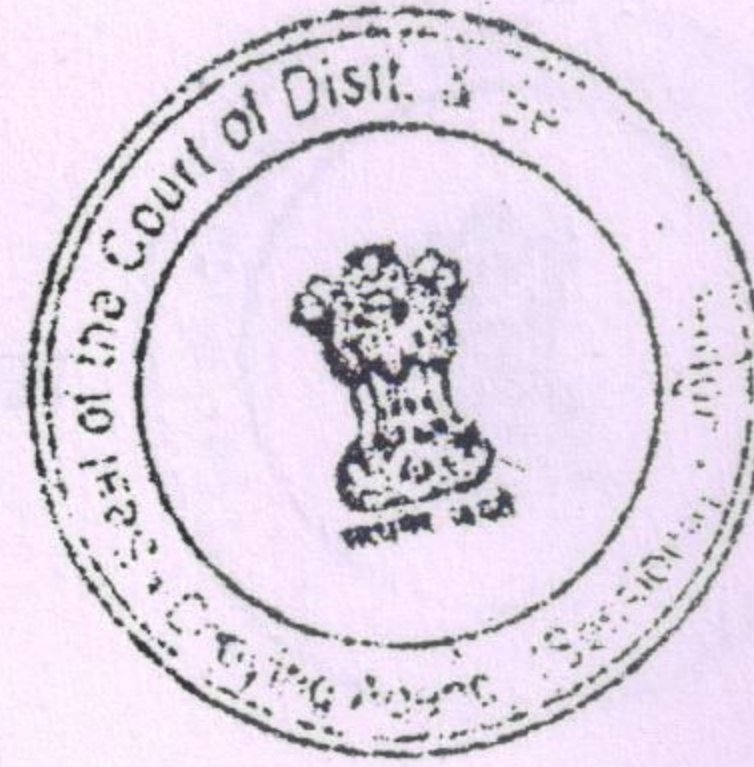


HMA No.313/18

~~_____~~ v. ~~_____~~ & Ors.



03.05.2018

Present: Petitioner ~~_____~~ in person with counsel.
Respondent is already exparte.

Clarifications given by the counsel for the petitioner.
Put up at 4:00 P.M for orders.


(DR. SUDHIR KUMAR JAIN)
Principal Judge, Family Courts,
West, Tis Hazari Courts, Delhi
03.05.2018

At 4:45 P.M.

Present: None.

Vide my separate judgment of even date, the petition is allowed and the marriage between the petitioner and the respondent no.1 is dissolved by a decree of divorce on the ground of cruelty as per Section 13(1)(ia) of Hindu Marriage Act, 1955. No order as to cost. File be consigned to record room.


(DR. SUDHIR KUMAR JAIN)
Principal Judge, Family Courts,
West, Tis Hazari Courts, Delhi
03.05.2018



IN THE COURT OF DR. SUDHIR KUMAR JAIN
PRINCIPAL JUDGE, FAMILY COURTS (WEST)
TIS HAZARI COURTS, DELHI

HMA No.313/18

1. [REDACTED]

S/O [REDACTED]

R/O [REDACTED]

Pitampura, Delhi-110034

.... Petitioner

V.

D/O [REDACTED]

W/O [REDACTED]

R/O [REDACTED]

Link Road, Malad(W)

Mumbai-400064

Also At:

R/O [REDACTED]

Ansari Road, Darya Ganj,

Delhi-110002

.... Respondent No.1

2) [REDACTED]

OHIO, 43235-USA

.... Respondent No.2

3) [REDACTED]

S/O [REDACTED]

R/O [REDACTED]

Mundia Bass

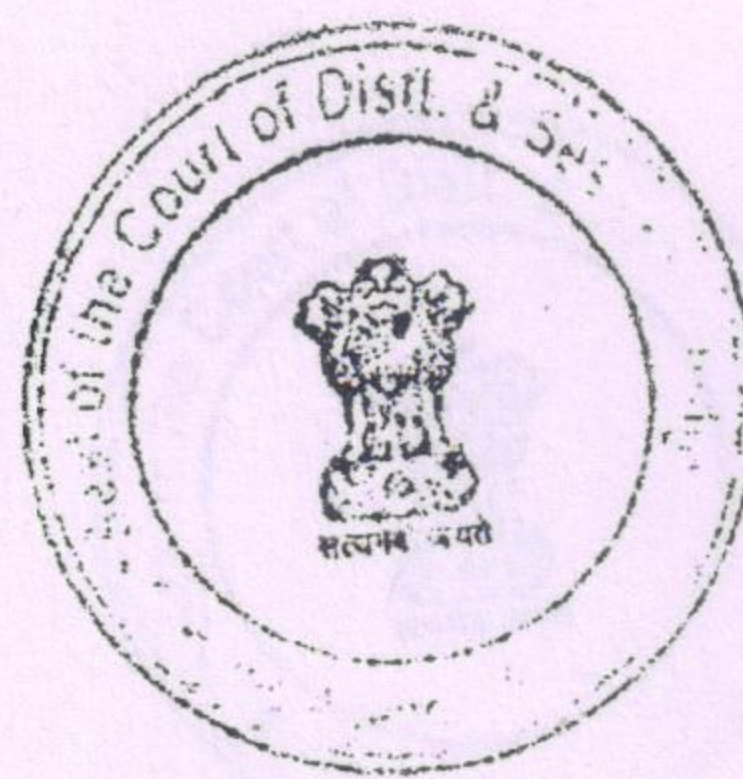
Chuchuwala Temple,

Muradabad, U.P.

.... Respondent No.3

Dr. - 2
3/5/18

ATTESTED
11/5/18
Date Copying Agency (Sessions)





Date of institution : 20.03.2014
Date of conclusion of Arguments : 03.05.2018
Date of judgment : 03.05.2018

**PETITION U/S 13 (1) (ia) OF THE HINDU MARRIAGE
ACT, 1955 (AS AMENDED UPTO DATE) FOR
DISSOLUTION OF MARRIAGE BY A DECREE OF
DIVORCE ON THE GROUND OF CRUELTY**

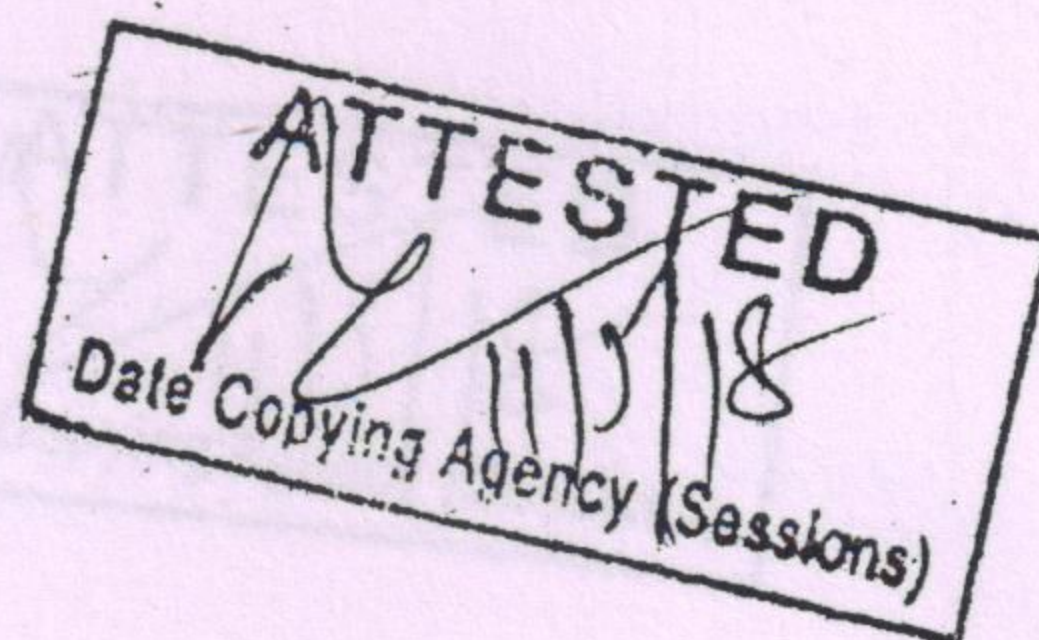
JUDGMENT

1. The petitioner and the respondent no.1 got married on 23.08.1998 according to Hindu Rites and Ceremonies at Delhi. The petitioner and the respondent lived and cohabited together as husband and wife at USA and thereafter at Mumbai till 29.05.2012. Two children namely, Ms. Disha and Master Arnav were born out of the marriage between the petitioner and the respondent no.1 in the year 2002 & 2005 respectively. At the time of marriage, the petitioner was employed with Wysitech Inc., USA and the respondent was a certified Chartered Accountant.

The petitioner at USA found that the respondent no.1 was suffering from an Auto Immune Disorder called Lichen Planus with the effect that the respondent no.1 was not able to take solid or semi solid food and was put on strict liquid diet with heavy steroids and said illness of respondent no.1 was not disclosed to the petitioner at the time of marriage. The respondent no.1 was also suffering from various other ailments.

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The petitioner had provided best available medical treatment at his own expense to the respondent no.1.



The respondent no.1 became a licensed CPA in the year 1999 also started to work with a CPA firm in Columbus, OHIO. Due to this reason, the petitioner was shouldering major portion of household responsibility. The respondent no.1 also started to send money to her unemployed father for the education of her brother and sister.

The respondent no.1 was unable to conceive for a considerable period and had undergone fertility treatment at the expense of the petitioner. The respondent no.1 had fallen sick after the delivery of daughter [REDACTED] due to allergies.

The behavior of the respondent no.1 was rude, abusive and uncooperative from very beginning and became more hostile after the birth of the male child in 2005. The respondent no.1 asked Rs.10 Lacs from the petitioner in November, 2006 when the petitioner and the respondent no.1 came to India, for the business of her father and on refusal, respondent no.1 threatened with dire consequences in US. The respondent no.1 also filed a Domestic Violence complaint and obtained protection order on false and concocted grounds on 20.12.2006 which was withdrawn subsequently without the appearance of the petitioner.

The respondent no.1 refused to come to the house of the

for -2
3/5/28



petitioner during her visit in India and stayed with respondent no.2 for twenty days who was ex-colleague of the respondent no.1. However, the petitioner did not give much importance to the said act of the respondent no.1. The respondent no.1 is a loud and irresponsible person towards the petitioner as well as the towards her work and due to this reason, the respondent no.1 was fired by her employer in the year 2010.



The respondent no.1 forced the petitioner to shift to India as she found employment with JP Morgan Chase and her sister was also selected as Judicial Officer in Delhi. The respondent no.1 shifted to India in February, 2011 despite protest from the petitioner who also shifted to India in April, 2011. The petitioner and the respondent have set up their matrimonial house in Malad(W), Mumbai. The petitioner was forced to give up his employment with Cintas Corporation for the welfare of the children.

The petitioner was required to travel to US for short term as the tenant of the petitioner in the house situated at Dayton, OHIO had served a notice to vacate the house. The petitioner found a temporary employment with M/s Resolvit.

The respondent no.1 after returning back to India became closer to respondent no.3 with whom, the respondent no.1 used to talk till midnight on phone and skype. The respondent no.1 and respondent no.3 used to meet house side

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3/5/08



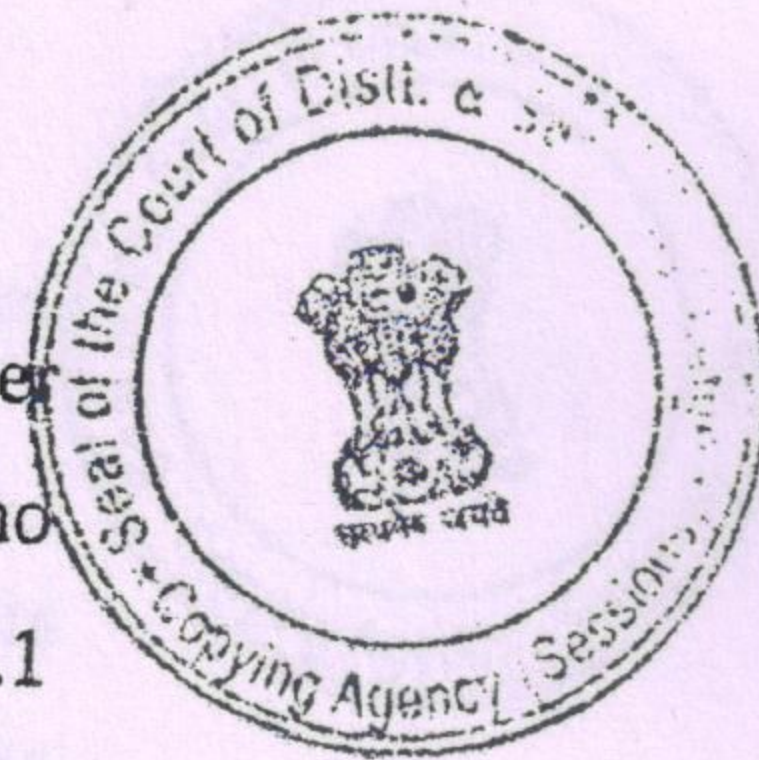
the house. During the trip to Kashmir from where the petitioner and the respondent no.1 scheduled to return on 29.06.2012, the respondent no.1 & respondent no.3 started to spend late evenings/early night roaming around together. The respondent no.1 threatened the petitioner with dire consequences when the same was objected to by the petitioner. The respondent no.1 also filed false, concocted and frivolous complaint with Delhi Police against the petitioner. The respondent no.1 also got issued the passport of the daughter by using forged signature of the petitioner. The respondent no.1 also filed a complaint at CAW resulting into the registration of FIR bearing no.185/2012 at P.S Daryaganj. The respondent no.1 also moved an application for legal separation in Warren County Court, OHIO which was dismissed as the petitioner and the respondent no.1 not residing in US.



The respondent no.1 severed all relations with the petitioner after trip to Kashmir. The respondent no.1 also did not return back the belongings of the petitioner such as certificates, valuables, ornaments etc despite request. The respondent no.1 used to travel to Bangalore with respondent no.3. The conduct of the respondent no.2 was sufficient enough to indicate his illicit relations with respondent no.1. The respondent no.1 also visited a boutique located at 19/20, Natraj Market, Malad(W) with a man representing him as her husband. The respondent no.1 and respondent no.2 also visited Singapore

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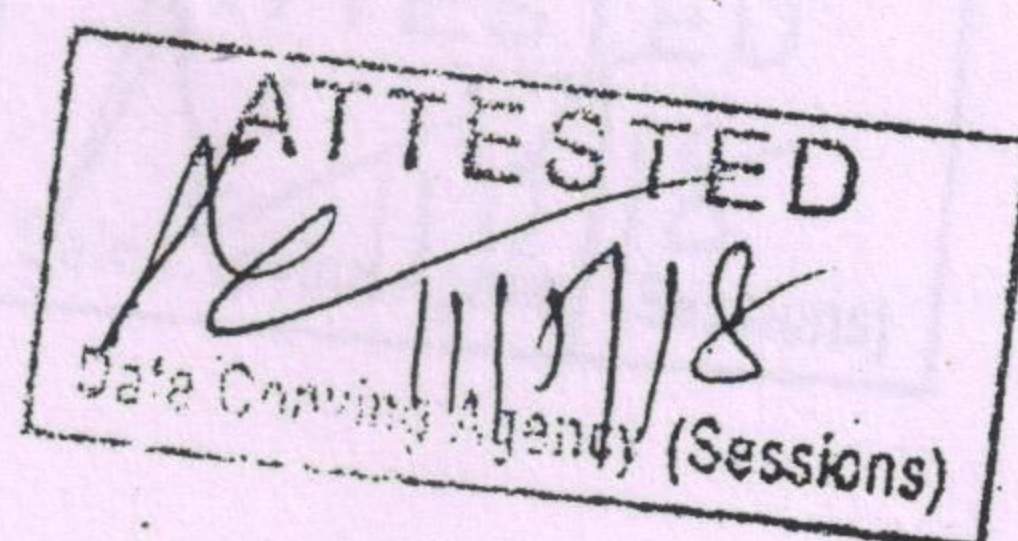
in December, 2013 where they stayed together. The petitioner also received the call from respondent no.2 on 21.02.2014 who asked the petitioner to stay away and allow the respondent no.1 and respondent no.2 to live peacefully together. The prevailing circumstances indicated that the respondent no.2 and respondent no.3 had sexual intercourse with respondent no.1.

The petitioner being aggrieved filed the present petition for grant of divorce on the ground of cruelty as per Section 13(1)(ia) of Hindu Marriage Act, 1955 which is under disposal. The petitioner has not condoned the acts of cruelties of the respondent no.1. The petition is not filed in collusion with the respondents.

2. The notices were ordered to be issued against the respondents. The respondent no.1 and 2 were served by way of publication but did not appear despite service. The respondent no.1 and respondent no.2 were proceeded *ex parte* vide order dated 12.02.2015. The respondent no.3 was ordered to be struck off from the array of the parties vide order dated 10.03.2016.

3. The petitioner examined himself as PW1 and tendered the affidavit which is Ex.PW1/A and relied upon documents which are Ex.PW1/1, Ex.PW1/3, Ex.PW1/6, Ex.PW1/8 & Mark A to Mark F. The petitioner's evidence was ordered to be closed vide order dated 02.06.2016.

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4. Sh. Viveck Aggarwal, Advocate for the petitioner heard Record perused.

5. Section 13 of The Act deals with the grounds on the basis of which a marriage between the husband and the wife can be dissolved by a decree of divorce. Section 13(1) (ia) of the Act deals with ground of cruelty and reads as under:-

13. Divorce.-(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty.

The expression "cruelty" has not been defined in the Act. Cruelty for the purpose of Section 13 (1) (i-a) is to be taken as a behaviour by one spouse towards the other, which causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental. Cruelty is necessarily a matter of inference to be drawn from the facts and circumstances of the case. It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether

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the plaintiff has been subjected to cruelty due to conduct of the other spouse. The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse. Mental Cruelty as a course of unprovoked conduct toward one's spouse which causes embarrassment, humiliation, and anguish so as to render the spouse's life miserable and unendurable.

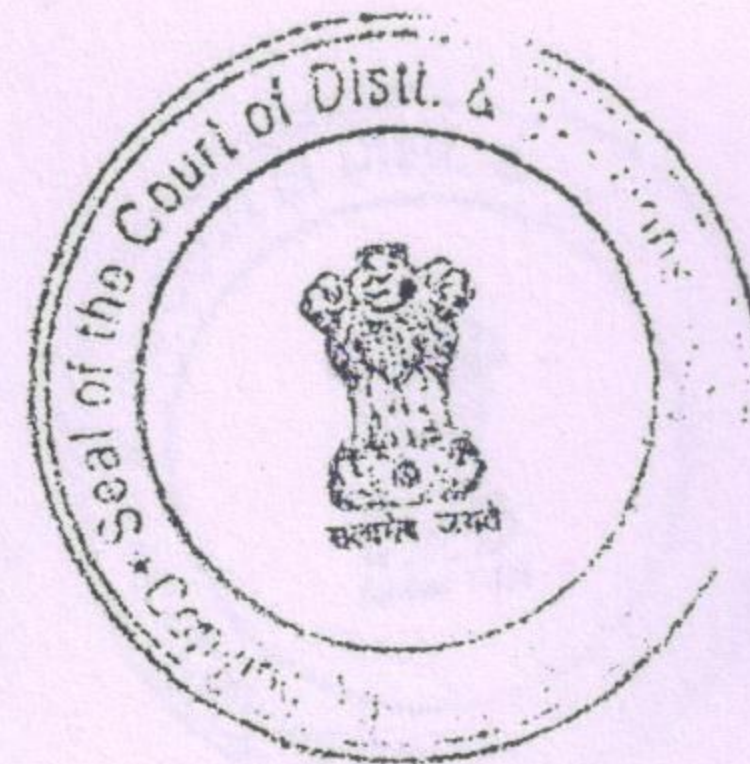
In case of *Sirajmohmedkhan Janmohamadkhan v. Haizunnisa Yasinkhan & Anr.*, (1981) 4 SCC 250, the Supreme Court stated that the concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used. Continuous

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ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which lead to mental or legal cruelty.

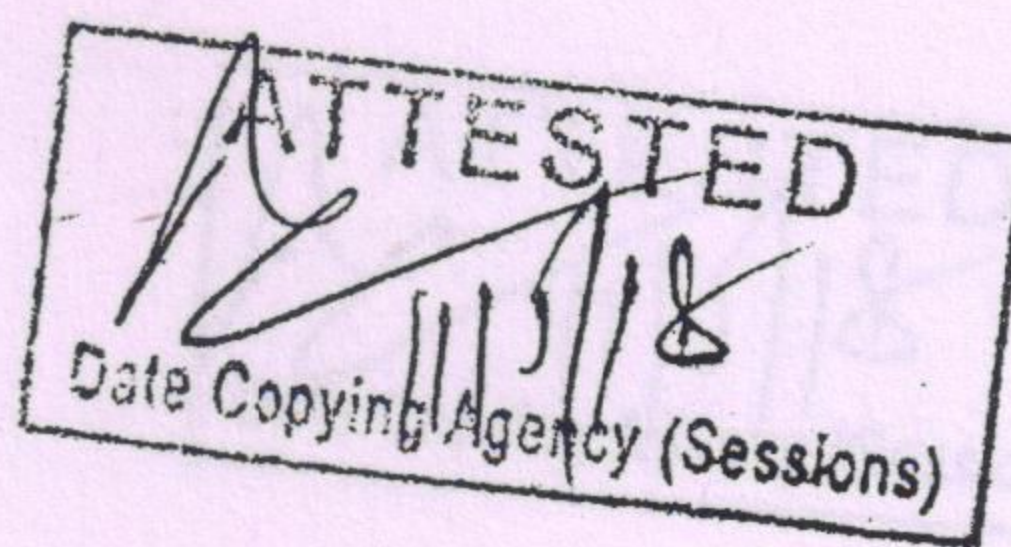


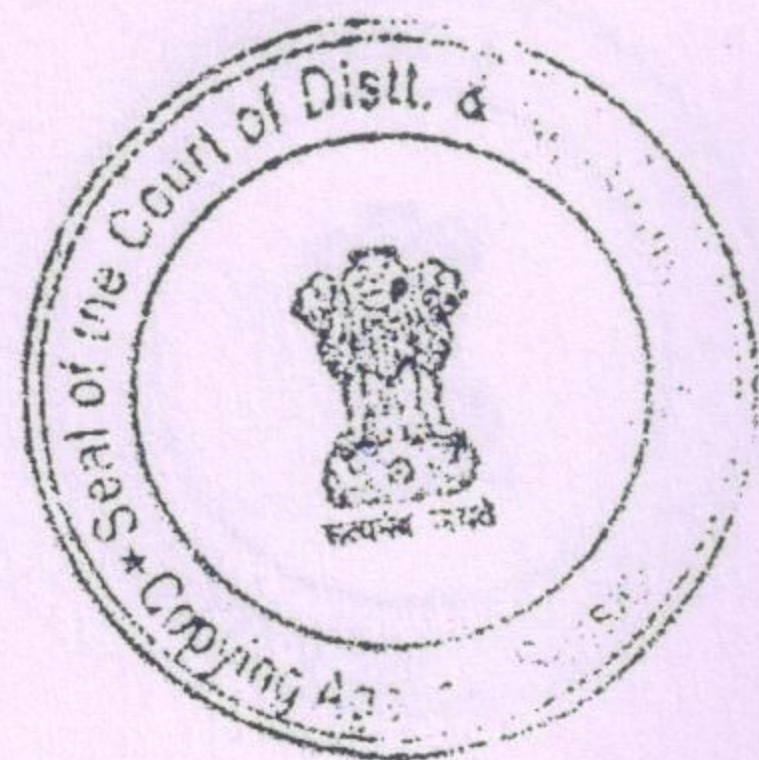
The Supreme Court had an occasion to examine in great detail the concept of mental cruelty. In the case of **V. Bhagat v. D. Bhagat (Mrs.)**, (1994) 1 SCC 337, it was observed as under:

Mental cruelty in Section 13 (1) (i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case.

The mental cruelty has also been examined by the Supreme Court in **Parveen Mehta v. Inderjit Mehta**, (2002) 5 SCC 706 which reads as under:

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Cruelty for the purpose of Section 13 (1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively.

In **A. Jayachandra v. Aneel Kaur**, (2005) 2 SCC 22, the Supreme Court observed as under:

The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the

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spouse, same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty.



In *Vinit Saxena v. Pankaj Pandit*, (2006) 3SCC 778 while dealing with the issue of mental cruelty, the Court observed as follows:-

It is settled by a catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case.

The word 'cruelty' has not been defined and it has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where

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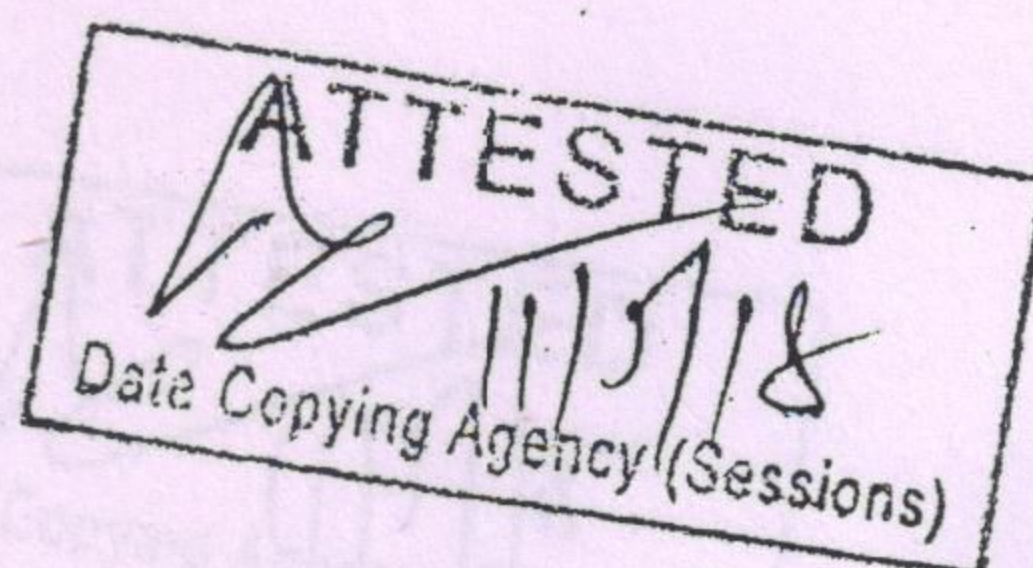
the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

Each case depends on its own facts and must be judged on these facts. The concept of cruelty has varied from time to time, from place to place and from individual to individual in its application according to social status of the persons involved and their economic conditions and other matters. The question whether the act complained of was a cruel act is to be determined from the whole facts and the matrimonial relations between the parties. In this connection, the culture, temperament and status in life and many other things are the factors which have to be considered.

In *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511, Supreme Court has given certain illustrative examples wherefrom inference of mental cruelty can be drawn. These are as under:-

- (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.

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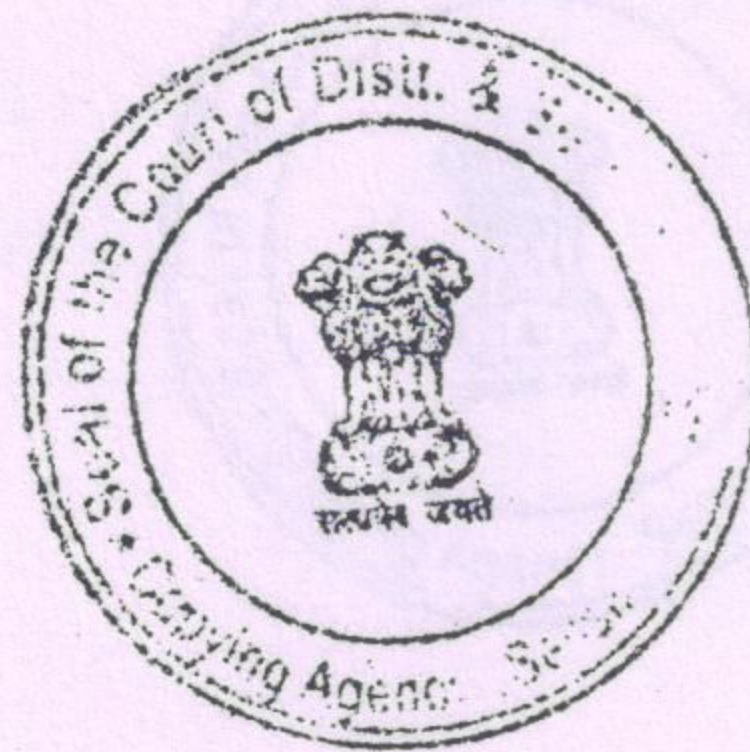
(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

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

(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.

(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 [pic] 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.

(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



Dr. - Dr.
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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."

In the said case the Court has also observed thus: -

The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances...."

In K. Srinivas Rao v. D.A. Deepa, (2013) 5SCC 226,



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Date Copying Agency (Sessions)

while dealing with the instances of mental cruelty, the court opined that to the illustrations given in the case of Samar Ghosh certain other illustrations could be added. It was observed as under:-



Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.

6. The petitioner pleaded various acts stated to be committed by the respondent no.1 which constituted cruelty on the petitioner. The petitioner stated that the respondent no.1 was suffering from Auto Immune Disorder called Lichen Planus which was not disclosed to the petitioner at the time of marriage. The respondent no.1 was also suffering from various other ailments. The behaviour of the respondent no.1 was rude, abusive and uncooperative towards the petitioner which has become more hostile after the birth of male child in the year 2005. The petitioner further stated that in November, 2006 when the petitioner and the respondent no.1 came to India then the respondent no.1 asked Rs.10 Lacs for the business of her father and on the refusal, the respondent no.1 threatened the petitioner

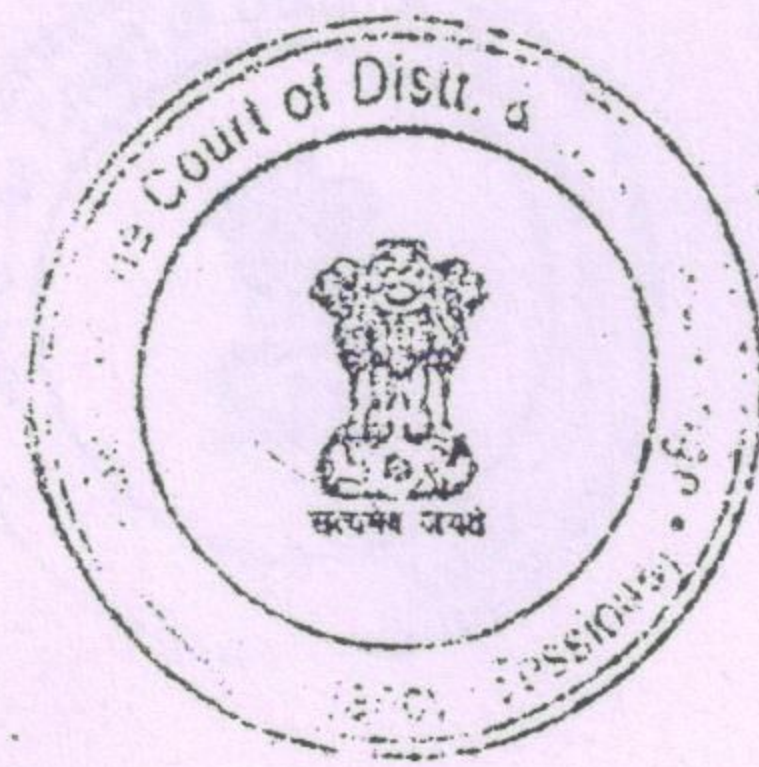
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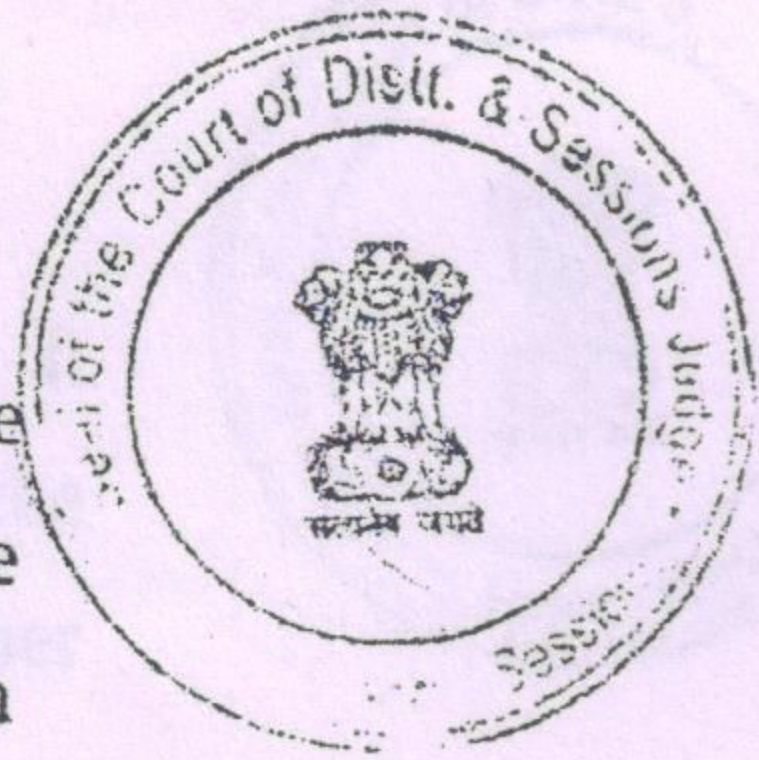
with dire consequences. The respondent no.1 also filed a domestic violence complaint and obtained a protection order on false and concocted grounds on 20.12.2016 which was withdrawn even without the appearance of the petitioner. The petitioner also pleaded that respondent no.1 also developed relations with respondent no.2 and respondent no.3. The respondent no.1 also filed an application for legal separation in Warren County Court, OHIO in US which was dismissed vide order Ex.PW1/6. The petitioner also pleaded other acts of cruelty stated to be committed by the respondent no.1.

7. The petitioner to prove said facts examined himself as PW1 and tendered the affidavit Ex.PW1/A. The petitioner in affidavit Ex.PW1/A deposed all the facts as pleaded in the petition. The testimony of the petitioner remained unchallenged and unrebutted. There is no reason to disbelieve the testimony of the petitioner as PW1. The testimony of PW1 by way of affidavit Ex.PW1/A reflects that the respondent no.1 had threatened the petitioner with dire consequences when the petitioner refused to give Rs.10 Lacs for the business of her father in November, 2006 when the petitioner and the respondent no.1 came to India. If the wife forced and pressurised the husband to give money to her family members for business and on refusal if the wife threatened the husband with dire consequences amounts to cruelty. The said act of the respondent no.1 towards the petitioner amounts to mental cruelty.



20-12-2016
31/1/2018





8. The respondent no.1 also threatened the petitioner to file cases against him. The respondent no.1 filed a domestic violence complaint in U.S in December, 2006 which was withdrawn even without the appearance of the petitioner. The respondent no.1 also filed an application for legal separation in Warren County Court, OHIO in US which was dismissed vide order Ex.PW1/6. The filing of various cases by one spouse against the another spouse amount to cruelty.

9. The petitioner also pleaded that the respondent no.1 also developed relations with respondent no.2 & respondent no.3. The respondent no.1 also visited to Singapore along with respondent no.2 in December, 2013 and both of them stayed together. The petitioner also pleaded that the respondent no.1 during her stay in India in November, 2006 also stayed with respondent no.2 for a period of 22 days. The petitioner also pleaded that the respondent no.1 used to travel to Bangalore as and when the respondent no.3 was traveling to Bangalore. The respondent no.1 during trip to Kashmir with petitioner in the month of June, 2012 used to roam around with respondent no.3 in late evenings/early nights. The proximity of one spouse with another person definitely caused to mental cruelty to the another spouse. All these facts are sufficient to constitute mental cruelty on the part of the respondent no.1 towards the petitioner.

10. The petitioner also pleaded that the respondent had severed

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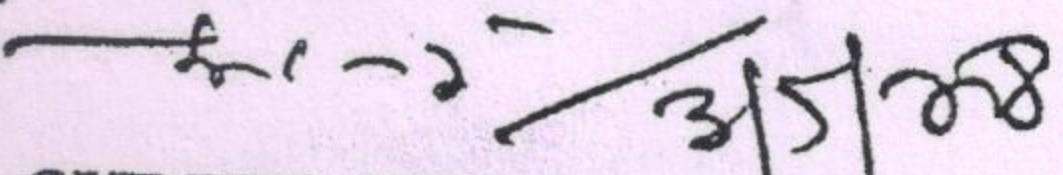


all relations with the petitioner after the trip to the Kashmir. It means that the respondent no.1 has withdrawn from the matrimonial company of the petitioner and denied the petitioner with cohabitation which amounts to cruelty.

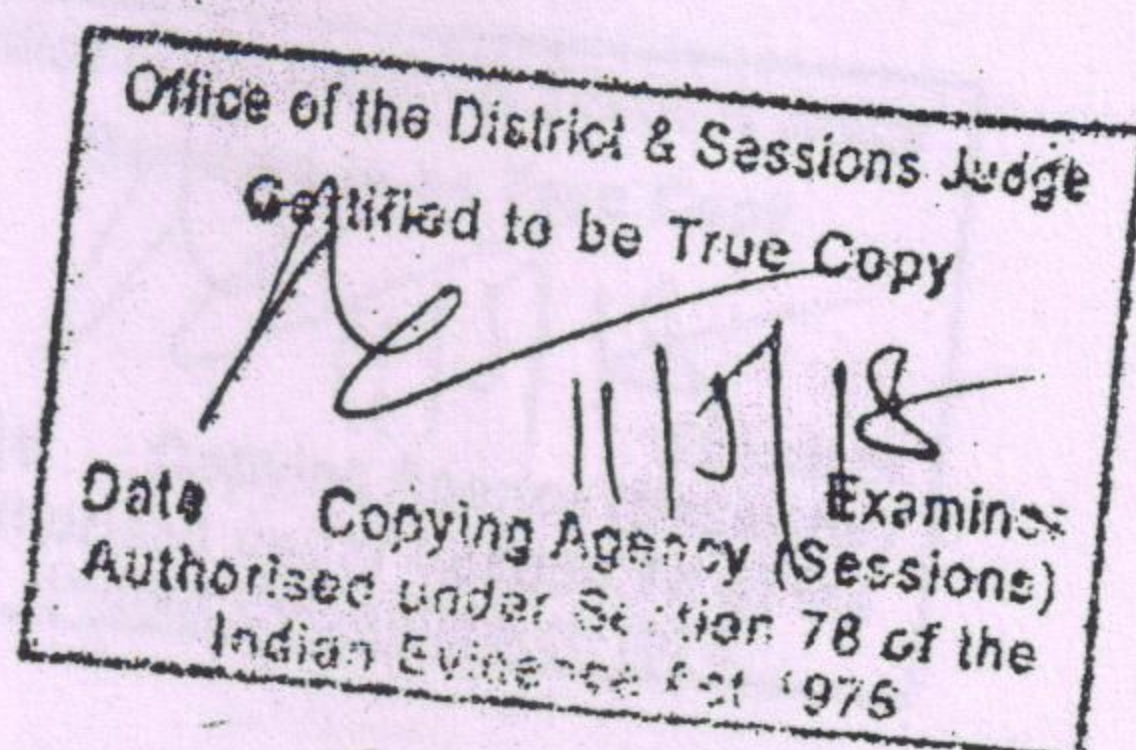
11. In view of above discussion, it is proved that the petitioner was subjected to cruelty by the respondent after the marriage within the ambit of Section 13(1)(ia) of Hindu Marriage Act, 1955. Accordingly, the petition is allowed and the marriage between the petitioner and the respondent no.1 is dissolved by a decree of divorce on the ground of cruelty as per Section 13(1)(ia) of Hindu Marriage Act, 1955. No order as to cost. File be consigned to record room.

ANNOUNCED IN THE OPEN

COURT ON 03.05.2018


(DR. SUDHIR KUMAR JAIN)
PRINCIPAL JUDGE,
FAMILY COURTS(WEST)
TIS HAZARI COURTS: DELHI

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DECREE SHEET
(U/O XX Rule 7 of the Code of Civil Procedure, 1908)
IN THE COURT OF DR. SUDHIR KUMAR JAIN, PRINCIPAL JUDGE,
FAMILY COURT (WEST), TIS HAZARI COURTS, DELHI



HMA No. 313/18

[REDACTED]
S/o Om Prakash Aggarwal,
[REDACTED]
Pitampura, Delhi - 110034

Versus

.... Petitioner

[REDACTED]
Link Road, Malad (W),
Mumbai - 400064

Also At:

[REDACTED] Darya Ganj,
Delhi - 110002

.... Respondent No. 1

Claim for : Petition under 13(1) (ia) of The Hindu Marriage Act, 1955 for
dissolution of marriage of the petitioner and respondent no. 1.

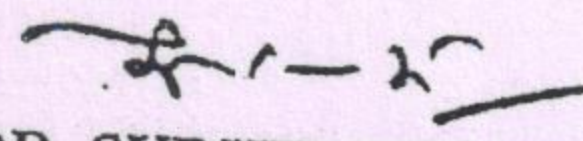
Petition presented on : 20.03.2014

This petition came on this 3rd day of May, 2018 for final disposal before me
in the presence of counsel for the petitioner. Respondent no. 1 is already ex parte.

It is ordered ex parte that petition u/s 13(1) (ia) of The Hindu Marriage Act,
1955 is allowed. The marriage between the petitioner and respondent no. 1 is
dissolved by decree of divorce on the ground of cruelty as per u/s 13(1) (ia) of The
Hindu Marriage Act, 1955 with effect from today.

Given under my hand and the seal of the Court on this 3rd day of May,
2018.

Seal


(DR. SUDHIR KUMAR JAIN)
PRINCIPAL JUDGE: FAMILY COURTS: WEST
TIS HAZARI COURTS

