

A.F.R.
RESERVED

Case :- FIRST APPEAL No. - 72 of 2004

Appellant :- Smt. Archana Sharma

Respondent :- Mukesh Kumar Sharma

Counsel for Appellant :- S.C. Srivastava, Manoj K Jaiswal, Satish Chandra Srivastava

Counsel for Respondent :- S.C. Shukla, Indrajeet Shukla, S.C. Shukla, Umesh Kumar Srivastava

Connected With

Case :- FIRST APPEAL No. - 73 of 2004

Appellant :- Smt. Archana Sharma

Respondent :- Mukesh Kumar Sharma

Counsel for Appellant :- S.C. Srivastava

Counsel for Respondent :- U.K. Srivastava, Indrajeet Shukla, S.C. Shukla, Satya Prakash

Hon'ble Rajiv Sharma, J.

Hon'ble Mahendra Dayal, J.

(Delivered by Hon'ble Mahendra Dayal, J.)

Both the aforesaid first appeals are between the same parties and arise out of the matrimonial dispute between the parties. We, therefore, with the consent of learned counsel for the parties, are disposing of both the first appeals by a common judgment.

First Appeal No.72 of 2004 arises out of the judgment and decree dated 30.09.2004 passed by Principal Judge, Family Court, Lucknow, whereby the petition filed by the appellant under Section 25 of the Hindu Marriage Act read with Section 151 CPC and Rule 17 of the Hindu Marriage and Divorce Rule, 1956, has been dismissed. The other First Appeal No.73 of 2004 arises out of the judgment and decree dated 30.09.2004 passed by Principal Judge, Family Court, Lucknow, whereby a petition under Section 13(1)(1a) of the Hindu Marriage Act filed by the respondent for dissolution of marriage was decreed and the Branch Manager, Oriental Bank of Commerce, Branch Tikaitrai Talab, Biharipur Branch, Lucknow was directed to hand over the ornaments kept in Locker No.180 to the appellant.

Before entering into the facts and merits of the case, we are constrained to observe that the parties are litigating since last about 23 years. The worst sufferer of this long litigation is the child, who was born out of the wedlock and the parties are still not ready to reconcile or settle their dispute amicably.

The facts of the case as emerge from the pleadings of the parties are that the appellant-Smt. Archana Sharma was married to the respondent at Lucknow on 05.02.1991 according to hindu rites and customs. However, the marriage could not last beyond eight months as the respondent filed a suit for dissolution of marriage in the month of October, 1991. Since the petition for dissolution of marriage was filed within a year of marriage, the respondent also applied for leave under Section 14 of the Hindu Marriage Act (for short, "the Act"), as Section 14 of the Act creates a bar for presenting any petition for dissolution of marriage by a decree of divorce within a year of marriage. However, an exception has been incorporated in Section 14 of the Act, which provides that a Court may upon an application made to it in accordance with the Rules, allow a petition to be presented before one year since the date of marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent. However, it is also provided that if during the course of hearing, it appears to the Court that leave was obtained by the petitioner by any misrepresentation or concealment of the nature of the case, the Court may provide that the effect of decree shall be made after the expiry of one year from the date of marriage or may dismiss the petition without prejudice to the right of the parties to present the petition

after the expiry of one year.

The petition for dissolution of marriage and divorce was presented by the respondent on the ground of cruelty. Section 13 of the Act empowers a Court to dissolve the marriage by a decree of divorce on the ground that after the solemnization of marriage any of the party, has treated the other with cruelty. It was alleged by the respondent in the petition that soon after the marriage, the appellant started pressurizing the respondent to evict the other family members of the respondent, who had been residing with him. Apart from this, the appellant also used to demand a sum of Rs.3,000/- per month for her day to day expenses. The appellant inspite of persuasion by the respondent did not mend her ways. When the respondent refused to fulfill the demands of the appellant on account of financial constraint, the appellant started misbehaving with the family members of the respondent. The appellant even went to the extent of physically assaulting them. Even the mother of the respondent, who was about 70 years of age, was not spared. She also used to threaten the respondent and other members of his family to implicate them in a false case of dowry demand. When the behaviour of the appellant became unbearable and she started throwing the articles outside the house and started abusing the family members, the matter was reported to the police on 14.06.1991. The mother of the appellant and her two brothers also came to the house of the respondent but instead of pursuing the appellant, they also started misbehaving with the respondent and his family members. The respondent also got himself medically examined and then lodged an FIR. The appellant left the company of the respondent on

15.06.1991 and lived with her parents till 17.07.1991. Thereafter, the family members of the appellant started pressurizing the respondent to live apart from his family members, otherwise he would face several litigations. Having no other alternative, the respondent took a house on rent in L.D.A. Colony, Kanpur Road, but even then the appellant did not come to live with the respondent. However, after some persuasion, the appellant came to live with the respondent on 17.07.1991, but again she continued with her aggressive attitude and did not observe her marital obligation. It is also pleaded by the respondent that during the absence of the respondent, the appellant used to visit several places after locking the house. The respondent was so much harassed that he had to leave the house, which he had taken on rent in L.D.A. Colony and started living in the house of the appellant. He lived there till 10.09.1991, when he was transferred to Bulandshahr. When the appellant and her parents came to know about the transfer order, they not only threatened the respondent but also did not allow him to go outside the house. However, the respondent somehow managed to leave the house and reached Bulandshahr on 11.09.1991. Thus, the behaviour of the appellant towards the respondent was so much cruel that it became impossible for him to live with the appellant. It was on the aforesaid grounds of mental and physical cruelty, that the petition for divorce was presented.

The appellant in her written statement stated that on 08.10.1991 with the petition for divorce was filed, she was pregnant and gave birth to a male child after some time. It was further pleaded by the appellant that soon after the marriage, the respondent and his

family members started demanding colour television and other articles in lieu of dowry and in order to fulfill their demand, they started physically assaulting the appellant, while as a matter of fact, the appellant always used to give respect not only to the respondent, but also to his family members and also performed her marital obligations. The cruelty and harassment of the respondent reached to such an extent that the appellant had to leave her matrimonial house and came to the residence of her parents. The appellant also denied the allegations with regard to cruelty made in the petition for dissolution of marriage. She also stated in her written statement that the matter was also reported to the police upon which a case Crime No.347 of 1991 under Sections 498A, 323, 504 IPC was registered against the respondent and other family members, but the investigating officer in connivance with the respondent submitted final report, which was opposed by the appellant. Apart from this, the appellant also presented an application for maintenance under Section 125 CrPC. On the basis of the aforesaid facts, the appellant prayed for dismissal of the petition.

On the basis of the pleadings of the parties, learned Principal Judge, Family Court, Lucknow framed two issues. The issue no.1 was as to whether the appellant treated the respondent with cruelty and the other issue was with regard to the relief claimed by the respondent. The parties lead evidence in the form of affidavit and documents and the learned Judge, Family Court on the basis of the evidence on record came to the conclusion that the appellant treated the respondent with cruelty and as such the respondent was entitled to get a decree of divorce and on the basis of the aforesaid

conclusions, learned Judge, Family Court allowed the petition and dissolved the marriage between the parties by passing a decree of divorce.

During the pendency of the aforesaid petition for dissolution of marriage, the appellant presented another petition under Section 25 of the Act for grant of permanent alimony. This petition was contested by the respondent on the ground that the appellant was capable enough to maintain herself and her son as she was in job and on the basis of evidence on record, learned Judge, Family Court dismissed the petition for permanent alimony on the ground that the appellant was able to maintain herself and after the decree of divorce, she was not entitled to get any alimony under Section 25 of the Act.

Feeling aggrieved by both the aforesaid judgments and decrees, the appellant has filed the appeals.

We have heard Shri S.C.Srivastava, learned counsel appearing on behalf of the appellant and Shri S.C. Shukla, who has appeared on behalf of the respondent.

Learned counsel for the appellant has assailed the judgment and decree of Regular Suit No.535 of 1991 firstly on the ground that leave to present a petition for dissolution of marriage prior to the expiry of one year from the date of marriage was allowed ex parte without giving any opportunity of hearing to the appellant and against the provisions of Section 14 of the Act and the Allahabad High Court Rules framed under the Hindu Marriage Act and known as the Hindu Marriage and Divorce Rules, 1956 (for short, "the Rules"). The submission on behalf of the appellant is that the petition for divorce and dissolution of marriage was presented before the Court on

08.10.1991 and an application under Section 14 of the Act for leave was also presented on the same day. The learned court below without issuing any notice to the appellant and without affording any opportunity of hearing to the appellant, allowed the application for leave by the order dated 09.10.1991.

The second ground for assailing the judgment and decree is that the learned court below has passed the impugned decree without recording any specific finding that the respondent was treated with cruelty by the appellant.

We proceed to adjudicate both the points one by one in the following manner.

For appreciating the arguments of the learned counsel for the appellant with regard to the leave granted to the respondent under Section 14 of the Hindu Marriage Act, and as such the provision of Section 14 of the Act and Rules 8 & 9 of Hindu Marriage and Divorce Rules, 1956 are reproduced as under:-

"Section 14. No petition for divorce to be presented within one year of marriage.-(1)
Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, [unless at the date of the presentation of the petition one year has elapsed] since the date of the marriage.

Provided that the Court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented [before one year has elapsed] since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall

not have effect until after the [expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the [expiration of the said one year] upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the [expiration of one year] from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the [said one year].

Rule 8. Application for leave under Section 14 of the Act.—(1) Where any party to a marriage desires to present a petition for divorce within one year of such marriage he or she shall obtain leave of the Court under Section 14 of the Act on ex parte application made to the Court in which the petition for divorce is intended to be filled.

(2) The application shall be accompanied by the petition to be filed bearing proper court-fee. The application shall be supported by an affidavit made by the petitioner setting out the particulars of exceptional hardship to the petitioner or exceptional depravity on the part of the respondent on which leave is sought.

(3) The evidence in such application may, unless the Court otherwise directs, be given by affidavit.

(4) When the Court grants leave, the petition shall be deemed to have been duly filed on the date of the said order. The petitioner shall, within a week of the order or within such further time as is allowed by the Court, file sufficient number of copies of application for leave, the affidavit in support thereof, the order of the Court thereon and the petition for divorce for service upon the respondents in the petition.

9. Service of order granting leave and procedure after service.—(1) When the Court grants leave under the preceding rule a copy of the application for leave, the affidavit in support thereof and the order granting leave along with the notice of the petition of divorce shall be served on the party to be affected thereby personally.

Provided that the Court may for a sufficient reason direct substituted service.

(2) (a) If the respondent desires to contest the petition for divorce on the ground that leave for filing the petition has been erroneously granted or

improperly obtained, he or she shall set forth in his or her written statement the grounds with particulars on which the grant of leave is sought to be contested.

(b) The Court may if it deems fit, decide as a preliminary issue, the question as to the propriety of the leave granted to the petitioner and may for that purpose summon and examine witnesses."

From the perusal of Section 14 of the Act, we find that the Court may grant leave to file a petition for dissolution of marriage before the expiry of one year from the date of marriage if the Court finds that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent. The provisions of Section 14 nowhere require issuance of notice to the other side before granting leave. The Rules framed under the Hindu Marriage Act provide that when the Court grants leave, the petition for dissolution of marriage shall be deemed to have been presented on the date of the said order. It is also mandatory under the Rules that the petitioner has to file sufficient number of copies of the application along with affidavit and the order of the Court passed thereon along with a copy of petition of divorce for service upon the respondent within a week from the date of the order. It is also provided in Rule 9 that when the Court grants leave under this Rule a copy of the application for leave along with affidavit and the order granting leave is to be served on the affected party personally. Sub-rule (2)(a) of Rule 9 provides that if the respondent desires to contest the petition for divorce on the ground that leave for filing the petition has been erroneously granted or improperly obtained, he or she shall set forth in the written statement the grounds with particulars on which the grant of leave is sought to be contested. The Court may if it think fit decide it as a preliminary issue after evidence.

Thus, from the perusal of the aforesaid provisions with regard to the grant of leave and service of notice upon the respondent, we find that the provisions nowhere require issuance of any notice to the respondent before granting the leave. However, it is mandatory that the petitioner, in case where leave has been granted has to file copies of the application along with affidavit, the order of the Court and the petition of divorce for service upon the other side within a week of the order. The Rule further enables the opposite parties/respondent to challenge the order so granted by taking a ground in the written statement showing that the order has been erroneously or improperly obtained and the Court may also frame and decide this point as a preliminary issue. In the present case, from the perusal of the written statement filed by the appellant on 23.09.1997, we do not find any such ground raised by the appellant as to the validity of the leave granted by the Court.

The appellant, in view of the Sub-rule(2)(a) of Rule 9 could have raised the issue with regard to the leave granted by the Court, but the appellant himself did not choose to raise any such ground in the written statement. From the perusal of the record, we find that the application of the respondent for leave to present the petition for dissolution of marriage was allowed on 09.10.1991 and the following order was passed :-

"It appears that the marriage between the parties was solemnised on 5.2.91. The present suit has been filed on 8.10.91 prior to the expiry of mandatory period of one year for institution of the suit of divorce, hence moved an application u/s 14 of H.M. Act for permission to file the suit before expiry of the said mandatory period.

The petitioner by means of this petition sought a decree of divorce against his wife on the ground of cruelty. It is urged that his living with his wife

would further agony in his life. He has filed his affidavit in support of the petition assertions stating that he apprehends danger to his life if he continues to live further with his wife without instituting present suit for divorce.

Heard the applicant, examine the averments made in the application and also in the petition, I find that there would be no impediment if the application u/s 14 of the Act is allowed.

The application is, therefore, allowed."

The appellant, however, moved an application on 20.05.1994 for recall of the aforesaid order dated 09.10.1991, but no orders were passed on the said application. The written statement was filed by the appellant on 23.09.1997 without assailing the leave granted by the Court, but after a gap of three years, the appellant moved another application with the prayer that a preliminary issue be framed as to the validity of the order passed under Section 14 of the Act granting leave to the respondent to present the petition of divorce within one year of marriage. On this application, the learned court below invited objections and after hearing the learned counsel for the parties, the learned court passed a detailed order on 01.05.2000 whereby both the applications, one for recall of order dated 09.10.1991 and another for framing preliminary issue, were rejected. There is no dispute with regard to the fact that the order dated 01.05.2000 was not challenged by the appellant before any competent Court and as such the order attained finality. Learned counsel for the respondent has submitted that since the appellant did not raise this issue in her written statement as required under Rule 9 of the Rules and also did not challenge the order dated 01.05.2000 and as such it is not open to the appellant now to challenge the said order in this appeal as the same has become final. We find force in the submission of the learned

counsel for the respondent and hold that the appellant did not raise any objection with regard to grant of leave in her written statement and did not challenge the order dated 01.05.2000 as a result of which, the order granting leave became final. The appellant now cannot raise this issue again at this stage. Moreover, the grievance of the appellant is that the appellant was not heard before passing of the order on the application for leave under Section 14 of the Act, it is pertinent to mention that as discussed above, the law does not require issuance of any notice to the opposite party before granting leave. It is only after the leave is granted that the petitioner is required to file copy of the petition along with required documents and process for issuance of the notice to the opposite party. The Rules framed under the Act give a right to the opposite party to object the leave granted by the court by making specific averments in the written statement and the Court may frame preliminary issue on this point and decide the same after hearing both the parties. But in the present case, the appellant did not raise any such plea in her written statement and instead moved an application for recall of the order by which leave was granted and the learned court below rejected the application which order attained finality. Thus, we do not find any force in the submission of the learned counsel for the appellant that the leave to present the petition for dissolution of marriage within one year of marriage was passed illegally or without jurisdiction.

The next question, which requires consideration in this appeal is as to whether the appellant treated the respondent with cruelty after the solemnization of marriage so as to attract the provisions of

Section 13 of the Act. Under the Hindu Marriage Act, the husband or the wife have a right to present the petition for dissolution of marriage by a decree of divorce on certain grounds enumerated in the section and one of such ground is that if any party after the marriage treats the other spouse with cruelty, a petition for dissolution of marriage may be filed. The provision of seeking divorce on the ground of cruelty has been substituted by U.P. Amendment, according to which, divorce may be obtained on the ground of cruelty if it is found that the respondent has persistently or repeatedly treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party; or, has not resumed cohabitation after the passing of a decree for judicial separation against that party and the period of two years has elapsed since the passing of such decree or the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the other party. Thus, by way of U.P. Amendment, obtaining divorce with cruelty as a ground has been made more difficult for the reason that the petitioner in order to seek divorce on the ground of cruelty has not only to prove cruelty but he is also required to prove that he has persistently or repeatedly been treated with cruelty and the cruelty is to such an extent that a reasonable apprehension in his mind or her mind has arisen which in his or her opinion is harmful or injurious to live with the other party.

In the instant appeal, on examination of the allegations made in the petition, we find that according to the respondent, the appellant started pressurizing the respondent to ask other members of the

family to leave the house so that she may live alone with the respondent. Apart from this, the appellant also used to demand Rs.3,000/- per month from the respondent in order to meet her day to day expenses of make-up and roaming around here and there. As the respondent was not ready either to ask his family members to leave the house or to meet day to day expenses of the appellant, she started misbehaving not only with the respondent but other members of his family. According to the respondent, she used to abuse them and sometimes also physically assaulted them on petty matters. She also used to throw the household articles outside the house by which it became difficult for the respondent to live in the company of the appellant. It has also been alleged in the petition for divorce that other unknown persons used to come to meet the appellant and when objected by the respondent, the appellant used to threaten the respondent and his family members to kill them by mixing the poison in their meals and implicate them in false case of demand of dowry. Even the old aged mother of the respondent was not spared by the appellant and she was also assaulted several times. The respondent having no other alternative informed the police on 14.06.1991 and after that, the mother and brother of the appellant came to the house of the respondent for persuasion, but instead of pursuing the appellant, they also misbehaved with the respondent and his family members. These activities of the appellant reached to such an extent that the respondent found it very very difficult to live in the company of the appellant. The appellant, however, left the company of the respondent on 15.06.1991 and lived with her parents till 17.07.1991. The respondent in order to please the appellant and to save his matrimonial life, took another house on rent at L.D.A. Colony, Kanpur

Road and asked the appellant to live there with him, but the appellant continued with her cruel attitude with the respondent. In the meantime, the respondent was transferred to Bulandshahr but when the respondent informed the appellant and her parents that he has been transferred to Bulandshahr, they wrongfully confined him and did not allow him to go outside the house. However, after much difficulty, he could manage to reach Bulandshahr and joined there. The appellant also made frivolous complaints in the office of the respondent and to the Superintendent of Police. Thus, the appellant created such an atmosphere that the respondent found it impossible to live with the appellant. According to the respondent, having no other alternative remedy in order to get rid of the appellant, he had to file the petition for dissolution of marriage by a decree of divorce even before the expiry of statutory period along with an application for leave as provided under Section 14 of the Act and the learned court below after considering the entire circumstances and also finding that it was a case of exceptional hardship, granted the leave and the notice was issued to the appellant.

The appellant when appeared in the court, filed application for recall of the order granting leave and moved application for interim maintenance and litigation expenses. However, the matter went on for several years and ultimately on 23.09.1997, the appellant filed written statement denying all the allegations made in the petition and making counter allegations against the respondent. The case of the appellant was that soon after the marriage, the elder brother of the respondent and his parents started demanding colour television and some other articles in dowry. When the parents of the appellant could

not fulfill their demand of dowry, they started treating the appellant with cruelty. According to the appellant, she used to do all the household work as the parents of the respondent had discontinued the services of maidservant, who was working in the house since before the marriage. It was further stated in the written statement that the parents of the appellant were called on and a demand was made from them to give gold ornaments, but when the parents of the appellant expressed their inability to fulfill the demand, the parents of the respondent and other members of his family started harassing the appellant in one way or the other. With regard to the report lodged by the respondent, the case of the appellant is that the alleged report was absolutely false. The appellant was so much harassed for the demand of dowry that she had to give an application to the Social Welfare Department, upon which the respondent was called upon and at Police Station Talkatora and the written compromise was arrived at between them, but even after that, the respondent and his family members continued with their demand of dowry. It has also been alleged by the appellant in her written statement that the respondent himself deserted the appellant and refused to keep her as his wife and the entire allegations with regard to the alleged cruelty are absolutely false. On the basis of the aforesaid allegations, the appellant prayed for dismissal of the petition for dissolution of marriage.

We also find from the perusal of the record that several efforts were made by the Court for reconciliation between the parties, but every time, the matter could not be settled and divorce suit, which was filed in the year 1991 was decided on 30.09.2004 by which the

learned Family Court passed a decree of divorce.

Learned counsel for the parties have submitted written arguments as well as several case laws on the subject as to what would amount to cruelty for a decree of divorce, but as the law stands with regard to the dissolution of marriage, we are of the view that it depends upon the facts and circumstances of each case as to what would amount to cruelty so as to pass a decree for dissolution of marriage. It has been inserted by way of U.P. Amendment and has also been held by the Hon'ble Apex Court as well as various High Courts that in order to prove cruelty as a ground of divorce, the petitioner has not only to prove the cruelty but has also to prove that the cruelty is to such an extent that it has become impossible for the petitioner to live with the respondent and the cruelty so done by the respondent is to such an extent that a reasonable apprehension has arisen in his mind that it will be harmful and injurious for him or her to live with the respondent.

The submission on behalf of the appellant is that the learned court below has discussed the material on record and the evidence lead by the parties as well as the case law but while deciding the issue with regard to cruelty, the learned court below has failed to record a definite finding that the appellant has treated the respondent with cruelty and the cruelty was to such an extent that it was not possible for the respondent to live in the company of the appellant. In the absence of such finding, the learned court below had no jurisdiction to grant a decree of divorce.

The learned counsel for the respondent has, on the other hand, submitted that the learned court below has examined each and every

aspect of the matter and the evidence lead by the parties and has come to the conclusion that on the basis of the material on record, the petition for dissolution of marriage was liable to be allowed and the marriage was liable to be dissolved by a decree of divorce. When the learned court below has found that the petition for divorce was liable to be allowed, it was implied that the learned court below was satisfied that the appellant was guilty of treating the respondent with cruelty and as a result of strained relations and cruelty by the respondent, it became impossible for them to live as husband and wife. It is also submitted on behalf of the respondent that if the learned court below has not said in so many words that the appellant was guilty of cruelty, the same will not vitiate the entire judgment, which is otherwise passed on correct appraisal of evidence and the law. He has further submitted that this Hon'ble Court by hearing the first appeal has power to re-appreciate the evidence and record a fresh finding of fact and in case it is found that the learned court below could not record a finding with regard to the cruelty for some reason, this Hon'ble Court while exercising the jurisdiction of first appeal under the provisions of C.P.C. can rectify the said mistake and record a finding that the appellant had treated the respondent with cruelty to such an extent that it was not possible for the respondent to live in the company of the appellant.

As we find from the facts and pleadings of the parties that the marriage between them was solemnized in the year 1991 and since then a period of twenty three years has passed and the parties are still not ready to live as husband and wife. This itself is a cruelty. Although, cruelty has not been defined under the Hindu Marriage Act,

but it has been held that the cruelty includes not only physical cruelty but also mental cruelty. The Hon'ble Apex Court in the case of ***Maya Devi vs. Jagdish Prasad, AIR 2007 SC 1426*** has held that cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society, to which the parties belong. Cruelty need not be physical. If from the conduct of the spouse it is established or an inference can be legitimately drawn that the treatment of the spouse is such that it causes apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. It has also been held by this Hon'ble Court in the case of ***Smt. Vimlesh vs. Sri Prakash Chand Sharma, AIR 1992 SC 260*** that solitary instance of cruelty would not constitute cruelty so as to grant a decree for divorce rather the behaviour of the other party has to be persistently and repeatedly treating the other spouse with such cruelty so as to cause a reasonable apprehension in the mind of the husband/wife that it will be harmful and injurious for her/him to live with the other party. Thus, we find that in order to make a ground for divorce on the ground of cruelty, the appellant has to prove that the cruelty caused by the spouse is to such an extent that on account of repeated cruel conduct, it has become impossible for him/her to live in the company of other spouse.

The respondent in order to prove the cruelty has examined himself and has also produced other documentary evidence. One of

such evidence is the medical report of the respondent himself, which shows certain injuries which according to the respondent were caused by the appellant during physical assault by her. Apart from this, the copy of the FIR lodged by them has also been filed. The respondent has also produced the copy of final report submitted by the police in the case lodged by the appellant with regard to the demand dowry and causing simple injuries. The appellant also produced the evidence before the court below. It has been mentioned in the impugned judgment that the appellant also submitted written arguments in which several contemptuous allegations were made against the judiciary and the matter was reported to the Hon'ble High Court. The respondent also approached the Hon'ble High Court for a direction to decide the matter at the earliest and this Hon'ble Court directed the learned court below to decide the matter within three months. It was only after the direction of the Hon'ble High Court that the matter could be finally decided by the impugned judgment.

The respondent in his evidence before the court below has described in detail the development which took place immediately after the marriage. It was stated on oath by the respondent that soon after the marriage, the appellant demanded Rs.3,000/- per month to her for roaming around the city and also to meet her day to day expenses. The respondent on account of financial constraint could not fulfill the demand of the appellant, as a result of which she became aggressive and started abusing the respondent and other members of his family. She also threatened that all other family members be asked to leave the house, otherwise she would kill them by mixing poison in their meals and also implicate them in a false case. The

respondent further stated on oath that he tolerated the conduct of the appellant for some time but when the appellant started physically assaulting the old mother and other members of the family, the respondent apprehended and informed the parents of the appellant. When they also did not pay any heed, the matter was reported to the police. The police also tried to persuade the appellant, but since the matter was a matrimonial dispute, the police expressed its inability to interfere. The respondent has further stated on oath that several unknown persons used to visit the house and the appellant had been visiting with them some times for the whole day and on being objected by the respondent, she used to abuse and threaten him. The behaviour of the appellant reached to such an extent that in the month of June, 1991, the respondent was physically assaulted by the appellant when the appellant bite him with her teeth and caused injuries with her fingernails. The respondent had to approach the doctor and a medical examination report showing injuries has been filed, which is on record. The respondent in the hope of the matter being resolved took a house on rent in the L.D.A. Colony at Kanpur Road, but the appellant did not agree to live with him even in that house. The appellant asked her to take some other house on rent in Aliganj and provide some financial assistance to her parents. The brother of the appellant also took away the luggage of the appellant forcibly and subsequently the respondent was transferred to Bulandshahr. The appellant and her parents did not allow him to join at Bulandshahr, but since the respondent could not even think to leave his job, he somehow managed to go there and joined at Bulandshahr. In the meantime, the appellant lodged a false report with regard to demand of dowry in which the police after investigation

submitted final report. In these circumstances, the respondent was compelled to file a petition for divorce.

From the perusal of the impugned judgment, we also find that after the examination-in-chief of the respondent, no cross-examination was done for a period of three years and as such having no other alternative, the Court closed the opportunity of cross-examination.

A perusal of the record further indicates that the appellant also moved an application for summoning the witnesses, which was rejected by the learned court below on 28.05.2004. This order was never challenged by the appellant and as such the same attained finality. An application for amendment of the written statement was also moved by the appellant, which was also rejected on 16.01.2004 and this order also became final as the same was not assailed before any Court. In view of above facts that the appellant did not cross-examine the respondent and also did not produce any evidence, the evidence adduced by the respondent stood unrebutted. The learned court below has relied upon the evidence of the respondent on the ground that the appellant did not rebut the evidence of the respondent either by cross-examination or by adducing any other evidence. However, the law is that even if the evidence of the respondent remains unrebutted and the appellant does not produce any evidence in defence, it is the duty of the Court to examine the evidence on record and come to a conclusion as to whether the cruelty as alleged by the respondent has been proved and such cruelty is to such an extent that the marriage between the parties should be dissolved by means of a decree of divorce. The learned

court below has discussed the evidence of the respondent in detailed and has recorded a clear finding that the appellant was guilty of causing mental and physical cruelty to the respondent and his family members and as such the marriage between the parties should be dissolved by means of a decree of divorce. The evidence which is on record and which is unrebutted till the stage of first appeal, we find that the respondent, who was married to the appellant on 05.02.1991 was being pressurized by the appellant to evict the other members of the family and give her Rs.3,000/- per month for her day to day expenses. It is also established from the evidence that on being refused by the respondent, the appellant not only used to throw the household articles but also used to physically assaulted the respondent and other members of his family. She even threatened to kill them by mixing poison in their meal. The matter went up to the police in the month of June, 1991 and a settlement was also arrived at in July, 1991 before the State Social Welfare Board, but even then, there was no improvement in the cruel behaviour of the appellant. The respondent in order to save his matrimonial life from being broken took a house on rent in the L.D.A. Colony, Kanpur Road, but the appellant did not agree to live there also and pressurized the respondent to live with her in her parental house. The respondent under pressure agreed to it but there also the cruel treatment of the appellant continued. In the meantime, the respondent was transferred to Bulandshahr and the respondent was not allowed to move outside the house to join at Bulandshahr for sometime, but the respondent somehow managed to escape from the house of the appellant and went to Bulandshahr for joining. The appellant also lodged a false FIR against the respondent and other members of his

family with false allegations of demand of dowry etc. upon which the police conducted the investigation and finally submitted final report. This fact is not disputed by the appellant. However, the appellant filed objection against the submission of the final report of the police upon which the Magistrate summoned the respondent and he had to seek bail from the Court of Judicial Magistrate. The Judicial Magistrate after the trial acquitted the respondent and other members of his family, who were falsely implicated in the said case but they had to undergo mental stress for several years before the court. All these facts are neither denied by the appellant nor they have been controverted. The appellant also made an allegation against the respondent that he had performed marriage with the sister of his sister-in-law, but no evidence was produced in this regard. The learned court below also tried to amicably settle the dispute by calling upon them before the court but the appellant did not agree without being paid a handsome amount by the respondent. The appellant also moved an application for payment of Rs.70,000/- as alimony and it was clearly mentioned in the said application that she would accept the divorce only in case the aforesaid amount is paid to her. This prima-facie indicates that the appellant instead of making any efforts towards amicable settlement always insisted for the alimony.

Keeping in view of the aforesaid facts and circumstances, the learned court below has found that the appellant had treated the respondent with cruelty and the cruelty was to such an extent that it had become impossible for the respondent to live with the appellant and having recorded this finding the learned court below has dissolved the marriage by a decree of divorce. The Hon'ble Allahabad

in case of ***Sadhana Srivastava vs. Sri Arvind Kumar Srivastava, reported in AIR 2006 All. 7*** has held that making false allegations against the husband of having illicit relationship and extra marital affairs by wife in her written statement constituted mental cruelty of such nature that husband cannot be reasonably asked to live with wife. The Hon'ble Court found that the husband in such circumstances was entitled to a decree of divorce. The same view has been expressed by the Hon'ble Delhi High Court in the case of ***Jai Dayal vs. Shakuntala Devi reported in AIR 2004 Delhi Page 31.***

In the case in hand, the respondent filed the suit for dissolution of marriage within a year of the marriage which prima-facie suggests that within eight months of marriage, the circumstances so happened that the respondent was compelled to file a suit for dissolution of marriage. It has been held by several High Courts in various decisions that in the matter of matrimonial disputes a serious responsibility rests upon the Court to first try that the matter between the parties may be amicably settled. Sub-section (2) of Section 23 of the Act also casts upon the Court a duty to make every endeavor to bring about the reconciliation between the parties before granting relief under the Act. The learned court below has specifically mentioned in the impugned judgment that several efforts were made by him by calling upon the parties to get the dispute settled, but it was only on account of the persistent demand of money by the appellant that the dispute could not be resolved. During the pendency of the appeal, this Court also made efforts for amicable settlement but without any result. Thus even after a gap of 23 years, there is no chance of reunion between the parties.

Under these circumstances, the appeal has to be decided on its merit and if we examine the material in this background, we find that there is sufficient material on record to indicate that the appellant has treated the respondent with cruelty and the cruelty was to such an extent that it had become impossible for the respondent to live in the company of the appellant. The learned court below has, thus, rightly passed the decree of divorce and has dissolved the marriage.

Learned counsel for the appellant has argued that though the learned court below has discussed the evidence on record, but has not recorded a definite finding and satisfaction that the cruelty so caused by the appellant was to such an extent that it had become necessary to dissolve the marriage by passing a decree of divorce. In this regard, it has been argued by the learned counsel for the respondent that under Rule 24 Order 41 CPC the appellate Court is also empowered to resettle the issues, if necessary or finally determine the suit, if the evidence on record is sufficient to enable the appellate Court to pronounce judgment. For this purpose, it would be irrelevant that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the appellate court proceeded. Thus, the appellate Court on the basis of evidence on record can even record a finding other than recorded by the court below. It is not disputed that the learned court below has discussed the issue with regard to cruelty in detail but has only failed to record a satisfaction that the cruelty was to such an extent that it was a good ground for dissolution of marriage by passing a decree of divorce. However, the discussion of the learned court below and conclusion arrived at by it suggests that

the court was satisfied that there was sufficient evidence on record to prove that the appellant had treated the respondent with cruelty and there was sufficient ground for dissolution of marriage. Since the appellate court is empowered to arrive at a conclusion on the basis of the evidence on record, we, while upholding the finding of the learned court below, are of the view that the cruelty so caused by the appellant was to such an extent that it was not possible for the respondent to live in the company of the appellant. Thus, we affirm the judgment and decree passed by the learned court below in Regular Suit No.535 of 1991.

The other first appeal, which has been preferred against the judgment and decree refusing to grant permanent alimony, the argument on behalf of the appellant is that the learned court below has wrongly dismissed the application under Section 25 of the Act on the ground that the appellant was able to maintain herself while as a matter of fact under the provisions of Section 25 of the Act, the appellant is entitled to get permanent alimony at the time of passing a decree of divorce. Section 25 of the Act provides that the Court at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, may order such payment if necessary.

The appellant during the pendency of the divorce suit moved

this application under Section 25 of the Hindu Marriage Act read with Section 17 of the Rules for grant of permanent alimony on the ground that at the time of passing of any decree she may be allowed permanent alimony. Prior to the filing of the application under Section 25 of the Act, the appellant had also applied for interim maintenance and litigation expenses under Section 24 of the Act upon which the learned court below passed an order for grant of interim maintenance. From the perusal of the record, we find that in support of the application under Section 25 of the Act, the appellant did not give any evidence as to what was her own income and what was the income of the respondent. The respondent, while controverting the submissions made by the appellant, stated that the appellant had always treated him with cruelty and the matter of divorce was pending since last several years only on account of fact that the appellant herself kept the proceedings pending on one ground or the other. The respondent had given a list and details of the earnings of the appellant and the learned court below while taking into account the evidence given by the respondent and in the absence of any evidence by the appellant came to the conclusion that since the appellant was able to maintain herself, she did not deserve any permanent alimony under Section 25 of the Act.

Learned counsel for the respondent has submitted that it is clear from the provisions of Section 25 of the Act that the Court while considering the application for permanent alimony will also take into account the conduct of the parties and other circumstances. In this case, the conduct of the appellant has always been to prolong the proceedings of the case and get money by one way or the other.

Whenever an effort was made for reconciliation, the appellant demanded a handsome amount to settle the matter. Thus, the conduct of the appellant was such that the learned court below did not find it proper to award any permanent alimony. The learned court below on the basis of the evidence has come to the conclusion that the appellant was getting only Rs.3,875/- per month after deduction. The appellant on the other hand was getting salary of Rs.5,631/- per month from Sahara India Office. The learned court below has also found that as required by the Rules, the appellant did not submit any details of her income and keeping in view the income of the appellant as well as that of respondent and also taking into account the conduct of the appellant, she was not entitled for any permanent alimony.

Having heard learned counsel for the parties and having gone through the record, we also find that the learned court below, while taking into account the income of the parties and their conduct, has rightly found that the appellant was not entitled to get any permanent alimony from the respondent.

In the result, both the appeals are liable to be dismissed and are accordingly dismissed.

In the circumstances of the case, we do not pass any order with regard to the costs. The parties are directed to bear their own costs.

Order Date :- 22nd September, 2014
Rakesh/-