**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-M-118-M of 2004
Date of Decision: 25.05.2022

Som Dutt

...Appellant-Husband

Versus

Babita Rani

....Respondent-Wife

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present:- Mr. Tajender Joshi, Advocate,
for the appellant-husband.

Mr. J.P. Sharma, Advocate,
for the respondent-wife.

ASHOK KUMAR VERMA, J.

[1] Appellant-husband has come up in appeal against the judgment and decree dated 07.04.2004 of the Additional District Judge, Faridkot, whereby petition filed by him under Section 13 of the Hindu Marriage Act (for short 'the HMA') for dissolution of marriage has been dismissed.

[2] The marriage between the parties was solemnised on 23.11.1990 at Narnaul, Tehsil and District Mohindergarh (Haryana) according to Hindu rites. Two sons, namely, Rahul and Rohit were born out of the said wedlock. As per appellant-husband, respondent-wife is suffering from incurable mental illness and becomes violent and beats the children mercilessly and even goes to the extent of attacking the appellant. The best efforts made by the appellant to get the respondent treated medically did not bear fruits. Respondent even refuses to cook meals for the

appellant, therefore, he had to go to sleep without food. Respondent deserted the appellant without any reason more than 3½ years ago immediately preceding the petition. The efforts made by the appellant to rehabilitate the respondent in matrimonial home also failed leading him to file the petition for dissolution of marriage.

[3] On notice of the petition, respondent-wife appeared and filed detailed written statement admitting the factum of marriage between the parties and children from the said wedlock. She denied that she was suffering from mental illness and ever physically assaulted the children or husband or ever denied them food. Rather appellant had levelled false allegations against the respondent to get divorce and it was the appellant who forced her to leave the matrimonial home. She made efforts to get herself rehabilitated in her matrimonial home. Respondent denied all the averments made in the petition and sought dismissal of the same.

[4] Appellant filed rejoinder to the petition and reiterated his earlier stand taken in the petition and denied the averments made in the written statement.

[5] Vide order dated 12.09.2002 following issues were framed: -

"1. Whether respondent is suffering from incurable disorder? OPA

2. Whether the respondent caused cruelty to the petitioner? OPA

3. Whether the respondent has deserted the petitioner without any reason? If so, its effect? OPA

4. Relief."

[6] In order to prove his case, appellant-husband examined Hoshiar

Singh as PW1, Sushil Kumar as PW2 and he himself stepped into witness box as PW3. He also tendered documentary evidence and closed his evidence.

[7] On the other hand, respondent-wife examined Bhani Sahai as RW1, her mother Saroj Devi as RW2 and she herself stepped into witness box as RW3. She also tendered documentary evidence and closed her evidence.

[8] Vide impugned judgment, the Family Court dismissed the petition filed by the appellant on the ground that he has failed to prove the allegations levelleved by him against the respondent-wife.

[9] Heard learned counsel for the parties at length.

[10] Perusal of record shows that the matter was referred to Lok Adalat for settlement between the parties. However, on 19.08.2011 case was returned to this Court as the efforts made for reconciliation between the parties failed. Again an attempt was made to resolve the dispute and vide order dated 22.12.2015 the parties were directed to appear before the Lok Adalat on 29.01.2016. On 08.04.2016 vide second attempt no compromise could be arrived at between the parties and on their request case was sent back to this Court for adjudication.

[11] The issue for consideration in the present appeal would be whether the relationship of the husband and wife has come to an end and if the respondent-wife is not ready to give mutual divorce to the appellant-husband, whether this act of her, would amount to cruelty towards husband, keeping in view the fact that she is not staying with her husband for the last about 23 years and there is no scope that they can cohabit as

husband and wife again. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Chandra Kala Trivedi vs. Dr. S.P.Trivedi, 1993 (4) SCC 232*** wherein Hon'ble the Supreme Court was considering a case where marriage was irretrievably broken down and held that in these case, the decree of divorce can be granted where both the parties have levelled such allegations against each other that the marriage appears to be practically dead and the parties cannot live together.

[12] Reference at this stage can be made to a judgment of three Judge Bench of Hon'ble the Supreme Court of India in case of ***A Jayachandra vs. Aneel Kaur, 2005 (2) SCC 22*** wherein Hon'ble the Supreme Court was having an occasion to consider the case of divorce on the basis of cruelty including mental cruelty. While examining the pleadings and evidence brought on record, the Court emphasized that the allegation of cruelty is of such nature in which resumption of marriage is not possible, however, referring various decisions, the Court observed that irretrievable breaking down of marriage is not one of statutory grounds on which Court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in longdrawn legal battle, directed in those cases dissolution of marriage. In para 17, it has been observed as under:-

> "*17. Several decisions, as noted above, were cited by learned counsel for the respondent to contend that even if marriage has broken down irretrievably decree of divorce cannot be passed. In all these cases it has been categorically held that in extreme cases the court*

> *can direct dissolution of marriage on the ground that the marriage had broken down irretrievably as is clear from para 9 of Shyam Sunder case. The factual position in each of the other cases is also distinguishable. It was held that long absence of physical company cannot be a ground for divorce if the same was on account of the husband's conduct. In Shyam Sunder case it was noted that the husband was leading adulterous life and he cannot take advantage of his wife shunning his company. Though the High Court held by the impugned judgment that the said case was similar, it unfortunately failed to notice the relevant factual difference in the two cases. It is true that irretrievable breaking of marriage is not one of the statutory grounds on which court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in long- drawn legal battle, directed in those cases dissolution of marriage. But as noted in the said cases themselves, those were exceptional cases."*

[13] Hon'ble the Supreme Court in a case of ***Naveen Kohli vs. Neetu Kohli, 2006 (4) SCC 558*** was considering a case of irretrievable break down of marriage. In this case, wife living separately for long but did not want divorce by mutual consent only to make life of her husband miserable. Thus, the decree of divorce was granted and held it is a cruel treatment and showed that the marriage had broken irretrievably. In para 62, 67, 68 and 69, it has been observed as under:-

> "*62. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and*

evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

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67. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

68. In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the Trial Court. In our opinion, wisdom lies in accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties.

69. Consequently, we set aside the impugned judgment of the High Court and direct that the marriage

> *between the parties should be dissolved according to the provisions of the Hindu Marriage Act, 1955. In the extra-ordinary facts and circumstances of the case, to resolve the problem in the interest of all concerned, while dissolving the marriage between the parties, we direct the appellant to pay Rs.25,00,000/- (Rupees Twenty five lacs) to the respondent towards permanent maintenance to be paid within eight weeks. This amount would include Rs.5,00,000/- (Rupees five lacs with interest) deposited by the appellant on the direction of the Trial Court. The respondent would be at liberty to withdraw this amount with interest. Therefore, now the appellant would pay only Rs.20,00,000/- (Rupees Twenty lacs) to the respondent within the stipulated period. In case the appellant fails to pay the amount as indicated above within the stipulated period, the direction given by us would be of no avail and the appeal shall stand dismissed. In awarding permanent maintenance we have taken into consideration the financial standing of the appellant."*

[14] In the present case, the marriage between the parties had broken down irretrievably since long and there is no chance of their coming together, or living together again. Further, not to grant decree of divorce would be disastrous for the parties.

[15] The three Judges' Bench of Hon'ble the Supreme Court in a case of ***Samar Ghosh vs. Jaya Ghosh, 2007 (4) SCC 511*** passed the decree on the ground of mental cruelty but the concept of irretrievable breakdown of marriage has been discussed in detail referring the 71st report of the Law Commission of India.

[16] Hon'ble the Supreme Court in a case of ***K. Srinivas Rao vs. D.A. Deepa, 2013 (5) SCC 266*** has observed that though irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, however, marriage which is dead for all purposes, cannot be revived by Court's verdict, if parties are not willing since marriage involves human sentiments and emotions and if they have dried up, there is hardly any chance of their springing back to life on account of artificial reunion created by court decree.

[17] It is well settled that once the parties have separated and separation has continued for a sufficient length of time and anyone of them 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.

[18] In the present case, the appellant and the respondent are living separately for the last more than 23 years. Firstly efforts were made to resolve the matrimonial dispute through the process of mediation, which is one of the effective mode of alternative mechanism in resolving the personal dispute but the mediation failed between the parties.

[19] Applying the ratio of the above-mentioned judgments to the facts of the present case and keeping in view the extra-ordinary facts and circumstances of the case, the appeal is allowed, judgment dated 07.04.2004 passed by the Additional District Judge, Faridkot, is set aside

and decree of divorce is granted in favour of the appellant-husband. Decree-sheet be prepared accordingly. However, we direct the appellant-husband to make an F.D. of ₹10 lakhs as permanent alimony in the name of the respondent-wife.

(Ritu Bahri)
Judge

(Ashok Kumar Verma)
Judge

May 25, 2022
R.S.

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No