

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO 163/1997

Date of Decision: August 20, 2010

MRS. FLORA BOSE .. Appellant Through: Mr. Sunil Mittal, Advocate VERSUS

SUPROTI BOSE .. Respondent Through: Nemo.

% CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not? Yes (3) Whether the judgment should be reported in the Digest? Yes
JUDGMENT

ARUNA SURESH, J.

1. Under challenge in this appeal is the judgment and decree of the learned Additional District Judge dated 8th April, 1997 whereby the petition of the appellant filed under Section 13 (1) (ia) and (ib) of the Hindu Marriage Act was dismissed.

2. Succinctly, the facts of the case are that parties to the petition were married on 8.12.1974 according to Hindu rites and ceremonies. One FAO 163/1997 Page 1 of 36 male child Ankur Bose was borne out of the wedlock on 7.8.1978. Respondent is an alcoholic. Many a times he remained out of job and under the influence of liquor and even otherwise he used to treat the petitioner with cruelty. Respondent had to vacate the rental premises on account of non payment of rent and petitioner had to depend for financial support on her parents. Respondent had stopped taking care of the family needs. After vacating the rented accommodation parties started living in the house of Petitioners parents. After shifting to her parents house, petitioner continued with her job and in the evenings she started going to theater leaving her child in the care of her parents because Respondent did not show any inclination or interest to look after the child. Petitioner became pregnant again, to which Respondent expressed his shock and disowned the child as his own. He suspected her fidelity and Petitioner had to go for medical termination of the pregnancy. To meet his drinking habit, he used to take money from the Petitioner or her parents and some times even sold out household articles. Petitioner was allotted a flat and Respondent wanted to sell the allotment letter to which Petitioner did not agree. This resulted into hurling of abuses and physical beatings to the Petitioner by the Respondent. The disputes and differences increased to the extent that parties stopped their physical relations. Petitioner sought FAO 163/1997 Page 2 of 36 guidance from a voluntary organization Saheli, where Respondent was called and the differences were reconciled with a view to restart the matrimonial life. Parties started living together w.e.f. 20.08.1989. However, disputes and differences continued as before. On 2.12.1989, allegedly a scene was created in the house and Respondent took out a kitchen knife to assault the Petitioner but, when their son intervened, he sustained injuries and was hospitalized. Petitioner lodged a complaint about this incident with the police on 3.12.1989. Since 2.12.1989 parties are living separately.

3. Respondent has refuted the allegations of the Petitioner that he is alcoholic or that he had been beating his wife and the child or that he did not take care of him or that he had no interest in the child. He has alleged that he never deserted the Petitioner but was forced to leave the house on 2.12.1989. He has also alleged that he had to vacate the rented accommodation because of eviction decree suffered by him for bona fide necessity and not on account of non payment of rent.

4. On the pleadings of the parties, following issues were framed for consideration by the Court:-

(1) Whether the Respondent has treated the Petitioner with cruelty as alleged?

FAO 163/1997 Page 3 of 36 (2) Whether the Respondent has deserted the Petitioner for continuous period of two years immediately preceding the presentation of the petition as alleged?

(3) Relief.

5. Respondent has been contesting the appeal in person. On 6th August, 2009 he had stated that he was ready and willing to divorce the Petitioner by mutual consent provided he was given half share in MIG flat No.57-D, Pocket IV, Mayur Vihar, Phase-1, in which he claimed himself to be the co-owner with the appellant. He had also agreed that if the appellant was able to show Conveyance Deed in her favour in respect of the said flat, he would divorce her. Thereafter the matter was listed for 12th August, 2009 with the direction to the appellant to produce the Conveyance Deed of the said flat. However, on 12.08.2009, the Respondent did not appear though appellant had brought the original Conveyance Deed executed in her favour by the DDA in respect of the said flat. ISSUE NO.1.

6. Mr. Sunil Mittal counsel for the appellant (being referred to as Petitioner) has submitted that the Trial Judge while delivering the impugned judgment, has not carefully examined the statement of the witnesses of the parties and erred in disbelieving the Petitioner's FAO 163/1997 Page 4 of 36 assertion that Respondent indulged in heavy drinking and thereafter caused physical and mental cruelty to her only on the ground that there was no documentary evidence or complaint made by the Petitioner regarding the drinking habit of the Respondent and the cruelty perpetuated by the Respondent on the Petitioner under the influence of liquor. He was weighed by the fact that Respondent had taken another premises on rent at Chitranjan Park after vacating the earlier premises. While observing that he was employed and if he was alcoholic and unemployed, he could not have afforded the rented accommodation in Chitranjan Park. He has argued that the trial Court failed to take notice of the complaints Ex.PW-1/3 and Ex.PW1/5 lodged by the Petitioner with the police.

7. It is further argued that the Trial Court went wrong while observing that the allegations of beatings levelled against the Respondent and forcing her to sell allotment papers of DDA flat because of which she had to suffer serious mental pain and agony are general in nature as there was no complaint of receiving any physical injury or bodily injury but she complained of having suffered mental torture and agony. He further emphasized that the Trial Court went wrong in observing that there is no complaint or any evidence produced by the Petitioner to show that she was being asked by the Respondent for disposal of the flat and the allegations appeared to be exaggerated. It FAO 163/1997 Page 5 of 36 is also argued that Trial Court committed an error in disbelieving the Petitioner that she had to go for medical termination of her pregnancy because of the allegations levelled by the Respondent against her that she had become pregnant through someone else. The Court also went wrong in appreciating that she would not have continued to live with the Respondent for the sake of the child, yet she did not raise any whisper, neither to any of her relations nor to the relations of the Respondent. The Court also did not properly appreciate the statement of the Petitioner that Respondent was not working anywhere after November, 1982, when it observed that Petitioner did not summon the record of M/s. Akshay Industries or of M/s. Greaves Cotton Industries to prove when Respondent left their services and that the Petitioner therefore failed to discharge the onus of proving that Respondent was unemployed. Counsel for the appellant has emphasized that the findings of the trial Court on each and every acts of cruelty as narrated by the Petitioner in the petition and proved in evidence by way of her own testimony are erroneous and perverse in nature.

8. Learned counsel for the Petitioner has relied upon following cases:- (1) Smt. Vimla Mehra vs. Shri K.S. Mehra, 2009 III AD (Delhi) 11;

FAO 163/1997 Page 6 of 36 (2) Samar Ghosh vs. Jaya Ghosh, JT 2007 (5) SC 569; (3) Geeta Jagdish Mangtani vs. Jagdish Mangtani, 2005 Indlaw SC 561;

(4) A. Jayachandra vs. Aneel Kaur, 2004 Indlaw SC 1034; (5) Vinita Saxena vs. Pankaj Pandit , 2006 (87) DRJ 655 (SC); (6) Naveen Kohli vs. Neelu Kohli, 2006 (87) DRJ 630 (SC); (7) Rajinder Pershad (dead) by LRs. vs. Smt. Darshana Devi, 2001 VI AD (SC) 272.

9. In brief, the acts of cruelty alleged in the petition are :- (1) Respondent is an alcoholic and under the influence of liquor, he had been indulging in verbal abuses and physical beatings to the appellant.

(2) To meet his financial requirements as well as his need for liquor, he had been making monetary demands on the appellant and her parents and also mentally and physically tortured her for fulfillment of his demands.

(3) Appellant registered a flat in her name with the DDA. On allotment of the said flat Respondent pressurized, abused and harassed her to sell the allotment letter but, Petitioner did not succumb to his pressure.

FAO 163/1997 Page 7 of 36 (4) Respondent continued with his habit of drinking heavily and even failed to pay rent and suffered eviction. With the result parties had to reside in the house of parents of the Petitioner. (5) In 1981 Petitioner conceived for the second time but Respondent suspected her fidelity and disowned the child as his and indulged into causing mental and physical torture to her. Petitioner had to undergo medical termination of pregnancy, but for sake of the child, she continued to live with him.

(6) In May, 1989 Respondent came back home heavily drunk and gave her physical beatings, abused her, threw utensils and spit and vomited on her and quarreled with her the whole night. Appellant had to leave the home in the morning.

(7) With the intervention of social organization Saheli, parties were reunited on 20.09.1989. However, there was no improvement in their relationship. On 2.12.1989 a quarrel ensued between the parties when Respondent came home drunk at about 11:00 P.M. He allegedly picked up a knife and threatened to kill the appellant. However, the child intervened and received injuries on his person. Appellant made a complaint at Police Station Mayur Vihar and the child was got FAO 163/1997 Page 8 of 36 medically examined. Respondent left the company of the Petitioner on 3.12.1989 and since thereafter parties are living separately.

10. Parties to the petition were known to each other even before marriage as they were working in the same theater and had been meeting with each other before they took the decision to get married.

11. Appellant as PW-1 has deposed that after losing job in January, 1975 Respondent indulged in the habit of drinking wine with his friends. Though Respondent was employed with M/s. Akshay Industries in November, 1975 his drinking habits increased and Respondent even sold household articles to buy liquor for himself. Respondent was again unemployed and appellant had to take a part time job in 1982 with Delhi Art Theater leaving her child in the custody of her parents. She has deposed that instead of improving his behaviour Respondent started consuming more liquor and torturing her mentally as well as physically by giving her beatings. He would take money from her for his drink and also forced her to get money from her parents. Respondent with a view to purchase drinks also took loan and started selling household articles. She has deposed that whenever she resisted the demand of Respondent for money, she was given beatings. Because of the beatings she suffered mental FAO 163/1997 Page 9 of 36 pain as well as physical torture. She has deposed on oath that because of excessive drinking Respondent started coming late at home and she and the Respondent ceased to have any physical relationship with each other.

12. Petitioner in her statement has narrated the instance of May, 1989 stating that, Respondent returned home late at night in drunken condition and for no rhyme or reason gave her physical beatings, pulled her hair, sat on her, abused her, spit and vomited on her in the absence of her child who had gone to school trip. She has

stated that Respondent quarreled with her throughout the night with the result, she had to leave house in the morning and take refuge in her parents house. There is no effective cross examination of the appellant and Respondent as RW-1 has not specifically refuted the act of cruelty committed by him on the Petitioner in May, 1989.

13. The other incident she has narrated is of 2.12.1989, when under the guidance of Shaheli, a voluntary women organization, she had started living with the Respondent and the child from 20.09.1989. She has testified that on that date Respondent returned home at about 11:00 P.M. in drunken condition and started abusing her for no reason. When he did not cool down, she asked him as to why he was abusive, on which Respondent picked up utensils and threw them FAO 163/1997 Page 10 of 36 upon her and he also picked up a knife from the kitchen and threatened her of life. To save herself, she went to the room and her son, who had intervened between her and the Respondent was also threatened and was injured by him with a knife on his left eye.

14. In between 20.09.1989 to 2.12.1989, as per her statement, parties continued to fight and Respondent continued to come home late at night in drunken condition. He showed his dis-interest towards the Petitioner as well as the child.

15. There is no cross examination of the appellant about the behaviour of the Respondent towards the appellant after their re-union on 20.09.1989. It is not disputed that the parties had reconciled with the assistance of voluntary organization Saheli, and a document Ex.PW-1/1 dated 5.08.1989 (copy of the same Ex. RW-2/1) was executed. However, this document in no manner suggests that parties had reconciled their dispute. Rather it suggests separation and divorce by mutual consent. It seems that after execution of this document parties continued to visit Saheli, on its calls and consequently decided to live together. This is reflected from the letter dated 20.09.1989 Ex.PW-1/17, written by the Respondent to Saheli, acknowledging their advice and assistance in solving their problem and helping them to re-unite. However, there is no FAO 163/1997 Page 11 of 36 evidence produced by the Respondent on record to suggest that he had improved upon his behaviour towards the Petitioner.

16. It has come in evidence that after marriage parties started living in a rented house at Chitranjan Park. At that time, Respondent was employed with M/s. Office Equipments and he lost his job in January, 1975. Petitioner took up job in September, 1975 with M/s. K.G.Khosla Compressor at Faridabad. Respondent had taken a job with M/s. Akshay Industries in 1975 and thereafter her parents discontinued the financial support. She has deposed that the rented accommodation had to be vacated on 31.12.1982 because Respondent did not pay the rent of the premises and suffered eviction order and she was forced to take shelter in her parents house along with Respondent and the child. She has denied the suggestion that the tenanted premises were vacated for bonafide requirement of the landlord. Respondent has a grouse that they were provided garage accommodation by appellants parents and not in the house. Certified copy of the eviction order has not been placed and proved on record by the Respondent to demolish the statement of the appellant that they had to vacate the rented premises at Chitranjan Park for non payment of rent. Respondent has not placed on record any document to indicate that he was employed and therefore there was no occasion for him to demand any money from his wife, the FAO 163/1997 Page 12 of 36 appellant or his in-laws to meet his demands. Since Petitioner categorically deposed that Respondent was unemployed for most of the time, it was for him to demolish her evidence by producing relevant evidence on record, documentary or otherwise, to indicate his financial status. Pass Book Ex.PW-1/R-3 pertains to the year 1985 till January, 1991. Debit entries in the account book basically relate to the school fees which might have been paid by the Respondent. To this also the explanation has been given by the Petitioner that, since school fees account was opened under the guardianship of father, she had been financing the Respondent to pay school fees of the child from the said account.

17. To a suggestion put to her in the cross examination she has deposed that It is correct that my husband has been resorting to physical injuries to me right from the marriage. I got married in the year, 1974. I tolerated

the illtreatment of the respondent till, 1989 in the hope that the behaviour of the respondent might improve. It is correct that the influence of the father/respondent on the child was not congenial.

18. It is pertinent that the testimony of the Petitioner that Respondent is addicted to heavy drinking and has been giving physical beatings and causing mental torture to her in drunken condition remained FAO 163/1997 Page 13 of 36 uncontroverted as she has not been cross examined on this aspect except that, when asked, she has replied that her husband was addicted to alcohol right from the marriage.

19. True that Respondent in his statement has denied that every day he indulged in excessive drinking, but then his vague denial in the absence of any cross examination of the Petitioner would not in any manner prove that Respondent was not alcoholic or that under the influence of liquor he did not torture his wife physically or mentally.

20. The Trial Court while considering the oral evidence of the parties observed:-

"34. As regards the grounds of cruelty which are based mainly on the drinking habits of the respondent and on the basis of fact that respondent was unemployed for a considerable period and that the respondent had always been asking the Petitioner to bring money from her parents, all these do not stand proved as I have already observed above."

"35. As regards the allegations about drinking habit of the respondent, there is no concrete evidence except the oral testimony of both the parties. The petitioner/wife has levelled allegations that the respondent/ husband was a regular drinker and the respondent/ husband has denied the same. Since no particular incident of drinking has been proved on record, whereby respondent had taken excessive drinking and then under the influence of liquor

FAO 163/1997 Page 14 of 36 he had caused any cruelty upon the petitioner or had treated the petitioner with any cruelty. So I find that general allegations regarding drinking can not be termed as cruelty of such a nature

which may amount of matrimonial offence of
cruelty for the purposes of dissolution of
marriage."

21. The fact findings of the Court are not born out of the record. Incidents of cruelty have been specifically testified by the Petitioner as PW-1. Such as incidents of May, 1989 and 2.12.1989. These allegations cannot in any manner be considered as general in nature. It is proved in evidence of the Petitioner that Respondent used to physically and mentally torture her for bringing money from her parents for fulfillment of his requirement of liquor.

22. To my mind, the Trial Court also did not properly appreciate the allegations of unemployment and torture for money as proved by the appellant in her testimony, while observing:-

"30. will go to show that the respondent

had at least not lost his job and that is why after vacating one rental accommodation at

Inderpuri, he took up another rental

accommodation in Chitranjan Park. Though he

had denied that he started indulging in drinking liquor daily and he has not at all admitted fact of taking drinks, yet assuming for the sake of

arguments that at times the respondent had been

taking drinks but that factor alone will not be

FAO 163/1997 Page 15 of 36 sufficient to say that the petitioner was being

treated with cruelty by the respondent unless the said drinking habit of the respondent is coupled with the overt act of creating scenes or giving

beatings to the petitioner . that there is no

document on record to suggest that there was

any dispute between the parties either over

drinking habit of the respondent or the

respondent not taking interest in the family

affairs or not supporting the family financially." "32. .. that none of the parties has

summoned any record from M/s Akshay

Industries or from M/s Greaves Cotton

Industries to show that the respondent was not

working anywhere after Nov., 82 and was unemployed for some period. Since the allegation of unemployment of respondent are by the petitioner so the onus to prove the same was on petitioner. She should have shown the records and prove that respondent was unemployed.

33. . So there is a presumption that the petitioner might have taken up a part time job with Delhi Art Theatre on account of her interest in that field ... But that does not show that she was compelled to take part time job because of financial crisis as the petitioner has not proved on record to show that during the year 1982 when she took up part time job respondent was out of job and there was no other source of income to properly maintain the family."

23. The Trial Court went wrong in observing that after vacating the rented accommodation at Inderpuri, he took up another rented accommodation at Chitranjan Park because, soon after the marriage FAO 163/1997 Page 16 of 36 parties first lived at Inder Puri with the parents of the Respondent for a very short period and thereafter they took rented accommodation at Chitranjan Park, where they continued to reside till the eviction order was passed against the Respondent in 1982 and therefore the Trial Court was not right in its approach to discard the testimony of the appellant that Respondent was unemployed when it observed that Respondent had not lost his job and that is why after vacating the rented accommodation at Inder Puri, took another accommodation at Chitranjan Park. Analysis of evidence by the Trial Court is therefore, erroneous and has to be brushed aside.

24. There cannot be any direct, oral or documentary evidence except the testimony of the Petitioner and the circumstantial evidence to prove that there was dispute between the parties either for drinking habit of the Respondent or for Respondent not taking any interest in the family affairs or for not supporting the family financially. Financial status of the Respondent, indicated in his pass book, has already been discussed above. Needless to say, Respondent has not controverted the statement of the Petitioner that he was unemployed or that he was not supporting her financially. Rather, he tortured her physically and mentally to take money from her and her parents to meet his need for liquor. In his cross examination he admitted that he had no documentary proof to show that he was in employment and was FAO 163/1997 Page 17 of 36 getting salary and was financially sound to meet his requirements and that of his wife and child.

25. Respondent in his cross examination did admit that a complaint was made by the appellant with a voluntary organization Saheli, where he was called number of times for reconciliation. He also admitted that a complaint was lodged by his wife with CAW Cell which remained alive during the period from 20.09.1989 to 2.12.1989 when parties were living together. This suggests that they started living together on a trial basis to understand each other better but, unfortunately, they again fell out as Respondent did not improve his behaviour. Admittedly, Petitioner has been financially independent throughout as she remained in employment and also worked in the theater on part time employment after her office hours. If the Respondent was financially sound, there was no need for the Petitioner to take up a part time job in the evening after coming home from the office at the cost of neglecting her house and the child who admittedly was being taken care of by her parents in her absence.

26. In her complaint dated 3.12.1989 Ex.PW-1/3, made at Police Station Mayur Vihar, Petitioner has specifically levelled allegations against the Respondent that on 2.12.1989 he came home at about 11:00 P.M. FAO 163/1997 Page 18 of 36 Under the influence of liquor he picked up a quarrel with her. Similar were her allegations in her complaint Ex.PW-1/5 made on the same day to SHO, Police Station Trilok Puri. It is not in dispute that Respondent was called by the SHO of the concerned Police Station for interrogation.

27. There is a letter written by the Respondent on 11.09.1989 Ex.PW- 1/19 on the record. Few lines of the said letter being relevant are reproduced below:-

" Far from giving proper return for
this love. I have behaved in a very cruel
manner to you from all angles, mental,
physical, financial and social ."

" Far from being grateful to you for
this, I have beaten you, I have tortured
you a lot, and I confess this thousand
times. I give you words that I will work
hard to keep your happiness intact ."

"Save me from the grip of vice, and
allow me to do penance for all my
sins .."

28. Thus, there is clear admission on the part of the Respondent made to the appellant in this letter that he had been torturing her mentally, physically, financially and socially. He was not providing any finance to the appellant, rather forced her to part with money to meet his demands for liquor. This also indicates that Respondent was not financially independent; being jobless as alleged by the Petitioner. FAO 163/1997 Page 19 of 36 When he has referred to a vice, and sought forgiveness from the Petitioner, he referred to no other vice but his addiction to liquor. It was because of excessive drinking, he physically and mentally tortured her, did not take any interest in the family, did not care for her and the child.

29. This letter was written by the Respondent just nine days before he joined the company of the Petitioner in September 1989 and re- started living with her. However, despite all the assurances and undertakings given by him in this letter, he completely failed to honour them. The Trial Court has failed to appreciate the documentary evidence as discussed above and erroneously observed that there was no direct evidence produced on record for the alleged mis-conduct and ill-behaviour of the Respondent with the Petitioner.

30. Another instance of grave mental cruelty is when in 1981 Petitioner conceived for the second time, she suffered physical as well as mental torture at the hands of the Respondent because he suspected her fidelity and she had to get medical termination of the pregnancy done.

31. The Trial Court committed error when it observed that Petitioner could not have continued to live with the Respondent after termination of the pregnancy on the alleged ground of suspected FAO 163/1997 Page 20 of 36 fidelity but she did not do so and continued to live with the Respondent indicating that no such cruelty was committed by the Respondent and that the statement of the Petitioner was not believable.

32. Respondent has not disputed that in 1981 Petitioner had conceived second time and also that she had to undergo medical termination of pregnancy. There is no cross examination of the Petitioner on this aspect of the matter, nor Respondent has stated anything in his statement as RW-1 indicating the reasons which might have forced the Petitioner to get here pregnancy terminated.

33. Therefore, I find no reason to disbelieve the testimony of the Petitioner that she had to undergo termination of pregnancy because of the Respondents suspicion on her fidelity, and he accused that the child was not his and disowned him. Nothing can be more cruel to a woman, rather a mother, than such accusation on her character and also the father disowning the child.

34. Rift between the parties widened further when Petitioner was allotted a flat by the DDA. It has come in evidence that Respondent pressurized, abused, harassed and ill-treated the Petitioner for selling the allotment documents to which Petitioner never agreed. To pressurize her, Respondent gave her physical beatings and mentally FAO 163/1997 Page 21 of 36 tortured her. It has also come in her statement, which has remained uncontroverted on record that, Respondent never provided any financial assistance to her for purchase of the flat. It is not the case of the Respondent in his testimony that he had financially supported his wife to pay the purchase price of the said flat to DDA. It is an admitted case of the parties that Respondent had filed a civil suit seeking half share in the said flat but he lost the case. His challenge to the judgment and decree of the trial court in appeal also failed. It is obvious that Respondent pressurized appellant to sell the allotment of the flat with a view to have easy access to finances which would have come in the hands of the Petitioner on sale of the flat. It is pertinent that even before this Court, Respondent made a statement that he was ready and willing to divorce his wife by mutual consent provided, he was given half share in the flat, being co-owner. When Petitioner produced the original Conveyance Deed dated 28.12.2005 on the desire of the Respondent, he absented himself knowing it well that the flat was owned by the Petitioner and he has no share in the same. A copy of the Conveyance Deed has been placed on record by her to prove that the said flat is allotted to her in her individual name and not jointly with the Respondent. A person, who remained almost unemployed during his stay with his wife, started spending money on liquor, indiscriminately, came home late at night, gave physical FAO 163/1997 Page 22 of 36 beatings as well as mentally tortured her and least of all demanded share in her flat, cannot claim that he was not CRUEL to his wife. Petitioner has been running her household and bringing up the child single handedly, with no support from her husband. Behaviour of the Respondent over the years can only be termed as CRUEL.

35. The worst incident of cruelty, as proved on record, is of the night of 2.12.1989. It is proved in evidence from the testimony of the RW1, which finds corroboration from consequent FIRs/police complaints made by the Petitioner at Police Station, Trilok Puri and Mayur Vihar, that on the fateful night Respondent came heavily drunken and for no rhyme or reason picked up quarrel with her, gave her beatings, abused her, picked up utensils and threw them on her, picked up a knife and threatened her of life. When suddenly her son

intervened to save her from his anger and threat under the influence of liquor and when he tried to inflict injuries on her, he got injuries on his left eye. He was taken to SDN hospital where he was provided with proper medical assistance. MLC Ex. PW-1/2 was prepared by the concerned doctor of the hospital. As per this MLC history of the patient as recorded is "being beaten by blunt weapon q/e and left eye congested". Respondent in his cross examination could not explain as to how his son got injuries on his left eye. He has deposed that he had no idea if on the fateful night of 2.12.1989 FAO 163/1997 Page 23 of 36 his son suffered injuries on his left eye. He also had no idea if his son was injured when he made attempt to save his mother during his fight with the Petitioner. According to him, he came to know that his child was provided medical aid only after coming to the Court. He admitted that neighbours did come on account of commotion after hearing the loud voice and shouting of his wife. He did admit that on 3.12.1989 in the morning, parents of the appellant and volunteers from Saheli, came to his house.

36. Thus, it is clear from the answers given by the Respondent in his cross examination that, he could not recollect the incident of 2.12.1989, obviously he was under the influence of liquor when he physically beat his wife, threw utensils on her and tried to cause injuries with a knife. To save herself, Petitioner had to lock herself in the room. To save his mother when the child intervened, he also received injuries on his left eye.

37. The word cruelty finds no definition in the Act. Therefore, the word cruelty used in Section 13 (1) (ia) of the Act is in the context of human conduct and behaviour in relation to and in respect of matrimonial duties or obligations. It is a course or conduct of one spouse which adversely affects the other spouse. Cruelty can be mental or physical, intentional or unintentional. While judging the FAO 163/1997 Page 24 of 36 physical cruelty, Court has to judge the degree of such physical torture and if it is mental, the enquiry is required to the nature of cruel treatment and then as to the impact of such treatment on the mind of the other spouse.

38. The ingredients of cruelty as required to be proved on record by the Petitioner are based on delicate personal relationship of husband and wife. Court, therefore, has to see the probabilities in a given case to find out the legal cruelty, not merely as a matter of fact, but as to the effect on the mind of the Petitioner spouse because of the acts or omission of the other. This cruelty besides physical, mental can also be corporeal.

39. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the Petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Court dealing with the petition filed for divorce on the ground of cruelty has to keep in mind that the problems before it are those of human beings and the psychological FAO 163/1997 Page 25 of 36 changes in a spouses conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before such conduct can be called cruelty, it must touch a certain pitch of severity.

40. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy a marriage. Foundation of marriage is tolerance, adjustment and respect towards one another. Therefore, inherently tolerance of each others fault to a certain bearable extent has to be kept in mind before considering a particular conduct of a spouse towards the other as tantamounting to cruelty. The Court has to consider the mental and physical conditions of the parties, their characters and social status and therefore, the incidents which can be termed as cruelty have to be adjudged in a case on the facts and circumstances and the evidence adduced on record. It is not required that physical violence as well as mental torture are essential to constitute cruelty. Even conduct inflicting a miserable mental agony and torture under the given circumstances may constitute cruelty within the meaning of Section 13(1) (ia) of the Act.

41. In case of physical cruelty, the Court generally gets direct evidence but in case of mental cruelty, the Court has to first make an inquiry FAO 163/1997 Page 26 of 36 to the nature of cruel treatment, the impact of such treatment in the mind of the spouse if it caused reasonable apprehension that it can be harmful or dangerous to

live with the other. It is not necessary for the party to narrate each incident against the other spouse to constitute such conducts as cruelty. Sometimes two or three incidents may be sufficient to prove the cruelty committed on the petitioner by the other spouse. Many a times mental cruelty is more severe than the physical cruelty.

42. In 'Samar Ghosh Vs. Jaya Ghosh' (2007) 4 SCC 51, the Supreme Court has enumerated some instances of human behaviour which may be relevant in dealing with the cases of mental cruelty. They are:

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

(ii) On comprehensive appraisal of the entire

matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such

conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot

amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of FAO 163/1997 Page 27 of 36 deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

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

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

(vii) Sustained reprehensible conduct, studied

neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

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

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

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be

persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any

longer, may amount to mental cruelty.

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

(xii) Unilateral decision of refusal to have

intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

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

(xiv) Where there has been a long period of

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

43. Evidently mental cruelty cannot be comprehensively defined, within which all kinds of cases of mental cruelty can be covered. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound and therefore, to assimilate the entire human behaviour in one definition is almost impossible. What may amount to cruelty in one case may not amount to cruelty in the other case because, concept of cruelty differ from person to person depending upon his/her upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system. The concept of mental cruelty FAO 163/1997 Page 29 of 36 has changed with the passage of time; because of impact of modern culture through various medias electronic and print and other value system. Therefore, there cannot be any straight jacket formula or fixed parameters for determining the mental cruelty in matrimonial matters. No uniform standard, therefore, can be laid down for guidance what may constitute mental cruelty in matrimonial disputes.

44. Coming back to the facts and circumstances of this case, parties to the petition were married in December, 1974. They continued to live together for a period of fifteen years except a short separation from May 1989 to September 1989. Petitioner has been tolerating the physical torture as well as mental agony at the hands of the Respondent for the said period. She continued to live with the Respondent despite the fact that he suspected her fidelity when she conceived for the second time in 1981. She must have suffered grave mental pain and agony when she had to go for medical termination of pregnancy. Respondent was never financially stable and sound. Petitioner had been working since after her marriage and looking after the financial needs of the family including that of the Respondent. It is not disputed that parties had to vacate the rented accommodation in Chitranjan Park because of the eviction order, which Respondent suffered. Respondent did not make any FAO 163/1997 Page 30 of 36 arrangement for another rented accommodation. Rather he shifted with the Petitioner in the house of her parents, where she continued to live in a garage for quite sometime. Respondent was in the habit of taking liquor but, he became alcoholic over the period of time.

45. As discussed above, there is enough evidence to indicate that to meet his demands for liquor, he physically and mentally tortured the Petitioner. Some of the instances of physical and mental cruelty proved on record are of 1981, May 1989 and of 2.12.1989. It is significant that behaviour of the Respondent became more cruel when he refused to contribute for the purchase of the flat allotted in the name of the Petitioner by the DDA. Not only this, he wanted to sell the allotment but, could not succeed as Petitioner remained firm on her

decision not to sell the allotment, for which she had to face physical as well as mental cruelty at the hands of the Respondent. The conduct of the Respondent in pressurizing the Petitioner to sell the allotment is obvious from his various subsequent acts. He filed a suit claiming half share in the property but he lost. He disputed the absolute title of the Petitioner in the said property at Mayur Vihar. Even in this appeal, he made it clear that he would divorce the Petitioner only after he was given half share in the house. Under the circumstances, to say that conduct of the Respondent towards the Petitioner cannot be construed as cruelty within the meaning of FAO 163/1997 Page 31 of 36 Section 13(1) (ia) of the Act would not be correct.

46. Parties to the appeal are artists. An artist by temperament is emotional and sensitive. Behaviour of the Respondent towards the Petitioner throughout fifteen years of their living together has been unreasonable and torturous. His ill behaviour can be safely construed as grave. He has been ill-treating the Petitioner. There is evidence to indicate that there was cessation of sexual intercourse, neglect of the Petitioner and the family, his indifference attitude towards the family and his assertion that Petitioner is unchaste, are factors which constitute mental or legal cruelty. Respondent, under the influence of liquor seemed to be losing his temper to such an extent that he would indulge into giving severe beatings, vomiting on his wife, spitting on her. Once he picked up a knife and threatened the Petitioner of life. In this fight, it was the innocent child, their son, who received injuries on his left eye. What could be more than what has been discussed above to construe legal cruelty? Respondent though had been assuring the Petitioner of reformation, neither his behaviour nor his conduct improved. Rather his behaviour and indifference to the Petitioner and the family increased. It was when Petitioner could not bear the Respondent any further that she left the house in May 1989 and went to her parents. She tried to readjust with the Respondent with the assistance of women FAO 163/1997 Page 32 of 36 organization Saheli. Again Respondent did not try to improve himself in any manner. His need for finances was another reason for his torturous conduct towards the Petitioner. Petitioner, therefore, suffered physical as well as mental cruelty and it could not be expected that they could live together after the incident of 2.12.1989.

47. Since after December 1989, parties are living separately. Son is now about 31 years of age and settled in life. Parties are living separately for about 21 years. The matrimonial bond between the parties has, therefore, been ruptured beyond repair because of mental and physical cruelty caused by the Respondent. After separation, the parties did not have any interaction with each other. Rather they have been litigating, may be in a Civil Court of law. I find on record a complaint dated 5th February, 1989 Ex. PW-1/15, disclosing the behaviour of the Respondent of 4.02.1989. Respondent has admitted that he has not met his child since after 2.12.1989.

48. Trial Court did not properly appreciate the uncontroverted statement of the Petitioner when it observed that the allegations of beatings, mental torture, pain and agony suffered by the Petitioner were quite general in nature and that the ground of cruelty as pleaded by the Petitioner did not prove the extent that she was being treated by the Respondent with such cruelty, which may amount to matrimonial FAO 163/1997 Page 33 of 36 events of cruelty under Section 13(1) (ia) of the Act. The appreciation of evidence by the Trial Court is not in the correct perspective on facts and circumstances of the case and evidence adduced on record. Uncontroverted evidence of the Petitioner has proved physical as well as mental cruelty and every incident of such cruel behaviour of the Respondent clearly established that Respondent treated her with legal cruelty.

49. Hence, the findings of the Trial Court on this issue are set aside and it is decided in favour of the Petitioner.

ISSUE NO. 2

50. On 3rd December, 1989 when Respondent left the house he was residing in Mayur Vihar i.e. the flat owned by the Petitioner. This happened because of a quarrel having taken place between the parties on the intervening night of 2nd/3rd December, 1989. Parties continued to fight the whole night. Respondent was violent and abusive towards the Petitioner in so much so that he even inflicted injury to his son. It was under

these circumstances that he left the house in the morning of 3rd December 1989 in the presence of workers of women organization Saheli and parents of the Petitioner.

51. There is no dispute that Respondent executed a document Ex. PW- FAO 163/1997 Page 34 of 36 1/4 on 3rd December, 1989 in the presence of S.Vatsyayan, PW-2. In this document, he has written that he was finally leaving the premises No.57-D, Pocket-IV, Mayur Vihar, New Delhi of his own with a pledge not to come back to the said premises and disturb the Petitioner s in future for any reason whatsoever. It is submitted by counsel for the Petitioner that Respondent deserted the Petitioner on 3.12.1989 of his own. I find no force in his submission. It is significant to note that in the last few lines of this letter he has written that he would not claim any rights or privileges in the said flat. In return he wanted that Petitioner should not seek any monetary assistance from him for the household from that date. It is also recorded that parties had agreed to go in for mutual divorce of marriage in a court of law within fifteen days from that date. Thus, it is clear from this letter that Respondent had deserted the Petitioner because of the incident of the night. It cannot be said that he was left with no option but to leave the house.

52. As pointed out above, Petitioner had lodged a complaint dated 3rd December, 1989 Ex. PW-1/3. Perusal of this complaint indicate that Respondent had to leave the house as a result of external intervention after writing the attached contract Ex.PW-1/4. It also indicate that Petitioner would approach the court of law for mutual divorce and in the meantime sought police protection. Since Respondent left the FAO 163/1997 Page 35 of 36 house under adverse and strained circumstances, it cannot be said that he deserted the Petitioner within the meaning of Section 13(1)(ib) of the Act. Hence, findings of the Trial Court on this issue are affirmed but, for different reasons.

RELIEF

53. In view of my findings on issue No.1, appeal is partly allowed and decree and judgment of the Trial Court dated 8th April, 1997 on this is hereby set aside. I hereby pass a decree for divorce under Section 13(1) (ia) of the Act.

54. Under the circumstances, parties are left to bear their own costs. Decree be prepared accordingly. Trial Court record be sent back along with an attested copy of this order.

ARUNA SURESH

(JUDGE)

AUGUST 20, 2010

vk/sb

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