Neutral Citation No. - 2025:AHC-LKO:13910-DB

RESERVED

Case :- FIRST APPEAL No. - 106 of 2022
Appellant :- Smt. Shikha Trivedi
Respondent :- Saurabh Shukla
Counsel for Appellant :- Shobhit Mohan Shukla, Ashok KumarMishra
Counsel for Respondent :- Manoj Kumar Misra, Sudeep Kumar

Hon'ble Vivek Chaudhary,J.
Hon'ble Om Prakash Shukla,J.

1. Heard Sri Shobhit Mohan Shukla and Sri Ashok Kumar Mishra, learned counsel for the appellant, Sri Manoj Kumar Misra and Sri Sudeep Kumar, learned counsel for the respondent and perused the record.

2. Present First Appeal under Section 28 of The Hindu Marriage Act, 1955, (hereinafter referred to as 'the Act 1955') Read With Section 19 of Family Courts Act 1958 (hereinafter referred to as Act 1958) has been filed by appellant i.e. wife Shikha Trivedi challenging Divorce Decree dated 14.10.2022 passed by Principal Judge, Family Court, Lucknow in Suit No. 3129 of 2018 (Sri Saurabh Shukla Vs. Smt. Shikha Trivedi) filed by Plaintiff i.e. husband Saurabh Shukla under Section 13 of the Act 1955 whereby aforesaid suit has been decreed resulting in annulment of marriage of parties held on 09.12.2012.

3. As per the plaint, the marriage of the appellant-wife was solemnized with respondent-husband on 09.12.2012 according to Hindu rites and rituals at Lucknow. The appellant is working in the Department of Home, State of U.P., as Head Operator, Police Radio Service w.e.f. 2006 and is presently posted at wireless Headquarters, Mahanagar, Lucknow. The respondent is also working as Review

Officer in the establishment of High Court of Judicature at Allahabad at its Lucknow Bench.

4. As per the version in plaint filed by the respondent-husband, it was alleged that, from the very inception of the marriage, the appellant exhibited an indifferent and aloof behavior towards respondent and her Mother-in-Law. After sometime the respondent discovered inappropriate messages on the appellant's mobile. Thus, it came in the knowledge of the respondent that the appellant is in illicit relationship with one Raj Bahadur, who is working along with the appellant in the same office. The respondent and his family intervened and tried to convince the appellant but she started quarreling and misbehaving with respondent and his family.

5. Plaint further states that after the aforesaid incident on 21.07.2013 the appellant started living in a rented accommodation near Neera Nursing Home in Lucknow, where Raj Bahadur was frequent visitor, until respondent brought her back in March 2014. Respondent also stated in his plaint, that, on interrogation of appellant, Raj Bahadur started threatening respondent and his widowed mother that respondent should leave appellant. The respondent made a complaint to the Senior Superintendent of Police, Lucknow about the said threat. On the application of the respondent an enquiry was instituted and the statement of Raj Bahadur was recorded by the enquiry officer. In his statement he admitted that he was in a relationship with appellant and they were keen to marry each other, but, because of denial by the parents of appellant they could not do so. He also stated that appellant married respondent under pressure of her parents. Plaint further states that on 25.05.2016, appellant came to the house of respondent and started misbehaving and had forcibly taken ornaments and cash from his house. Therefore, mother of the respondent lodged an FIR on 30.05.2016 at 12:30 hrs. as Case Crime no.459 of 2016 under Sections 323, 504, 506, 384 I.P.C at Police Station Madiyaon, District Lucknow. When this fact came into the

knowledge of the appellant and her father, then on same day appellant moved an application for lodging FIR against respondent and his family members. The FIR was lodged as Case Crime no.460 of 2016 under Section 307, 354, 323, 504, 506 I.P.C., at Police Station Madiyaon, District Lucknow on 30.05.2016 at 22:30 hrs. The parties have been living separately since 25.05.2016, and efforts for reconciliation also failed.

6. Allegations made by respondent-husband were denied in the written statement by the appellant-wife. She stated that while working as a Radio Operator, the appellant diligently cared for her mother-in-law. However, after some time of marriage, she started facing harassment from her brother-in-law and sister-in-law, who were residing in Sitapur and often used to visit their house. As she was newly married, therefore, kept mum. Appellant in her written statement states that when her brother-in-law tried to touch the body parts of the appellant, she raised concerns. The respondent and his family refused to accept their wrongdoing and threatened her to stay silent. Furthermore, appellant in her written statement stated that act of domestic violence was also committed by the respondent and his mother upon appellant on 21.11.2013 for which she got herself examined at Balrampur Hospital. Further on 25.06.2016, respondent told appellant that she will be allowed to stay in her matrimonial home but the respondent and her mother-in-law misbehaved with appellant and she was allegedly attacked and strangled, prompting her to seek police protection for which, she lodged an FIR on 30.05.2016, as Case Crime no.460 of 2016 under Section 307/354/323/504/506 IPC.

7. It is admitted by the both the parties before the Family Court that soon after marriage in 2013-14, the appellant started living separately in rented house and did not go to her parental house which is also in Lucknow. It is also admitted by both the parties that they have been living separately since 25.05.2016.

8. The learned Principal Judge, Family Court framed the following issues:

I. Is the plaintiff entitled to obtain a decree of divorce on the ground of desertion and cruelty mentioned in the plaint?

II. Whether the present suit is not maintainable as it is barred by the Doctrine of *Res Judicata* ?

III. Any other relief, if admissible.

9. The Family Court, after considering the pleadings and submissions of both the plaintiff and the defendant, and upon examining the statements of witnesses and the evidence on record, decided the issues framed in the suit. In respect of Issue no.(I), Family Court concluded that Plaintiff is entitled to grant of decree of divorce in terms of Section 13(1)(1a) and (1b) of Act 1955 i.e. on the ground of 'desertion' and ‘cruelty’ upon him by appellant. In the opinion of Family Court, it is an admitted position that appellant has 'deserted' respondent since 25.05.2016. Before that also, soon after marriage she left her matrimonial house and lived separately from July 2013 till March 2014. In respect of Issue no.(II), Family Court concluded that the doctrine of *res judicata* does not apply in the present case. Consequently, suit for divorce filed by Plaintiff was decreed by the Family Court on the ground of 'desertion' and ‘cruelty’ vide its judgment and decree dated 14.10.2022.

10. Feeling aggrieved by aforesaid judgment and decree passed by Family Court, appellant-wife has now approached this Court by means of present First Appeal.

11. Learned counsel for the appellant challenging the judgment and decree passed by Family Court submits that the same is patently illegal. According to learned counsel for appellant, the Family Court while passing aforesaid judgment and decree has not considered the

entire facts and evidence before it and has given incorrect and illegal findings of facts and law.

12. Learned counsel for the appellant submits that it was respondent-husband who was having illicit relationships with different women. Furthermore, it is argued that the divorce suit should have been dismissed under the doctrine of *res judicata*, yet the Family Court entertained it. The respondent-husband has completely failed to prove his allegations in the divorce suit by leading evidence before the Family Court. The appeal, therefore, deserves to be allowed.

13. Per contra, the respondent's counsel has argued that the Family Court had reached at the right conclusion regarding cruelty and also that there was desertion of marriage amongst the parties, so the judgment of the Family Court deserves to be confirmed.

14. This Court vide order dated 23.01.2023 directed the matter to the Mediation Center for reconciliation which proved unsuccessful.

15. Both the parties have made submission on following ground before this Court:

i. Whether suit is barred by *res judicata* ?

ii. Whether the Family Court erred in granting the decree of divorce based on the evidence on record or the respondent is entitled for a decree of divorce ?

On the Issue of *Res Judicata*:

16. Learned counsel for appellant argued that the suit for divorce was not maintainable due to the principle of *res judicata*. It is argued that the respondent had previously filed suits for divorce in 2017 and 2018, which were dismissed. Hence, the present suit was barred, and the Family Court should not have entertained it.

17. The respondent had previously filed a suit in 2017, which was dismissed on 17.01.2017, at the admission stage, on the ground that the parties had not yet completed the mandatory two-year period of separation. Another suit filed in 2018 was also dismissed on technical grounds. It is admitted that both the earlier suits for divorce, filed in 2017 and 2018 were dismissed at the stage of admission and were never decided on merits.

18. The doctrine of res judicata, as per Section 11 of the Code of Civil Procedure, 1908, prevents re-litigation of issues that have been conclusively settled by a competent court. Thus, for *res judicata*, the previous case must have been decided on its merits. If a case was dismissed on procedural grounds without a substantive determination, *res judicata* does not bar a subsequent suit.

19. The Supreme Court in case of ***Prem Kishore & Ors. v. Brahm Prakash & Ors. 2023 SCC OnLine SC 356*** held:-

> *"38. The general principle of res judicata under Section 11 of the CPC contain rules of conclusiveness of judgment, but for res judicata to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality. Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff's appearance, or on the ground of non-joinder or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision, not being on the merits, would not be res judicata in a subsequent suit."*

20. The Supreme Court in the case of ***Satyadhyan Ghosal v. Deorajin Debi, 1960 SCC OnLine SC 15*** explained that the principle of *res judicata* is based on the need for finality in judicial decisions. It applies when a matter has been decided between two parties and the decision is final, preventing the same matter from being litigated again. In paragraph 7, the Supreme Court has observed as under:

> *"7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter — whether on a question of fact or a question of law — has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct."*

21. Since admittedly no final decision on the merits of the case was rendered in either suits filed in year 2017 and 2018, and both were dismissed on the procedural grounds, the Family Court correctly held that the doctrine of *res judicata* does not apply. The argument that the present suit is barred by *res judicata* is without merit.

On the Issue of Cruelty

22. Learned counsel for the appellant contended that the trial court failed to consider that the appellant was subjected to domestic violence during her stay with the respondent and his family. Due to this alleged mistreatment, she was compelled to leave her matrimonial home and she started living separately. It was further

submitted that the appellant had lodged an FIR against the respondent and his family, registered as Case Crime No. 460 of 2016 under Sections 307, 354, 323, 504, and 506 of the Indian Penal Code (IPC) at Police Station Madiyaon, District Lucknow on 30.05.2016 at 22:30 hrs.

23. Learned counsel for the respondent vehemently opposed the submissions made on behalf of the appellant. In support of his arguments, he placed reliance on the judgment in ***Application under Section 482 No. 4210 of 2021 (Saurabh Shukla and Others vs. State of U.P. and Others) :Neutral Citation No.-2023:AHC-LKO: 85789.***

24. Upon perusal of the record, the alleged acts of domestic violence, including physical assault and strangulation, have not been proven, and the FIR filed against the respondent in this regard was quashed by the this Court by judgment and order dated 22.12.2023 in Application under U/s 482 No.- 4210 of 2021 (Saurabh Shukla And Other vs State of U.P. and others). Court while quashing the said FIR found:-

> *"25. Apart from above, there are material contradictions in the story narrated by the complainant as the criminal prosecution was initiated by lodging the F.I.R. after about three years and in the statement of the opposite party no.2, which was recorded by the Investigating officer, the opposite party no.2 and her father never levelled any allegation for demand of dowry and it was alleged that the applicant no.3 tried to molest her and the applicant nos. 1 and 2 had threatened to the opposite party no.2 for keeping mum with respect to the incident of molestation. It is also admitted by the opposite party no.2 that she was residing in hostel separately, as soon she left the matrimonial house. The Investigating Officer not only ignored the aforesaid circumstances but also escaped from the conclusion regarding call details between Raj Bahadur and the opposite party no.2 and also the statements given by the independent witnesses. After going through all the statements of the opposite party no.2 and the witnesses including other materials, it does not transpire that*

there was any demand of dowry which is one of the ingredients required for constituting an offence under Section 498A I.P.C. It is also a fact that the opposite party no.2 herself made a call on 25.5.2016 to the Control Room and, thereafter, local police reached on the spot and the opposite party no.2 went to the police station along with the police but no complaint was made then and no request was made for her medical examination.

26. In common manner and mode, this time also, the complaint has been made against the relative of the applicant no.1, i.e., brother-in-law and the sister though it is not evident that whether applicant nos. 3 & 4 were regularly visiting the matrimonial house of the opposite party no.2 and were involved in the day to day business of the family. Only the bald statement is got recorded wherein the allegation of molestation is levelled though no medical examination has ever got done.

27. This Court is not unmindful regarding the Judgements and orders rendered in the cases of Geeta Mehrotra and another Vs. State of Uttar Pradesh and another, (2012) 10 SCC 741; B.S. Joshi and others Vs. State Of Haryana and another, (2003) 4 SCC 675; R.P. Kapur Vs. The State of Punjab, 1960 AIR 862; Rajesh Sharma and others Vs. State of Uttar Pradesh and another, (2018) 10 SCC 472; Mirza Iqbal alias Golu and another Vs. State of Uttar Pradesh and another, 2021 SCC OnLine SC 1251; Kahkashan Kausar @ Sonam and others Vs. State of Bihar and others, 2022 SCC Online SC 162; Preeti Gupta and another Vs. State of Jharkhand and another, (2010) 7 SCC 667; Abhishek Vs. State of Madhya Pradesh, 2023 SCC Neutral Citation No. - 2023:AHC-LKO:85789 OnLine SC 1083; and Ramesh and others Vs. State of T.N. (2005) 3 SCC 507 wherein the Apex Court has found that inherent power can be exercised wherein there is every likelihood of misuse of process of law. Further the Apex Court also held that there has been tendency of involving the entire family members of household in the domestic quarrel in matrimonial dispute soon after the wedding and, therefore, mere casual reference of the names of the family members or relatives without there being any active involvement in the matter, would not justify to take cognizance. Thus, so far as the applicant nos. 3 and 4 are concerned, they in fact, are living separately but they have been dragged without being any proof that they are actively indulged in the family dispute.
28. In view of the abovesaid submissions and discussions, this Court is of considered opinion that the criminal prosecution of the applicants are sheer abuse of process of law. Resultantly,

the criminal proceedings, against the applicants, arising out of Case Crime No. 460 of 2016 under Sections 498-A, 323, 504, 506, 354-A I.P.C. Police Station Madiaon, District Lucknow are quashed."

25. The judgment dated 22.12.2023, passed in Application under Section 482 No. 4210 of 2021 (Saurabh Shukla and Others vs. State of U.P. and Others), was challenged by the appellant before the Supreme Court in Diary No.16117/2024. However, the case was dismissed vide order dated 22.10.2024 due to non-compliance with the conditional order. This clearly establishes that the appellant had filed a false criminal case against the respondent-husband, mother-in-law and his family members. The initiation of false and frivolous criminal proceedings against a spouse and their family not only subjects them to undue mental agony and harassment but also amounts to cruelty under matrimonial law. Therefore, the appellant's deliberate act of lodging false criminal cases against the respondent amounts to mental cruelty inflicted upon him. The Supreme Court, in ***K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226*****,** has held that filing baseless criminal complaints against a spouse with the intent to cause humiliation and distress amounts to cruelty and can be a valid ground for divorce. In the present case, since the allegations made by the appellant did not stand the test of judicial scrutiny and were ultimately quashed, it reinforces the finding that such conduct on her part contributed to cruelty towards the respondent and his family.

26. In ***K. Srinivas Rao*** (supra), the Supreme Court in paragraphs 10 and 16 held:

"10. Under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. a marriage can be dissolved by a decree of divorce on a petition presented either by the husband or the wife on the ground that the other party has, after solemnization of the marriage, treated the petitioner with cruelty. In a series of judgments this Court has repeatedly stated the meaning and outlined the scope of the term "cruelty". Cruelty is evident where one spouse has so treated the other and manifested

such feelings towards her or him as to cause in her or his mind reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental.

……….

16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh[(2007) 4 SCC 511], we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse."

27. In ***Raj Talreja*** (supra), the Supreme Court in paragraphs 11 and 12 held:

"11. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act, 1955 (for short "the Act"). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false. Later, she filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self-inflicted by the wife. Thereafter, proceedings were launched against the wife under Section 182 IPC.

12. We have perused the judgment of the High Court. The High Court while dealing with the plea of false complaints held that there was no reason to hold that the criminal

complaint filed by the respondent wife was false and mala fide. We are unable to agree with this finding of the High Court and the court below. Both the courts below relied upon the statement of the wife that her husband had often visited her house and she fulfilled her marital obligations. These observations are not based on any reliable or cogent evidence on record. It is not disputed before us that the wife continues to live in the house which belongs to the mother of the husband whereas the husband lives along with his parents in a separate house and the son and daughter-in-law of the parties live with the wife. The son is working with the husband. We may note that Ms Makhija has very fairly stated before us that the husband had always fulfilled his paternal obligations to his son and is continuing to pay maintenance to his wife as fixed by the court."

28. The Supreme Court in ***Narasimha Sastry v. Suneela Rani, (2020) 18 SCC 247*** in paragraphs 13 and 14 held:

"13. In the present case, the prosecution is launched by the respondent against the appellant under Section 498-A IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under Section 498-A IPC not only acquittal has been recorded but observations have been made that allegations of serious nature are levelled against each other. The case set up by the appellant seeking decree of divorce on the ground of cruelty has been established. With regard to proceeding initiated by the respondent under Section 498-A IPC, the High Court [Narsimha Sastry v. Suneela Rani, 2017 SCC OnLine Hyd 714] made the following observation in para 15 : (Rani Narsimha Sastry case [Narsimha Sastry v. Suneela Rani, 2017 SCC OnLine Hyd 714] , SCC OnLine Hyd)

"15. ... Merely because the respondent has sought for maintenance or has filed a complaint against the petitioner for the offence punishable under Section 498-A IPC, they cannot be said to be valid grounds for holding that such a recourse adopted by the respondent amounts to cruelty."

The above observation of the High Court cannot be approved. It is true that it is open for anyone to file complaint or lodge prosecution for redressal of his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot ipso facto be treated as cruelty. But, when a person undergoes a trial in which he is acquitted

of the allegation of offence under Section 498-A IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has been meted out on the husband. As per the pleadings before us, after parties having been married on 14-8-2005, they lived together only 18 months and, thereafter, they are separately living for more than a decade now.

14. In view of the forgoing discussion, we conclude that the appellant has made a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(i-a) of the Hindu Marriage Act, 1955."

29. From the facts and circumstances as narrated above as well as law settled by the Supreme Court, as quoted above, a case for cruelty is clearly made out in the present case by the wife against the husband, and the same is decided against the appellant and in favour of the respondent.

On the Issue of Desertion

30. Desertion, as defined under Section 13(1)(ib) of the Hindu marriage Act, 1955, is established when one spouse has willfully abandoned the other for a continuous period of at least two or more years. Section 13 of the Hindu Marriage Act, 1955, is relevant for this case, which reads as under:

"13(1). Any marriage solemnised, 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 solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or

(ib)has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or…."

31. The issue of desertion can be checked on two elements of ***Factum of Separation*** and ***Animus Deserendi*** (intention to desert) as propounded by the Supreme Court in ***Lachman Utamchand Kirpalani v. Meena alias Mota, AIR 1964 SC 40***, in which the Supreme Court held that desertion requires proof of **willful abandonment** of one spouse by the other, without reasonable cause and without the consent of the deserted spouse.

In the said case, reference was also made to ***Lachman Utamchand Kirpalani v. Meena alias Mota, AIR 1964 SC 40***, wherein it has been held that:

> *"desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation."*

32. Respondent's counsel submits that relationship of appellant with Raj Bahadur prior to the marriage and thereafter is proved from his statement given before Superintendent Police, Trans Gomti, Lucknow, on complaint made by the respondent. Statement given by Raj Bahadur to the police is quoted hereunder:

> "आवेदक के पत्नी को पूर्व समय से जानता हूँ, क्योंकि वह मेरे कार्यालय में कार्य करती है। आवेदक की पत्नी *(*शिखा त्रिवेदी*)* से शादी से पहले हम एक-दूसरे को अच्छी तरह से जानते व समझते थे व एक दूसरे से शादी करना चाहते थे और यह बात *(*जानकारी*)*

आवेदक सौरभ शुक्ला व लड़की के माँ-बाप को भली-भॉति मालूम थी, इस दौरान उन्होंने मुझसे कई बार मुलाकात कर मुझको समझाने की कोशिश की तथा लड़की को शादी से पहले धमकी देते थे कि अगर तुमने राज, बहादुर से शादी करने की कोशिश की तो उसे जान से मार डालेगें नहीं तो हम दोनों (लड़की के माँ-बाप) मर जायेगें। इस प्रकार लड़की पर मानसिक दबाव बनाकर सौरभ शुक्ला से उसकी शादी कर दी। आवेदक इन सभी घटनाओं से भिज्ञ था। प्रार्थी आवेदक की पत्नी से शादी करने के लिये सक्षम होने के बावजूद लड़की के माता-पिता व लड़की के सर्वोपरि हित को ध्यान रखते हुये लड़की की शादी में किसी प्रकार का कोई अवरोध उत्पन्न नहीं किया। तथा लड़की को भी राजी- खुशी शादी के लिये तैयार करने की कोशिश की जिसके बाद लड़की का विवाह आवेदक के साथ हो गया तथा अपने आपको लडकी से अलग हो गया तथा शादी के कुछ समय पश्चात जब लड़की को अपने ससुराल में कुछ कठिनाईयों का सामना करना पड़ा तो वह सलाह के लिये मुझे फोन करती थी तथा मेरे द्वारा उसको फोन न करने व सहानुभूति पूर्ण ढंग से उसे समझाया बुझाया जाता था।"

33. Counsel for appellant disputes the statement of Raj Bahadur stating that the same does not contain his signature. We do not find any force in the submission of counsel for appellant as not only the said document/statement contains signature of Raj Bahadur, but the same is duly verified by the Superintendent of Police, Trans Gomti, Lucknow. Thus, there can be no reason to disbelieve authenticity of the said statement.

34. It is admitted fact that the appellant has been living separately from the respondent since 25.05.2016 and during this period both appellant and the respondent have made no efforts for reconciliation of their marriage or any sincere efforts to resume cohabitation.

35. Furthermore, the submission of respondent's counsel that the appellant-wife was in a relationship with Raj Bahadur, which continued after marriage, appears to be correct. Appellant's continued separation from the respondent-husband seems to be driven by this very reason. This, in turn, indicates a serious breakdown of trust between the parties. The appellant's own

conduct, including her unwillingness to reconcile and her repeated absences from the matrimonial home, further strengthens the respondent's claim of desertion. Upon perusal of the facts of the case both essential conditions for granting divorce on the ground of desertion under Section 13(1)(ib) of the Hindu Marriage Act, 1955, are satisfied. The appellant's prolonged and unjustified separation, coupled with her failure to provide any cogent reason for the same, establishes a clear case of desertion within the meaning of Section 13(1)(ib) of the Act.

36. Admittedly, the marriage of the parties took place on 9.12.2012. They lived together till 21.7.2013 when appellant left her husband's home and separation continued till March, 2014. Again since 25.5.2016, they both are living separately. It has been more than eight years now. Thus, since marriage, they hardly lived together. During the said period also, there have been cross criminal cases against each other. In the facts and circumstances of the case, this is a case of irretrievable breakdown of marriage.

37. In ***Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511*****,** the Supreme Court held that prolonged separation and irreparable breakdown of a marriage can lead to divorce. It outlined various forms of mental cruelty, including emotional harm, neglect, and abuse, that justify dissolution of the marriage when the bond is beyond repair. In paragraph 95, 101 and 102, the Supreme Court has observed, as under:-

> *"95. Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be*

effective are bound to be a source of greater misery for the parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

102. When we take into consideration aforementioned factors along with an important circumstance that the parties are admittedly living separately for more than sixteen-and-a-half years (since 27-8-1990) the irresistible conclusion would be that matrimonial bond has been ruptured beyond repair because of the mental cruelty caused by the respondent."

38. In ***Rishikesh Sharma v. Saroj Sharma, (2007) 2 SCC 263*****,** the Supreme Court observed that after prolonged separation since 1981 and ongoing litigation, the marriage had irretrievably broken down. The Court held that it was in the best interest of both parties to

dissolve the marriage by granting a divorce, allowing them to live peacefully after years of legal disputes. In paragraph 4 and 5, the Supreme Court observed, as under:-

> *"4. We heard Mr A.K.Chitale, learned Senior Counsel and Mr S.S. Dahiya, learned counsel for the respondent and perused the judgment passed by both the trial court and also of the High Court. It is not in dispute that the respondent is living separately from the year 1981. Though the finding has been rendered by the High Court that the wife last resided with her husband up to 25-3-1989, the said finding according to the learned counsel for the appellant is not correct. In view of the several litigations between the parties it is not possible for her to prosecute criminal case against the husband and at the same time continue to reside with her husband. In the instant case the marriage is irretrievably broken down with no possibility of the parties living together again. Both the parties have crossed 49 years and living separately and working independently since 1981. There being a history of litigation with the respondent wife repeatedly filing criminal cases against the appellant which could not be substantiated as found by the courts. This apart, only child born in the wedlock in 1975 has already been given in marriage. Under such circumstances the High Court was not justified in refusing to exercise its jurisdiction in favour of the appellant. This apart, the wife also has made certain allegations against her husband, that the husband has already remarried and is living with another lady as stated by her in the written statement. The High Court also has not considered the allegations made by the respondent which have been repeatedly made and repeatedly found baseless by the courts.*
>
> *5. In our opinion it will not be possible for the parties to live together and therefore there is no purpose in compelling both the parties to live together. Therefore, the best course in our opinion is to dissolve the marriage by passing a decree of divorce so that the parties who are litigating since 1981 and have lost valuable part of life can live peacefully for remaining part of their life."*

39. Under similar circumstances, this Court in ***Satish Sitole v. Ganga, (2008) 7 SCC 734*** **Geeta Jagdish Mangtani v. Jagdish Mangtani, (2005) 8 SCC 177 Vikas Kanaujia v. Sarita, 2024 SCC OnLine SC 1699**, has held that an irretrievable breakdown of marriage is where husband and wife have been living separately for a considerable period and there is absolutely no chance of their living together again.

40. In view of the findings recorded above, this Court is of the opinion that the judgment of the Family Court dated 14.10.2022 does not suffer from any illegality or perversity. The evidence on record sufficiently establishes that the appellant deserted the respondent without reasonable cause and also that her conduct amounted to cruelty and also it is a case of irretrievable breakdown of marriage. The doctrine of *res judicata* does not apply in the present case, and the Family Court has rightly exercised its jurisdiction in granting the decree of divorce.

41. Accordingly, the present first appeal is ***dismissed***. No order as to costs.

[Om Prakash Shukla,J.] [Vivek Chaudhary,J.]

Dated: March 07, 2025
Sachin