



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on: 21st August, 2023**
+ **Pronounced on: 20th December, 2023**
MAT.APP.(F.C.) 178/2016 & CM APPL.9333/2017

..... Appellant
Through: Mr. Navin Sharma, Advocate with
appellant in person
versus
..... Respondent
Through: Mr. Jai Bansal & Mr. Abhishek
Verma, Advocates.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

Any successful marriage is built on mutual respect and faith. If either is compromised beyond a level, the end of the relationship is inevitable as no relationship can stand on half-truth, half-lies, half-respect and half-faith.

1. An Appeal under Section 19 of the Family Courts Act, 1984 has been preferred on behalf of the appellant/wife against the Judgment dated 31.08.2016 passed by the Additional Principal Judge, Family Court, Tis Hazari, Delhi *vide* which divorce has been granted on the ground of cruelty, in the petition filed by the respondent/husband under 13(1)(ia) of the Hindu Marriage Act, 1955 (*hereinafter to be referred to as "HMA"*).

2. **Briefly stated**, the parties got married on 28.02.2000 and one son, Rudraksha, was born from their wedlock on 27.04.2004. The respondent/husband has asserted that during the pre-nuptial negotiations it



was falsely projected that the appellant/wife is an MBA. However, after the marriage, he came across the educational documents of the appellant and could not find any MBA Certificate. He also found that most of the certificates were in different names and on inquiry from the appellant she stated that her father used to write her name differently in the educational records anything to make the so called DATA look “colorful”. She further admitted that she was not an MBA graduate but was advised to claim so in her matrimonial home.

3. The respondent asserted that he had an excellent schooling and had more than a “*literate tag*” and the intellectual level of both the parties could not match since the very inception. The appellant being aware of her handicap, joined English Speaking Schools and similar courses for improvement of her speaking skills in the English language. She also joined *Priya Warrick Finishing School* in the month of May, 2001. The respondent claimed that he spent lot of money in getting her admitted to various English Speaking Schools and Finishing Schools, but to his shock and surprise the appellant did not attend any of these programs for more than 2-3 days, resulting in wasteful expenditure and financial strain.

4. The respondent had further claimed that the father of the appellant used to interfere in his professional work and often insisted that she should come to meet the father or his elder brother. He also insisted that the respondent/husband should have a personal account to meet the situation in bad time and for that he may even steal the money from the joint business and save it in a separate account. The respondent asserted that all his requests to the appellant/wife to refrain from creating problem for the family at the instigation of her parents, did not yield any result. When the



respondent displayed his disinclination to follow his advice, he was pressurized by the appellant to follow the advice of her father. It was claimed that he was harassed by the respondent at the instance of her father on one pretext or the other including fighting with him and objecting to his travel for business purpose, meeting with friends and talking to his friends and lady colleagues.

5. It was further alleged that the appellant was of a suspecting nature, which is evident from the fact that when they went out to a restaurant, Park Royal, in October 2001 and when the appellant/wife saw the respondent/husband looking at a painting, she suspected him of looking at other women standing below the painting and violently reacted by spilling the food and creating a ruckus. She would frequently pick up fights, suspecting that the respondent was having interest in the other women and thereby, caused embarrassment for him in the restaurants and public spaces.

6. The respondent further alleged that the appellant was in a habit of bad mouthing him. She would speak about her household affairs and discussed her personal life with outsiders and would tell that the respondent's mother beats her; the respondent had extramarital affair; his family had taken dowry; he suffered from impotency and he had forced the respondent for an abortion. The respondent came to know about the gravity of the situation when one of the teachers in *Priya Warrick Finishing School* contacted him and warned him to change his behavior or else the school would take action against him and he would face dire consequences. She also told one of her classmates that the respondent was a '*dilphenk aadmi*' (a flirt) and would fall for any woman, whether 16 years or 60 years, who could speak in English.



7. The respondent also alleged that the appellant used to use most filthy language and regularly threatened him that she would commit suicide and implicate him and other relatives in criminal matters.

8. The respondent further alleged that on 20.04.2003 he launched two restaurants in Delhi in the name of 'Café Red Bricks' and 'Khomcha' officially. The restaurant "Khomcha" was completely handled by the appellant and the mother of the respondent. They started doing good work and made profit in a short span of time. However, soon 'Khomcha' started showing poor performance due to unprofessional working of the appellant. After July, 2003 the appellant started interfering in the Café business and even started questioning the staff about the persons visiting the office and if the respondent was talking to other women in the office and their details.

9. The respondent had further asserted that his Café business was growing and while he was having a meeting in the second week of October, 2003 with 12-15 people in his office, appellant suddenly barged in while screaming at him and using insulting and abusive language. All the guests in the meeting could hear the abuses and allegations hurled at the respondent, which caused immense humiliation to him and this caused an apprehension in the mind of the respondent that his daily life would never settle because of the abusive conduct of the appellant.

10. The respondent further asserted that the graph of Café business declined as the regular customers stopped coming because of the bad mouthing by the appellant and various incidents of her behavior were being discussed on tables outside by the people. Some of the staff also opted to leave the job as they did not want to be part of the dirty tricks of the appellant. Ultimately, in less than a year Café Red Bricks had to be closed



because of the appellant's behavior.

11. She even told the staff to keep an eye on the respondent and report to the appellant. The respondent came to know about these facts when he made an inquiry from them. This conduct created a bad reputation of the respondent in the staff and it also caused immense mental harassment. The respondent got a clear impression that his married life with the appellant cannot be a success despite all the efforts that he may make.

12. The respondent further explained that he had his Company was progressing in exports for which reason he opened a Gold bank account with American Express Bank. Mrs. Bharti Singh was deputed as his personal Accounts Manager and she visited his office very often in order to settle the queries about the Company's accounts. The respondent, however, received a call from Mrs. Bharti Singh one day in the afternoon informing that the appellant has been calling her, using abusive language and questioning her relationship with the respondent. She informed that she had cleared all the misunderstanding of the appellant on the first call but she has been getting repeated blank calls and appellant would use abusive words and thereafter hang the phone. She had also been threatened to stop coming to the office of the respondent or else the appellant would get her out of the job since her father knew Senior Police Officers/ DCPs. Mrs. Bharti got extremely upset as she was a married woman and a respected lady having her own children. The respondent asked the appellant to seek an apology and forgiveness for such disrespectful behavior from the appellant. Thereafter, Mrs. Bharti Singh got a different Officer appointed to handle the accounts of the respondent's Company.

13. The respondent further asserted that because of the conduct of the



appellant, his love for her dried and he developed a physical aversion. Once in the night of May, 2002 while he was in deep sleep, the appellant tried to establish physical contact by partially undressing him and when he pushed her away, she resisted and hit her head on the wall and started hitting the respondent and abusing him in the filthiest language and threatened to implicate in false case. Even thereafter, on every alternate night he would go through this exercise of rape by the appellant.

14. The respondent further asserted that after the son was born on 27.04.2004, the appellant refused to have any physical relationship with him. The couple mutually agreed that though respondent would continue to provide her with all her requirements, but they shall have no physical relationship. However, after about one month of the child's birth, the fighting and threatening rituals started. The appellant started claiming that the respondent was sleeping with other women and was visiting brothels including all daily brothels as spotted by her cousins many a times and that he was going to the whores.

15. The respondent further claimed that the appellant then started going to *Tantriks, Pandits, Ojhas* and *Sadhus* and bringing these people in the matrimonial home which was quite scary. She would do *Jadu-Tona*, which caused mental harassment to the respondent as he got scared.

16. It was also asserted by the respondent that he suffered losses in business as his products were banned in European countries due to the Government policy. Unmindful of his financial conditions, the appellant continued to do unnecessary expenses which he was unable to control on account of her abuses and threats. The respondent also asserted that there was constant tension in the house as the behavior of the appellant towards



the domestic help was also abusive. She also would take out her anger by beating the two year old son. She also had an extremely disrespectful attitude towards his parents.

17. Because of all these conditions and incidents, he came under depression and on her insistence went to consult Doctor Vikas Jain, the Psychiatrist, who recommended him a tranquilizer. The appellant thereafter insisted that the respondent must visit the Doctor regularly, to which he refused as he was in perfect health, but on account of her persistence he visited the Doctor, who prescribed him some tests. Subsequently, he came to know that the test was for impotency, which was a shocking discovery for him. The Doctor despite his disinclination, conducted *Penial Doppler Test* in which he was found to be perfectly fine. However, these claims of his impotency and of making him go through the tests caused physical pain and mental agony. Because of this conduct he even thought many a times of committing suicide.

18. The respondent/petitioner thus, sought divorce on the grounds of cruelty which has been granted vide the impugned judgment.

19. The **appellant in her Written Statement** controverted all the assertions made by the respondent/husband in his divorce petition and asserted that all the allegations made by the respondent/husband were false, frivolous, vague, scandalous, malicious and defamatory merely to make her accede to the illegal demands of divorce by mutual consent, which had caused her severe mental torture. All the allegations made by the respondent/husband were claimed to be non-specific and did not disclose any cause of action.

20. The appellant/wife has narrated in detail that there were various



functions organized before the marriage and huge amount was spent, aside from various gifts, jewellery items which were given on every occasion to the family members of the respondent/husband. Further, about Rs. 30,00,000/- was spent on the wedding which was performed at a lavish scale. Similarly, extravagant function was organized for celebration of 40th day of birth of their son on which occasion the money was spent and various gifts, jewellery items were given.

21. The appellant/wife had claimed that soon after the marriage, all her jewellery articles were retained by her mother-in-law. Also, after the marriage, they did not go for their honeymoon. After six months of marriage, the appellant/wife and the respondent/husband went to Shimla for 4 to 5 days, but they were accompanied by the brother (*dewar*) of the respondent/husband.

22. The appellant/wife further asserted that after about one year of their marriage, she and the respondent/husband took a tour to Europe for about 22 days, but on their return, the respondent/husband's father started taunting her for having spent a lot of time and also conveyed that the expenses for the trip should have been borne by her father. The conduct of the mother of the respondent/husband changed thereafter and she started taunting the her for having brought insufficient dowry. A sum of Rs. 10,00,000/- was demanded from her father for the business expansion merely to get rid of her by hook and crook.

23. The appellant/wife claimed that the respondent/husband desired a well-educated and the homely woman and since the appellant/wife met both the criteria, they got married. She explained that she had disclosed at the time of marriage that she was pursuing an MBA and never claimed that she



has completed her MBA. She admitted that respondent/husband got her admitted in the School for acquiring better English speaking skills, but she asserted that she was compelled to leave the classes on account of her mother-in-law.

24. The appellant/wife also admitted that two restaurants, namely, *Café Red Bricks* and *Khomcha* were opened by the respondent/husband, but she asserted that she was made a Director in one of the business as respondent/husband wanted to avoid going to the Khari Baoli Office which he desired to be continued by his father. She denied that she ever interfered in the business of Café Red Bricks or caused harassment to the respondent/husband.

25. The appellant/wife further explained that the business of Café Red Bricks closed because it was located in a residential area and had to be shut because of frequent complaints from MCD and the neighbours.

26. The appellant/wife further asserted that the incidents relied upon by the respondent/husband were normal incidents which happen between the husband and the wife, but the same had been blown out of proportion by the respondent/husband to regal out of the matrimonial alliance.

27. The appellant/wife denied the allegations of sleeping separately.

28. The appellant/wife also denied that she used to hide sensitive files and folders of the respondent/husband or create a lot of problems in day-to-day activities or caused the embarrassment to the respondent/husband.

29. The appellant/wife further asserted that because of shutting down of Café Red Bricks, the respondent/husband came under stress and started smoking and drinking and would remain restless for the entire night. She, disturbed by such conduct of the respondent/husband, advised him to visit



the doctor which was acknowledged by him. The appellant/wife, however, denied that she compelled the respondent/husband to undergo the impotency test or cause him embarrassment on that account.

30. The appellant/wife admitted that there were multiple litigations which got initiated *inter se* the parties. Admittedly, the Guardianship Petition under Section 25 of the Guardian and Wards Act, 1890 was filed by the respondent/husband on 24.12.2008 seeking custody of the minor son, but the same was subsequently withdrawn. However, another Guardianship Petition was filed by the respondent/husband which was pending trial.

31. The appellant/wife had asserted that the parents of the respondent/husband wanted to construct a wall in front of her room. A Civil Suit bearing No. 345/2008 seeking Permanent Injunction was filed by the respondent/husband against the appellant/wife for permanently restraining her from raising any obstruction in the construction of the partition wall. But subsequently, the Suit got withdrawn by the parents of the respondent/husband on 10.11.2010. The parents went to the extreme of disconnecting her water and electricity supply which was restored only by the Orders of the Court.

32. The appellant/wife further admitted that she filed a Petition under Section 12 of the Protection of Women (from Domestic Violence) Act, 2005 against the respondent/husband, his parents and brother, Vineet and they were restrained from dispossessing her and the minor child from the matrimonial home, *vide* Order dated 01.12.2011. The appellant/wife also claimed that CCTV cameras were installed by the parents of the respondent/husband in order to disturb the peaceful living of the appellant/wife and her son in their house.



33. The appellant/wife, in the end stated that she was still willing to reside with the respondent/husband and claimed that the respondent/husband was not entitled to divorce.

34. **Issues on the pleadings** were framed on 29.03.2014 which are as under: -

*“1. Whether petitioner is entitled to decree of divorce on the ground of cruelty under Section 13(1)(ia) HMA 1955? OPP.
2. Relief.”*

35. The respondent appeared as PW1. He also examined PW2 Smt. Vimla Rani, PW3 Remi Kawal and PW4 Smt. Saroj Sarpal both friends of the mother of the respondent, PW5 Sh. Girish S. Nair, PW6 Mohd. Ruhula and PW7 Shri Rakesh Malviya his friend.

36. The appellant examined herself as RW1. She also examined RW3 Shri Ram Avtar her father, RW3 Smt. Kamlesh Gupta her mother and RW4 Shri Satish Kumar Gupta.

37. **The learned Family Judge** essentially referred to the allegations in regard to the character of the respondent including him having illicit relationship and also of subjecting him to *Doppler's Impotency Test* and further acts of harassment by the appellant, to conclude that respondent was subjected to cruelty and thereby granted divorce. **The petition for grant of divorce on the ground of cruelty was, therefore, allowed.**

38. Aggrieved by the said judgment for grant of divorce, the appellant/wife has filed the present appeal.

39. **Submissions heard and the record perused.**

40. The parties got married on 28.02.2000 and the litigation commenced between them in October, 2006. The marriage, therefore, survived for



barely six years.

41. The respondent had asserted that they were misled about the educational qualifications of the appellant, a fact which had emerged to be correct and true in the evidence. While the appellant had asserted that in her statement that she was pursuing the MBA and never claimed that she has completed the course, but in her testimony she admitted that she had never joined the course of MBA. Further, the respondent had asserted that to improve her English speaking skills and to be able to interact with the customers and his friends as well as to be a part of his business, she joined English Speaking Schools many a times, but after few days she stopped attending her classes which led to an unnecessary expenditure by the respondent.

42. While the appellant had denied these averments in her written statement and had asserted that she was dissuaded by her mother-in-law from attending the classes, but in her testimony it had emerged that she for the reasons known best to her though joined the Schools, but abandoned them after a few months. Similarly, she admitted joining *Priya Warrick Finishing School*, but again left it after a few days.

43. The respondent may have incurred expenses in getting the admission for the appellant, but the fact remains that the endeavour of the appellant to join the schools to improve her English Speaking Skills was only to match the expectations of the appellant. She not been able to successfully complete her courses, cannot be termed as compelling the respondent to incur unnecessary expenditure or that there was any malice on her part in making the respondent spend money for enrolment in these programmes. No cruelty that can be inferred from such acts as alleged by the respondent.



44. The respondent had claimed that she was a woman who was quarrelsome, having an erratic behaviour and used abusive language in public. She even made complaints to her teachers and classmates in *Priya Warrick Finishing School* about the ill treatment by the mother-in-law and the respondent, which was not seriously refuted by the appellant. The appellant may have shared her stresses in matrimonial life with the teachers and her classmates but that was only to find a solution and cannot be termed as an act targeted towards humiliating the respondent.

45. The respondent however, established from his evidence that the appellant used to instruct the staff in the office to keep an eye on the respondent. The appellant had admitted that she had stated in her application under Section 24 Hindu Marriage Act, 1955 that “*yeh to iska shauk hai* (referring to flirt)”. The respondent had claimed that she used to make allegations of his visiting the brothels and whores and that her cousins had seen him there.

46. These facts get corroborated from the allegations made by the appellant in her application under Section 24 & 26 HMA dated 17.03.2007, that the husband had an illegitimate relationship outside the marriage with one Ms. Akansha living in G.K Part-I and one Archana living at Vasant Kunj. She further alleged the relationship of the respondent outside the marriage with other women about which she claimed that she did not have the details. She, however, sought to explain her claim in her cross-examination by stating that what she implied was that he had affairs though no physical relationship. The assertions made by her were bald and not substantiated by any evidence. Though, the appellant had denied having made any such allegations in her Written Statement but the tone and tenure of her assertions



in her application under Section 24 HMA, 1955 as referred to by the learned Addl. Principal Judge, Family Court, fully leads to an irresistible inference that not only was she suspecting him but also made allegations about this character and having interest in other women.

47. Furthermore, the appellant had admitted in her cross-examination that she had never seen the respondent flirt with the girls, but tried to explain her assertions by asserting that such reputation was projected by the respondent himself to the appellant. However, her explanation is not believable. The testimony of the respondent when appreciated in the light of assertions and admissions of the appellant, clearly prove that she suspected the respondent of having affairs with other women.

48. In the case of *Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate*, (2003) 6 SCC 334 while analysing the impact of such grave allegations of illicit affairs and unchastity by either spouse in any married life, the apex court held that :-

"7..... The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court..... We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the



reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible."

49. Similarly, it was held in the case of *A. Jayachandra v. Aneel Kaur*, (2005) 2 SCC 22 Apex Court observed that advices given by the wife for working in the office were nothing but casting doubt on the reputation, character and fidelity of her husband. Constant nagging on those aspects, certainly amounted to causing indelible mental agony and amounts to cruelty. Also, casting aspersions to the alleged extramarital relationship of the appellant with another married lady who was the wife of his friend, would lead to the inevitable conclusion of cruelty.

50. Hence, it is no more *res integra* that such reckless, defamatory, humiliating and unsubstantiated allegations by one spouse, which has the impact of publically tarnishing the image of the other spouse, is nothing but acts of extreme cruelty. In the present case as well, the appellant always had doubts on the fidelity of her husband which necessarily led to harassment resulting in mental cruelty to the respondent/husband. The strongest pillars on which any marriage stands is trust, faith and respect, and thus, no person can reasonably be expected to put with such disrespectful conduct of their "significant other" who lacks faith in her partner. Any spouse not only expects their partner to respect them but also envisions that in times of need, the spouse would act as a shield to protect their image and reputation. Unfortunately, here is a case where the husband himself is being publically harassed, humiliated and verbally-attacked by his wife, who had gone to the extent of levelling allegation of infidelity during his office meetings in front



of all his office staff/guests. She even took to harassing the woman workers of his office and left no stone unturned to portray him as a womanizer in the office. This behaviour is but an act of extreme cruelty to the respondent/husband.

51. Pertinently, the respondent had also referred to an incident pertaining one Ms. Bharti Singh, who was allotted to him for management of his accounts with American Express Bank. He had deposed that she being the Accounts Manager, used to frequently call him and also at times visit the office, which was not acceptable to the appellant who even called her and used abusive language. Because of her conduct, Ms. Bharti Singh quit the job of the respondent and some other person was assigned to manage their personal account.

52. The respondent had also claimed that the appellant used to come to his office and misbehave with the staff and also used abusive language towards the staff, which again stands corroborated from the testimony of the witnesses, PW-5 Gireesh Nair and PW-6 Mohd. Ruhulla, examined by both the parties.

53. The appellant had asserted that she was being beaten and harassed and subjected to various acts of cruelty by the mother of the respondent. The maids in the house were instructed not to assist the appellant in any household affair. However, she herself has admitted that there were two maid servants and that there was a male cook who used to do the household work. Her assertion that she was not provided with the assistance of the servants in the house, is clearly not tenable. This is pertinent in the light of her own admissions in her cross-examination that her mother-in-law never gave her any beatings though she used to abuse her.



54. The conduct of the appellant was not respectful towards her mother-in-law is brought forth from the testimony of PW3 Remi Kawal and PW4 Smt. Saroj Sarpal who had deposed that because of the misconduct of the respondent, the Kitty members stopped visiting the house of the respondent as they did not want to be humiliated by the appellant. Both these witnesses also deposed about the incident of 08.05.2008, when on receiving a telephone call from other ladies, they went to the house of the respondent where they found that the appellant had attempted to slap the mother-in-law and also beat her with the slippers while abusing her. The PCR was called, but the matter was compromised and it was agreed that the appellant would not enter the room of the mother-in-law. The police got the compromise signed and left. Moreover, the appellant herself admitted in her cross-examination that she was not on cordial terms with her mother-in-law.

55. Though there was no documentary proof of this incident, but the ocular evidence of the witnesses which has not been sufficiently rebutted by the appellant again establishes her erratic behaviour towards the respondent and his family members.

56. The other act of cruelty relied upon by the respondent was that the appellant/wife used to allege that the respondent/husband was impotent. She compelled him to go for *Doppler's Impotency Test* in which he was found to be fit. Such allegations caused mental cruelty to the respondent.

57. This version has been explained by the appellant who asserted that the respondent/husband suffered losses in his business on account of change of Government policies in regard to the business with European countries because of which he went into depression and took to smoking and drinking. She, out of concern for his health, insisted on his visiting the Doctor. She



denied that she got the Impotency Test conducted of the respondent/husband. The appellant while fanning ignorance about the test being conducted, herself gave the explanation that the respondent had visited the Doctor to address his problem of not being able to perform sexually when under intoxication and irritated and frustrated. The admissions of the appellant establish that the respondent was made to undergo the Impotency Test in which he was found to be fit. Clearly, such averments and allegations about the manhood of a person would not only be depressive but also mentally traumatic for any person to accept.

58. The appellant had made serious allegations of respondent being abusive, quarrelsome and erratic in his behaviour. However, in her cross-examination she admitted that the respondent used to provide everything to her and the child and that he never made any dowry demands. The allegations of dowry demands by the respondent and his family members clearly get demolished by her own admissions. Learned Addl. Principal Judge has rightly concluded that levelling of such allegations of dowry demands would certainly cause mental cruelty to the respondent and his family members.

59. Undeniably, multiple litigation got initiated *interse* the parties. The Guardianship Petition was filed by the respondent on 24.12.2008, which he subsequently withdrew, but he again filed a Guardianship Petition which is pending disposal. The appellant admittedly is residing in the same house, though in a separate portion, her dispossession being protected under Section 12 of Protection of Women from Domestic Violence Act, 2005. However, despite being in the same house as the parents-in-law, she admittedly did not make any effort to make the child interact with the paternal grandparents.



Admittedly, when she goes out for attending the Court hearings, the child is left alone in the house and even then she does not involve the parents-in-law in the care of the child. Her candid admissions in her testimony establish that she has alienated the child from the respondent and the grandparents and all the efforts made by the husband to develop a bond with the child have been thwarted by the appellant. She is also creating a non-conducive atmosphere and instilling bitterness in the child towards the respondent and his parents. She herself asserted that the child does not want to meet the respondent since he wears his hair in a pony tail. Such absurd explanations by the appellant to say that the child has no interest in meeting the father only leads to one conclusion and that she has not only alienated the child from the respondent but has not made any effort to bridge the gap between the father and the son despite she being in the same house where the parents-in-law are residing.

60. In the case of *Prabin Gopal v. Meghna*, 2021 SCC OnLine Ker 2193 in a similar situation, the Kerala High Court observed that the mother had intentionally distanced the child from the father and had deprived the child from the parental love and affection. It was a case of parental alienation where the child, who was in the custody of one parent, had been psychologically manipulated against the estranged parent. It was a strategy whereby one parent intentionally displayed to the child unjustified negativity aimed at the other parent, with the intent to damage the relationship between the child and the estranged parent and to turn the child emotionally against the parent. It was further observed that the child has a right to love and affection of both the parents and likewise, the parents also have a right to receive love and affection of the child. Any act of any parent calculated to



deny such affection to the other parent, amounts to alienating the child which amounts to mental cruelty. Since the child was in the custody of the mother, it was held that the mother had breached her duty which she owed as a custodian parent to instil love, affection and feelings in the child for the father. Nothing more can be more painful than experiencing one's own flesh and blood i.e., the child, rejecting him or her. Such wilful alienation of the child by a parent amounts to mental cruelty to the other parent.

61. In the present case as well, the child has not only been totally alienated, but has also been used as a weapon against the father. Nothing can be more painful for a parent to see the child drifting away and being totally against the father. This assumes some significance in the light that the father never failed to provide as required for the child.

62. **To conclude** the evidence on record as adduced by the parties proves that the respondent had alleged about the aggressive and quarrelsome and erratic behaviour of the appellant, but she herself has admitted that he is a good husband and takes care of all her as well as of child's needs. She alleged being ill treated by the parents of the respondent, but she herself admitted that her mother-in-law had never beaten her. She claimed that she was harassed on account of dowry, but again admitted that in her own testimony that no dowry demands were made. She further alleged extramarital relationship of the respondent which from her own evidence have been proved to be false allegations. She not been satisfied with the sexual relationship with the respondent even coerced the respondent to undergo Doppler's Impotency Test. To compound all her acts, she used the child as a weapon and has totally alienated him from the respondent. All these acts which happened in a span of about six years that they spent



together, proved that the respondent was subjected to cruelty and harassment which is sufficient to create mental agony and trauma in his mind to the extent that he at times even thought of committing suicide. The acts of the appellant, as proved, can only be termed as acts of cruelty towards the respondent.

63. We, thus, concur with the findings of the learned Addl. Principal Judge, Family Courts that the respondent was subjected to acts of cruelty which entitled him to divorce under Section 13 (1)(ia) of the HMA.

64. The appellant has filed an application under section 24 and 26 of the HMA, seeking Rs. 2 Lac per month as maintenance and Rs. 2 Lac on account of expenses of the proceedings. A perusal of the record shows that the appellant has already been awarded, an amount of Rs. 25,000/- per month as maintenance and an additional amount of Rs. 10,000/- for the upbringing of the minor child as well as an amount of Rs. 50,000/- litigation expenses, in an application under Section 24 and 26 of the HMA filed in HMA No. 319/10/06. The appellant is at liberty to approach the appropriate court/forum to pursue the application seeking enhancement of maintenance or permanent alimony before the Family Court, in accordance with law.

65. Accordingly, we find no merit in the appeal, which is dismissed as along with the pending application(s).

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

DECEMBER 20, 2023

Jn/va