

Hindu Marriage Act, 1955¹ on the ground of Cruelty.

3. The factual matrix of the case, along with the record of multiple legal proceedings between the parties, is summarised as follows:
4. Appellant-Dr. Vikas Kanaujia and Respondent-Dr. Sarita got married to each other on 20.02.2002 in accordance with Hindu Rites and Customs. The Respondent-wife came to her marital home at Meerut. The Appellant submitted in his plaint, that marriage was consummated but later the relationship between parties was strained as Respondent refused to perform marital obligations and misbehaved with his mother. On 22.02.2002, the younger brother and maternal aunt of the Respondent allegedly visited the house and the Respondent left for her paternal home along with them. The Appellant brought her back to marital home on 04.03.2002. Afterwards both the Appellant and Respondent went to Udhampur (Jammu and Kashmir) where the Appellant was working as an

¹ In short, HMA

eye surgeon. However, the Appellant claims that behaviour of Respondent was cold and indifferent towards him. They both returned on 11.03.2002. On 17.03.2002 the Thirteenth day function (Terahi Ceremony) was held for a family member of Appellant. On the evening of same day, the Respondent left her marital home. Since then, the Respondent is residing at her paternal home. Thus, the Appellant and Respondent have lived together for barely 23 days as the Respondent shifted to her paternal home before completing even a month at her marital home.

5. The Appellant states that he made repeated attempts to bring back the Respondent but he failed as Respondent refused to live with him. Thus, the Appellant filed a suit under Section 9 of HMA for restitution of conjugal rights as Suit No. 598 of 2002. The Respondent, on the other hand, filed an application under Section 24 of the HMA for maintenance as Suit No. 336 of 2002. Both the cases were listed together before the Family Court on 28.11.2002 however allegedly the Respondent and her father misbehaved with the father of Appellant on the day of proceedings.

Since no attempts of reconciliation were successful, on 26.02.2003 the Appellant filed a suit for dissolution of marriage under Section 13 of the HMA on the ground of 'Cruelty' as Matrimonial Case No. 123 of 2003. Appellant claimed 'cruelty' against Respondent on two grounds. First, the Respondent did not fulfil her marital obligation by depriving the Appellant of his conjugal rights. Second, the Respondent caused mental cruelty by her temperament and misbehaviour with family members of Appellant. On the other hand, in the Written Statement the Respondent-wife has stated that Appellant was unhappy in marriage since day one. She never refused to join the company of Appellant and live together. But the Appellant and his family wanted to remarry him for dowry. They had allegedly demanded dowry from Respondent as well.

6. While the proceedings in Matrimonial suit were pending, on 31.07.2006 the Family Court rejected the application filed by Respondent seeking maintenance under Section 24 of HMA,

on the ground that Respondent was also a doctor and her earnings are at par with the Appellant.

7. The suit for restitution of conjugal rights was later withdrawn by the Appellant. On 26.05.2003, the Respondent wife filed a petition under Section 125 of the Code of Criminal Procedure, 1973 seeking maintenance as Case no. 89 of 2011. It was dismissed on 29.11.2013 on the ground that Respondent was earning at par with Appellant and thus not entitled to maintenance.
8. Further, on 24.02.2004 the Respondent filed Criminal complaint at Meerut under Sections 498A, 406 and 34 of Indian Penal Code, 1860² against the Appellant, his parents and siblings. In this complaint she alleged mental harassment, dowry demand and retention of the dowry articles by the accused persons in her marital home, against the accused persons. On 05.11.2004, FIR bearing No. 965/2004 was registered against the Appellant and abovementioned family members. As the

² In short, 'IPC'

Sessions Court passed an order for Conciliation on 15.06.2005, the Appellant and Respondent lived together for 20 days from 15.06.2005 to 05.07.2005. However, on 05.07.2005, the police arrested family members of Appellant- his mother, father, sister and father, who were subsequently granted bail.

9. On 20.12.2006, the Family Court passed final order in Matrimonial Case No. 123 of 2003 by granting decree of divorce to Appellant. It decreed the suit on the ground of cruelty holding that Respondent had initiated false criminal proceedings against the Appellant. Thus, the Respondent filed First Appeal No. 31 of 2007 before the High Court.
10. Meanwhile on 08.07.2013, the Metropolitan Magistrate discharged the father, brother, and sister of the Appellant from all charges in connection with FIR No. 965 of 2004. The Respondent filed application for framing charges under Section 498A of IPC against the brother and sister of Appellant. However, the Magistrate rejected this application on 26.11.2013. On 18.12.2017, the Metropolitan Magistrate passed

final order acquitting the Appellant and his mother. The Respondent filed Appeal before the Sessions Court. On 02.03.2023, the Sessions Court upheld the acquittal order passed by trial court.

11. By the Impugned order passed on 22.08.2019, the High Court allowed the appeal of Respondent filed in matrimonial case against the order of Family Court, thereby dismissing the petition to grant divorce. The High Court denied the ground of irretrievable breakdown of marriage stating that parties have not been living separately on account of their free will. It was the appellant who refused to co-habit with the Respondent and she herself did not desert him. Thus, the Appellant has approached this Court against the order of High Court which denied him divorce.
12. Afterwards, allegedly the Respondent visited residence of Appellant and made unsavoury enquiries in neighbourhood. She further filed a Missing Persons Complaint alleging that Appellant is missing. On 07.10.2019, the Respondent entered into the workplace of Appellant in OPD area of department of

Ophthalmology in Sanjay Gandhi Post Graduate Institute of Medical Sciences, Lucknow along with police personnel, causing disturbance in the department. The Appellant even got a warning letter from the head of the department to resolve personal grievances outside the premises. The police frequently visited the department and made enquiries about appellant in connection with the Missing complaint filed by Respondent.

13. We have heard learned counsel for the parties and perused the material on record. We are of the opinion that this is a fit case to exercise powers conferred on this Court under Article 142 of the Constitution of India. A Constitution Bench of this Court in **Shilpa Shailesh v. Varun Sreenivasan**³ has held that this Court has the discretion to dissolve the marriage on the ground of irretrievable breakdown of marriage in order to do 'complete justice' to the parties, even if one spouse opposes such prayer. Relevant portion of Paragraph 50 of the judgment is reproduced hereunder:

³ 2023 SCC OnLine SC 544

“.....

(iii) Whether this Court can grant divorce in exercise of power under Article 142(1) of the Constitution of India when there is complete and irretrievable breakdown of marriage in spite of the other spouses opposing the prayer?

This question is also answered in the affirmative, inter alia, holding that this Court, in exercise of power under Article 142 (1) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do 'complete justice to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. The Court, as a court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed.”

14. In the present case we are convinced that the marriage has failed completely and there is no possibility of parties living together and thus the continuation of further legal relationship is unjustified.

15. The husband and wife have lived together on their own will for hardly 23 days since marriage. They further lived together for 20 more days from 15.06.2005 to 05.07.2015 as Sessions Court passed order for conciliation. Thus, in total the parties have not lived together for more than 43 days. The Respondent left her matrimonial house within the first month of marriage. The period of separation has been more than 22 years. The possibility of parties living together is further reduced as parties are in their early 50s now and have built independent lives. Further, the parties have fought multiple legal battles against each other since 2002 itself with six cases filed against each other, including criminal cases. The Respondent had filed a criminal case against the Appellant and his family members where they were arrested although subsequently discharged and acquitted.
16. Although the Respondent claims that she is willing to live with the Appellant believing in the sanctity of marriage, her actions are not in consonance with her claim. In this long period of 22 years, there was no one to stop her from living

together with the Appellant. The mediation and conciliation proceedings have failed. The Appellant on the other hand states that the claim of willingness to live together is falsely projected claim before the Court of law only to mislead the Court, delay the proceedings and harass the appellant.

17. Thus, the effective cumulation of actions of both the parties in past 22 years since marriage has resulted in demolition of their matrimonial bond beyond repair. The marriage has ceased to exist both in substance and in reality. The relation has even taken a sour taste as the families of parties have also developed rivalries. The act of Respondent to lodge a missing complaint against Appellant after the delivery of impugned order is also indicative of the bitter relation between the parties. Considering the long separation period of 22 years, lack of existence of marriage between the parties and the sour relations developed due to continuous legal battles, we deem this case to be fit for exercise of extraordinary powers conferred under Article 142 of the Constitution.

18. In the case of **Rajib Kumar Roy vs Sushmita Saha**⁴, this Court exercised the power conferred under Article 142 of the Constitution of India by dissolving the marriage between parties who were living separately for 12 years. Paragraph Nos. 9,10 and 11 of the judgement are reproduced hereunder:

“9. Continued bitterness, dead emotions and long separation, in the given facts and circumstances of a case, can be construed as a case of “irretrievable breakdown of marriage”, which is also a facet of “cruelty”. In *Rakesh Raman v. Kavita*, 2023 SCC OnLine SC 497, this is precisely what was held, that though in a given case cruelty as a fault, may not be attributable to one party alone and hence despite irretrievable breakdown of marriage keeping the parties together amounts to cruelty on both sides. Which is precisely the case at hand.

10. Whatever may be the justification for the two living separately, with so much of time gone by, any marital love or affection, which may have been between the parties, seems to have dried up. This is a classic case of irretrievable breakdown of

⁴ 2023 SCC OnLine SC 1221

marriage. In view of the Constitution Bench Judgment of this court in Shilpa Sailesh v. Varun Sreenivasan, 2023 SCC OnLine SC 544 which has held that in such cases where there is irretrievable breakdown of marriage then dissolution of marriage is the only solution and this Court can grant a decree of divorce in exercise of its power under Article 142 of the Constitution of India.

11. We therefore declare the marriage to have broken down irretrievably and therefore in exercise of our jurisdiction under Article 142 of the Constitution of India we are of the considered opinion that this being a case of irretrievable breakdown of marriage must now be dissolved by grant of decree of divorce.”

19. In light of the facts and circumstances of the present case, along with powers conferred under Article 142 of the Constitution of India and judicial precedents discussed herein, we hereby grant the decree of divorce on account of irretrievable breakdown of marriage. As both the parties are professionally qualified medical doctors and have sufficient and equal earnings,

we are not inclined to award any permanent alimony.

20. The judgement dated 22.08.2019 passed by the High Court of Allahabad is hereby set aside. The marriage between the parties is dissolved, exercising powers under Article 142 of the Constitution of India. The present appeal is accordingly allowed.

21. Pending application(s), if any, is/are disposed of.

.....**J.**
(VIKRAM NATH)

.....**J.**
(SATISH CHANDRA SHARMA)

NEW DELHI

JULY 10, 2024