is the legal notice dated 15.04.1987 issued on behalf of the second husband of the respondent wherein it narrates the violent and cruel manner in which the respondent behaved with her second husband and as to how she assaulted everybody. This aspect of the respondent's conduct has been lost sight of by the Family Court. In the counter affidavit and in her deposition, it is the case of the respondent that she was never interested in the properties owned and inherited by the appellant. But a perusal of Ex.P.5, P.10 to P.17, P.20, 32, 33, 36, 37 and 43 would reveal that she was more concerned about the Fixed Deposits made by the appellant in various institutions in which she was a nominee. She had written to all these institutions to stop payment to the appellant on maturity of those deposits and to stop change of the joint deposits and she had also denied rights to the adopted son Sivakumar.

26. The respondent filed a suit for permanent injunction in respect of property in O.S. No.5746 of 1999 whose decree is under challenge in S.A. No.2218 of 2004 considered along with this appeal. She further filed a suit for declaration to declare the adoption of Sivakumar as null and void. At the stage of final arguments of the said suit, an application to amend the plaint was made to include an additional relief to set aside the settlement deed executed in favour of the appellant's son as null and void. But this interim application was rightly dismissed and it was upheld by this Court and the Supreme Court as well. In all the stages, the petitions filed by the respondents were dismissed. These facts would make it clear that the respondent's greed over the property in the name of Sivakumar was the cause for the respondent to resort to acts of mental and physical torture.

27. Finally, we have to consider whether there is any possibility for redemption of the matrimonial life of the parties, when admittedly the parties have been living separately for more than a decade, i.e. right from the date of petition for divorce. The appellant's contention that the respondent's two earlier marriages ended in failure has been spoken of by the latter in her oral evidence. Numerous suits and police complaint have been lodged by the respondent whereby it is not possible to reconcile and compromise. The police complaint dated 30.01.1997 has been marked in respect of harassment of the respondent on the appellant. Similarly, the respondent has given police complaint against the appellant and his son has been summoned for enquiry on numerous occasions. Therefore, there has been a constant harassment on account of these complaints.

28. All the above instances do really substantiate the acts of mental cruelty and lay a firm foundation for grant of divorce. Hence, in our considered view, it is established from the instances pleaded and proved by evidence, both oral and documentary, in support of the appellant that the Family Court, has not looked into these evidence based on the legal propositions and the established rule of law. That apart, the decisions relied on by the counsel for the respondent are those of the High Courts whereas the counsel for the appellant has relied on some important decisions of the Supreme Court more particularly in the decision reported in (1975) 2 SCC 326 in the case of Dr. N.G. Dastane vs. Mrs. S. Dastane (supra) and High Courts as well and since we are bound to abide by the rulings of the Supreme Court which are more relevant to the facts of the case of

hand, we are of the opinion that the appellant should have been granted divorce by the Family Court.

29. In view of what has been stated above, we hold that the decision of the Family Court is not correct and the judgment of the Family Court which is under challenge is liable to quashed and is accordingly quashed and the FCOP filed for divorce under Section 13(1) (i-a) of the Hindu Marriage Act, 1955 is allowed thereby granting divorce by dissolving the marriage held on 23.08.1992 between the appellant and respondent and in the result, the appeal is allowed. No costs. Consequently, the connected C.M.P. is closed. cad

To

1. The I Additional Judge

Family Court

Madras

2. The Record Keeper

V.R. Section

High Court of Madras

[PRV/8756]