

**In the High Court at Calcutta  
Civil Appellate Jurisdiction  
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya  
And  
The Hon'ble Mr. Justice Supratim Bhattacharya**

**F.A.T. No. 100 of 2022  
+  
CAN 5 of 2026**

[REDACTED]

**Versus**

[REDACTED]

For the appellant : Mr. Sanjay Mukherjee,  
Mr. Purnendu Das,  
Mr. Kinjal Kr. Barai, ...Advs.

For the respondent : Mr. Shyamal Chakraborty,  
Mr. Rajib Ray,  
Ms. Suparna Deb,  
Mr. Sumit Roy, ...Advs.

Heard on : 23.07.2026, 30.07.2026 & 13.08.2026

Reserved on : 13.08.2026

Judgment on : 21.08.2026

**Sabyasachi Bhattacharyya, J.:-**

1. The appellant-wife has preferred the present first appeal against a divorce decree passed against her in favour of her husband, the present respondent,

on the ground of cruelty. The learned Trial Judge also took into account that the marriage between the parties has broken down irretrievably.

2. Learned counsel for the appellant assails the judgment on the ground that the ingredients of mental cruelty were not made out. It is submitted that the couple married under the Special Marriage Act on June 18, 2009 and on April 15, 2013, a child was born to them. Thus, at least till that date, the marriage between the parties did not suffer from any misunderstanding. From the evidence, it is argued, it is clear that the spouses were living happily with each other during the entire period of their staying together. Even after the appellant had to leave the matrimonial home on April 17, 2014, the respondent-husband, in his cross-examination, has admitted that the appellant-wife returned several times to the matrimonial home and, on such occasions, they lived together for 7/8 days on each occasion as spouses.
3. It is contended that Section 27(1)(d) of the Special Marriage Act operates on the principle of fault, which was not established in the present case.
4. Learned counsel appearing for the appellant next contends that the appellant-wife had requested for separate residence of the parties, away from the matrimonial home; however, such request does not automatically translate to cruelty. The proposition laid down in *Narendra vs. K. Meena*, reported at (2016) 9 SCC 455, it is submitted, is not an inflexible proposition and was laid down in the facts of the said case. In the present case, the appellant-wife sought separation from the husband's mother only to protect her child from serious mistreatment of her minor child by the husband's mother.

5. It is next argued by the appellant that the respondent's police complaints were not independently verified on the veracity of the contents thereof by the learned Trial Judge. Mere filing of criminal cases cannot tantamount to cruelty *per se*. In the present case, the complaints were lodged by the appellant-wife on the happening of a specific incident after separation, during a period when there were ongoing disputes between the parties. On February 26, 2016, the appellant went to the respondent's business premises with her minor child during heavy rain, to ask for an umbrella/raincoat for the child. In view of use of abusive language and misbehaviour by the respondent, the appellant was constrained to lodge a police complaint, giving rise to a criminal case under Section 324 of the Indian Penal Code. Such circumstances, it is argued by the appellant, could not be a cruelty on the part of the wife.
6. The respondent-husband, it is submitted, complains that on January 14, 2015, during a period when the parties were living separately otherwise, the respondent, his mother, paternal uncle and aunt visited the appellant-wife's parental home, allegedly to bring back the appellant. The appellant has also stated elsewhere about such visit and the fact of quarrel between the parties. Such friction, it is submitted, during a period when the parties were estranged, is not cruelty by itself on the part of the appellant.
7. Learned counsel for the appellant next highlights the respondent's plea that there were threats by the appellant of lodging police complaints and to have the respondent arrested. Such generalised threats, that too to invoke lawful remedies, cannot by itself amount to cruelty. Moreover, the circumstances leading to such allegations were not proved by the respondent.

8. There is absolutely no corroborative evidence to substantiate the respondent-husband's allegation that filthy language was used against him by the appellant-wife in public places, including the place of business of the husband. In the absence of such cogent corroborative evidence, the sole deposition of the plaintiff/respondent as PW 1 could not be construed to be sufficient proof of such allegation.
9. Learned counsel for the appellant next argues that the appellant has alleged forced termination of pregnancy in January, 2014 and had stated in her cross-examination that she had relevant document to prove the same. Although such document was not furnished in the Trial Court, an application has been filed in this appeal under Order XLI Rule 27 of the Code of Civil Procedure (hereinafter referred to as "the Code") to adduce a prescription dated January 2, 2014 as additional evidence. Learned counsel cites *Sathyanath and Another Vs. Sarojamani*, reported at (2022) 7 SCC 644, to argue that the First Appellate Court has ample power to admit evidence and to decide a *lis* on merits itself, in the event sufficient materials are before it to come to a conclusion.
10. Insofar as Exhibit 7, a purported receipt given by the appellant-wife for jewellery received by her from the respondent (which is a Bengali document) is concerned, learned counsel for the appellant alleges that the appellant was compelled to sign the said document and the same cannot belie the fact that the articles of the appellant were retained by the respondent-husband's family, for which a proceeding under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the DV Act") was initiated by the appellant.

- 11.** Learned counsel for the appellant places reliance on *Samar Ghosh Vs. Jaya Ghosh*, reported at (2007) 4 SCC 511, for the proposition that there is no uniform standard to ascertain mental cruelty in a matrimonial dispute. It is to be ascertained by the court whether, as a cumulative effect of the regular conduct of one of the spouses, the other cannot be reasonably expected to continue the matrimonial relationship. While so assessing, the court has to look at the background, temperament and status of the parties as well the circumstances of each case.
- 12.** Citing *Savitri Pandey Vs. Prem Chandra Pandey*, reported at (2002) 2 SCC 73, learned counsel appearing for the appellant submits that 'mental cruelty' under the Special Marriage Act is different from ordinary wear and tear of married life. The course of conduct as a whole has to be consistently such that makes it impossible for one of the spouses to live with the other.
- 13.** Next relying on *A. Jayachandra Vs. Aneel Kaur*, reported at (2005) 2 SCC 22, it is argued by the appellant that the nature of conduct and the impact thereof on the matrimonial relation is to be assessed as a whole to come to a finding of mental cruelty. Not every unpleasant incident is a cruelty.
- 14.** Learned counsel for the appellant next contends that it has been held time and again that irretrievable breakdown, by itself, is not a ground for divorce under the Special Marriage Act or under the Hindu Marriage Act. The respondent declined to continue the matrimonial relationship despite the appellant wanting to resume the same and having pleaded so in her counter claim for restitution of conjugal rights. Thus, the contributory conduct of the respondent could not be taken to be to his advantage, by claiming that the marriage between the parties has broken down irretrievably.

15. Since the respondent admitted in his evidence that the appellant returned even after leaving the matrimonial home to lead conjugal life at stretches of 7/8 days on several occasions, it cannot be said that the appellant had no willingness to return.
16. A fundamental defect in the impugned judgment, it is argued, is that the learned Trial Judge failed to adjudicate on merits the appellant's counter claim for restitution of conjugal rights. Without any adjudication on the same first, the Trial Court ought not to have come to the finding that the marriage had broken down irretrievably or that the respondent-wife was guilty of cruelty by severing the conjugal relationship.
17. Section 22 of the Special Marriage Act permits a prayer for restitution of conjugal rights. In line with Section 23A of the Hindu Marriage Act, it is submitted, the respondent has the right to make a counter claim in a matrimonial suit even under the Special Marriage Act, since such a suit has the trappings of the regular civil suit.
18. The medical treatment of the wife was admittedly undertaken by the respondent-husband, due to the wife's condition of Diabetes. Learned counsel for the appellant submits that this, by itself, shows mutual care and trust, belying the allegation of irretrievable breakdown of marriage.
19. The appellant further contends that in *Rakesh Raman Vs. Kavita*, reported at (2023) 17 SCC 433, relied on by the respondent, the facts were different from the present case and the parties had separated for a considerable period even prior to the suit whereas, in the present case, the pre-suit separation period was about 7/8 months. Moreover, the respondent cannot take advantage of his own wrong to claim irretrievable breakdown where the

appellant all along wanted to return to the matrimonial home and on occasions had come back and stayed with the respondent as husband and wife.

- 20.** In reply, learned counsel appearing for the respondent-husband argues that the appellant's insistence to sever the ties with the respondent's widowed mother, who is dependent on the respondent, would be evident from GD Entry 1828 dated May 25, 2014 (Exhibit 3) and the deposition of the respondent as PW 1. The appellant's threats of false police cases against the husband and his family tantamounted to coercion by the appellant-wife to achieve her purposes, which constitutes mental cruelty.
- 21.** The appellant used to repeatedly visit the respondent's business place despite his objection, creating public disturbance, using filthy language, damaging telephone and other instruments in front of customers and demeaning the respondent's dignity and goodwill in front of outsiders. Further public humiliation was inflicted upon the respondent when the appellant harassed the respondent's uncle and aunt in the respondent's business premises on March 12, 2015 and thereafter the appellant visited the spot with police.
- 22.** It is next argued by learned counsel for the respondent that only a single incident of forced abortion in January, 2014 was pleaded in the Paragraph No. 6(k) of the written statement. However, in her evidence, the appellant enlarged such allegation to allege repeated forced intercourse and multiple abortions, which was never substantiated by her.
- 23.** The appellant alleged in her evidence for the first time that the respondent had misappropriated the parental property of the appellant-wife in

conspiracy with a developer. However, such allegation was completely missing in her pleading. In her cross-examination, the appellant-wife admitted that no proceeding was initiated against the developer, nor did the appellant ever revoke the Power of Attorney allegedly executed in favour of the developer. Even no development agreement was produced. The appellant admitted further in her cross-examination that she did not have knowledge of the particulars of the property-in-question and had lodged no complaints or had no supporting document or pleading to corroborate such wild allegation.

- 24.** The appellant sought to allege that the respondent-husband and his family have forcibly retained the marriage articles received by the appellant-wife. However, Exhibit-7 is a receipt in respect of the ornaments of the wife, signed by her on October 26, 2009. The appellant-wife sought to explain away such document in her Examination-in-Chief by alleging that she had put the signature on a blank paper. In her cross-examination, the appellant-wife however, admitted having written it and having signed the same and that she had lodged no complaint at any point of time regarding her signature being obtained on blank paper or subsequently misused.
- 25.** Learned counsel for the respondent-husband next moves on to grave allegations made by the appellant-wife of molestation of the parties' minor child by the respondent's mother and the husband's family. In her cross-examination, however, the appellant admitted that there was no complaint in that regard and she did not approach the child welfare authority or had any medical evidence in support of the same.



- 26.** Importantly, a complaint was lodged by her only two and-a-half months after December 26, 2014, when she was allegedly driven out, but in such complaint dated March 12, 2015 lodged at Burtolla Police Station, no whisper about being driven out was made by the appellant but only complaints were lodged against the husband of the respondent's aunt (Pisemosai) one Dipak Ghosh. The utter absence of any allegation as to being driven out, in an almost contemporaneous complaint lodged before the police, belies the said allegation.
- 27.** The appellant, it is argued, insisted repeatedly for the respondent to separate from his widow mother who is dependent on him, which amounts to cruelty by itself, as held in *Narendra (supra)*.
- 28.** It is further submitted by the respondent that no particulars of the allegations of dowry demands by the respondent were furnished by the appellant; rather, such case is demolished by Exhibit 7.
- 29.** In the maintenance case levied by the appellant-wife under the DV Act, she suppressed the alimony which was then being received by her in connection with the matrimonial suit, as well as her co-ownership of a flat with her mother. Thus, the appellant is not credible as a witness.
- 30.** The appellant denied medical treatment being offered by the respondent-husband in her Examination-in-Chief, although such allegation did not find place in her pleading. However, in her cross-examination, she admitted that the respondent-husband had arranged for her medical treatment at several hospitals.
- 31.** A criminal case under Section 324 of the Indian Penal Code (Burtolla PS Case No. 67/2016), giving rise to GR No. 429/2016, was initiated by the

appellant against the respondent, alleging assault with an iron scale on February 26, 2016, at which point of time the parties were not even living together. However, the respondent has since been acquitted for lack of proof and medical evidence in the said criminal case. The respondent argues that the humiliation suffered by the respondent-husband and his family for such false implication itself constitutes mental cruelty.

- 32.** Learned counsel for the respondent-husband next argues that the appellant admitted in her cross-examination that the respondent regularly used to send gifts to his minor son on different occasions, which were duly accepted, and also regularly paid maintenance to the wife, initially by electronic money orders and then as per the court's orders. The respondent has been consistently admitting that one cot, an almirah and a dressing table, given at the time of marriage, are still lying at the matrimonial home. Thus, there is no question of any suppression in that regard.
- 33.** The wife's application for return of articles under the DV Act is still pending and no direction has been given by the court taking up the said case for return of any article.
- 34.** Such persistent conduct of the respondent itself amounts to cruelty and makes it impossible for the respondent to continue to lead a matrimonial life with the appellant.
- 35.** Moreover, it is submitted that the parties resided together only for about 4-5 years after marriage but have been living separately since December 26, 2014 for more than 11 years.
- 36.** Moreover, a court-directed mediation between the parties failed.
- 37.** Also, there have been multiple litigations between the parties.

- 38.** It is submitted that all the above factors lead to the unerring conclusion that the marriage between the parties has broken down irretrievably, bringing it within the purview of the ratio laid down in *Rakesh Raman (supra)*, where the Hon'ble Supreme Court incorporated irretrievable breakdown within the definition of cruelty under the matrimonial laws.
- 39.** Learned counsel for the respondent next argues that intermittent cohabitation, even if admitted, still constitutes mental cruelty, since the disputes between the parties never ceased. The respondent has not sought divorce on the ground of desertion but on cruelty. Thus, a few stray incidents of the wife coming back and residing together does not mitigate the consistent cruelty meted out by her in separating from the husband for substantial periods without justification, particularly in the context of the cruel acts perpetrated by the appellant-wife.
- 40.** Insofar as the wife's counter claim for restitution of conjugal rights is concerned, learned counsel appearing for the respondent argues that mere non-framing of a separate issue on the same does not vitiate the judgment, since the Trial Court expressly addressed the issue and rejected the claim of restitution on merits in view of the marriage between the parties having broken down irretrievably.
- 41.** The learned Trial Judge also came to the conclusion that mental cruelty had been perpetrated by the appellant-wife, thus rendering the consequential dismissal of the counter claim of restitution a mere formality.

- 42.** *Sathyanath (supra)*<sup>1</sup>, it is submitted, merely recognises the court's discretionary power to pass a judgment if evidence is already on record, which proposition is not applicable to the present case. The application under Order XLI Rule 27 of the Code, it is submitted, ought to be dismissed, since despite having full opportunity to produce the medical prescription now sought to be brought on record, the appellant failed to produce the same throughout the trial. No explanation for the delay has been furnished, although the document was admittedly in the possession of the appellant all along, since forced abortion was a part of the original defence.
- 43.** Learned counsel cites *Union of India Vs. Ibrahim Uddin and Another*, reported at (2012) 8 SCC 148, to argue on the limited scope under Order XLI Rule 27 of the Code.
- 44.** Moreover, the respondent contends that even if taken on record, the isolated prescription dated January 2, 2014, now sought to be furnished, could not establish the respondent's alleged insistence for a forced abortion. Thus, the said application ought to be dismissed.
- 45.** Upon hearing learned counsel for the parties, we find that the following broad issues fall for consideration in the present appeal:
- (i) Whether the appellant-wife is guilty of mental cruelty;
  - (ii) Whether the marriage between the parties has broken down irretrievably and, if so, whether the same furnishes a ground for divorce;
  - (iii) Whether the absence of any formal decree dismissing the counter claim of the appellant-wife vitiates the impugned judgment;

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<sup>1</sup> *Sathyanath and Another Vs. Sarojamani*, reported at (2022) 7 SCC 644

- (iv) Whether the appellant's application under Order XLI Rule 27 of the Code ought to be allowed.

46. The above issues are decided as follows:

**(i) Whether the appellant-wife is guilty of mental cruelty**

47. The Indian law on mental cruelty as a ground of divorce has undergone an evolution over decades. However, certain common underlying features of cruelty can be extracted from the judgments cited by the parties.
48. In *Samar Ghosh (supra)*<sup>2</sup>, the Hon'ble Supreme Court laid down that a sustained course of abusive and humiliating treatment calculated to torture, discommodate or render miserable life of the spouse or 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.
49. At the same time, the Hon'ble Supreme Court cautioned that mere trivial irritations, quarrels, normal wear and tear of married life would not be adequate for grant of divorce on the ground of mental cruelty and the married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty.
50. Importantly, it was also observed that where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair and 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

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<sup>2</sup> *Samar Ghosh Vs. Jaya Ghosh*, reported at (2007) 4 SCC 511

feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

51. It is relevant to note that Paragraph No. 101 of the said report, where the contours of mental cruelty were crystalized, the Hon'ble Supreme Court put in a preceding rider that the instances provided therein are only illustrative and not exhaustive. Thus, there can be several other circumstances than envisaged in the said judgment which can come within the purview of mental cruelty.
52. The law in this regard was settled much before in the landmark judgment of *Dr. N. G. Dastane vs. Mrs. S. Dastane*, reported at (1975) 2 SCC 326. The Hon'ble Supreme Court, *inter alia*, considered therein the important aspect of condonation of cruelty, which is, under Section 23(1) of the Hindu Marriage Act and the corresponding provisions of the Special Marriage Act, a mitigating factor in grant of divorce on the ground of cruelty. The Hon'ble Supreme Court held that even though condonation is not pleaded as a defence, it is the statutory duty of the Court to find whether the cruelty was condoned. Paragraph Nos. 55 to 58 of the said judgment are relevant in the context and are set out below:

*“55. Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation there must be, therefore, two things: forgiveness and restoration. [ The Law and Practice of Divorce and Matrimonial Causes by D. Tolstoy, 6th Edn., p. 75] The evidence of condonation in this case is, in our opinion, as strong and satisfactory as the evidence of cruelty. But that evidence does not consist in the mere fact that the spouses continued to share a common home during or for some time after the spell of cruelty. Cruelty, generally, does not consist of a single, isolated act but consists in most cases of a series*

of acts spread over a period of time. Law does not require that at the first appearance of a cruel act, the other spouse must leave the matrimonial home lest the continued cohabitation be construed as condonation. Such a construction will hinder reconciliation and thereby frustrate the benign purpose of marriage laws.

**56.** The evidence of condonation consists here in the fact that the spouses led a normal sexual life despite the respondent's acts of cruelty. This is not a case where the spouses, after separation, indulged in a stray act of sexual intercourse, in which case the necessary intent to forgive and restore may be said to be lacking. Such stray acts may bear more than one explanation. But if during cohabitation the spouses, uninfluenced by the conduct of the offending spouse, lead a life of intimacy which characterises normal matrimonial relationship, the intent to forgive and restore the offending spouse to the original status may reasonably be inferred. There is then **no scope** for imagining that the conception of the child could be the result of a single act of sexual intercourse and that such an act could be a stark animal act unaccompanied by the nobler graces of marital life. One might then as well imagine that the sexual act was undertaken just in order to kill boredom or even in a spirit of revenge. Such speculation is impermissible. Sex plays an important role in marital life and cannot be separated from other factors which lend to matrimony a sense of fruition and fulfilment. Therefore, evidence showing that the spouses led a normal sexual life even after a series of acts of cruelty by one spouse is proof that the other spouse condoned that cruelty. Intercourse, of course, is not a necessary ingredient of condonation because there may be evidence otherwise to show that the offending spouse has been forgiven and has been received back into the position previously occupied in the home. But intercourse in circumstances as obtain here would raise a strong inference of condonation with its dual requirement, forgiveness and restoration. That inference stands uncontradicted, the appellant not having explained the circumstances in which he came to lead and live a normal sexual life with the respondent, even after a series of acts of cruelty on her part.

**57.** But condonation of a matrimonial offence is not to be likened to a full Presidential pardon under Article 72 of the Constitution which, once granted, wipes out the guilt beyond the possibility of revival.



*Condonation is always subject to the implied condition that the offending spouse will not commit a fresh matrimonial offence, either of the same variety as the one condoned or of any other variety. "No matrimonial offence is erased by condonation. It is obscured but not obliterated" [ See Words and Phrases : Legally Defined (Butterworths) 1969 Edn., Vol. 1, p. 305 ("Condonation")] . Since the condition of forgiveness is that no further matrimonial offence shall occur, it is not necessary that the fresh offence should be ejusdem generis with the original offence. [See Halsbury's Laws of England, 3rd Edn., Vol 12, p. 306] Condoned cruelty can therefore be revived, say, by desertion or adultery.*

**58.** *Section 23(1)(b) of the Act, it may be urged, speaks of condonation but not of its revival and therefore the English doctrine of revival should not be imported into matters arising under the Act. Apparently, this argument may seem to receive some support from the circumstance that under the English law, until the passing of the Divorce Reform Act, 1969 which while abolishing the traditional bars to relief introduces defences in the nature of bars, at least one matrimonial offence, namely, adultery could not be revived if once condoned. [ See Rayden on Divorce, 11th Edn., (1971) pp. 11, 12, 2368, 2403] But a closer examination of such an argument would reveal its weakness. The doctrine of condonation was established by the old ecclesiastical courts in Great Britain and was adopted by the English courts from the canon law. "Condonation" is a technical word which means and implies a conditional waiver of the right of the injured spouse to take matrimonial proceedings. It is not "forgiveness" as commonly understood. [ See Words and Phrases : Legally Defined (Butterworths) 1969 Edn., p. 306 and the cases cited therein] In England condoned adultery could not be revived because of the express provision contained in Section 3 of the Matrimonial Causes Act, 1963 which was later incorporated into Section 42(3) of the Matrimonial Causes Act, 1965. In the absence of any such provision in the Act governing the charge of cruelty, the word "condonation" must receive the meaning which it has borne for centuries in the world of law. [ See Ferrers v. Ferrers, (1791) 1 Hag Con 130, 131] "Condonation" under Section 23(1)(b) therefore means conditional forgiveness, the implied condition being that no further matrimonial offence shall be committed."*



- 53.** The distilled wisdom which can be derived from the said paragraphs is clear. Condonation is always subject to the implied condition that the offending spouse will not commit a fresh matrimonial offence, either of the same variety as the one condoned or any other variety. Hence, condonation is not absolute but is conditional. It was also considered that law does not require that at the very first appearance of a cruel act, the other spouse must leave the matrimonial home lest the continued cohabitation be construed as condonation. The Hon'ble Supreme Court stressed, as a marker of condonation, that the spouses continue to lead a normal sexual life despite the acts of cruelty of one of them. However, stray acts of sexual intercourse after separation were held by the Hon'ble Supreme Court to be capable of several explanations and thus, not by themselves condonation of cruelty.
- 54.** In the aforesaid backdrop, in *A. Jayachandra (supra)*<sup>3</sup>, the Hon'ble Supreme Court reiterated that mental cruelty depends on the facts of the case and the concept "proof beyond the shadow of doubt" is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Although preponderance of probability was stressed as the yardstick of evidence assessment in matrimonial matters, it was also held that 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, except where the frictions amounted merely to the "ordinary wear and tear of married life". The conduct, it was

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<sup>3</sup> *A. Jayachandra Vs. Aneel Kaur*, reported at (2005) 2 SCC 22

held, has to be considered in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions and that it was difficult to lay down a precise or exhaustive definition of what constitutes cruelty. It must be of the type, it was observed, as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent that it would be impossible for them to live together without mental agony, torture or distress.

- 55.** In *Savitri Pandey (supra)*<sup>4</sup>, the Hon'ble Supreme Court held that there may be cases on facts where it is found that the marriage has become dead on account of contributory acts of commission and omission of the parties and no useful purpose would be served by keeping such marriage alive. Yet, the court stopped short of holding irretrievable breakdown of marriage as a ground of divorce by itself, in the light of the still earlier judgment of *V. Bhagat v. D. Bhagat*, reported at (1994) 1 SCC 337. It was observed that if the appellant herself is trying to take advantage of her own wrong, the marriage between the parties cannot be held to have become dead for invoking Article 142 of the Constitution of India.
- 56.** Thus, the broad principles for establishing mental cruelty, as can be culled out from the trend of judgments holding the field, are that:
- (i) There has to be a sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness and torture of such kind which is more than the normal

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<sup>4</sup> *Savitri Pandey Vs. Prem Chandra Pandey*, reported at (2002) 2 SCC 73

wear and tear of married life and makes it impossible for the spouses to be expected to lead a conjugal life;

- (ii) Stray instances of sexual intercourse after separation cannot tantamount to condonation of cruelty *per se*;
- (iii) Condonation is not absolute and is impliedly conditional upon non-repetition of further acts of cruelty, either similar to the earlier acts of cruelty or otherwise, by the condoned spouse;
- (iv) There cannot be any exhaustive list of situations where it can be said that there is mental cruelty; the Court has to assess the entire matrimonial life of the parties on the anvil of their respective social status, educational background and other similar circumstances;
- (v) We may add to the above, if unfounded, unsubstantiated or baseless allegations are levelled by one spouse against another without any reasonable basis to make such allegations, which are of such a grave and serious nature that those assassinate the character of the victim spouse or publicly demean them and create serious mental agony, such allegations may tantamount to mental cruelty.

**57.** We proceed to assess the facts of the present case in the above backdrop.

**58.** The parties are not naïve and ignorant people but come from normal middle-class backgrounds.

**59.** One of the facets of cruelty in the instant case, as alleged, is the appellant-wife's insistence to sever ties with the respondent-husband's widow mother and live separately. The appellant, in principle, does not deny the same but seeks to justify it by alleging that it was done to protect her minor son, who was the subject of molestation and improper behaviour by the respondent-

husband's mother. However, not a scrap of paper or corroborative evidence or contemporaneous complaint has come to the fore in that regard at the behest of the appellant. We cannot undermine the extreme seriousness of such an allegation which, by itself, could be sufficient to demean the respondent and his family to such an extent that it would be impossible for the parties to reconcile normal conjugal life thereafter. Hence, the appellant-wife, in the absence of any corroboration of such grave allegation, was definitely guilty of cruelty on such count. If the conduct of the respondent's mother was such that it was no longer possible for the appellant-wife to live with her son with her for a moment more, it is surprising that the appellant-wife, although otherwise having lodged police complaints on different occasions, kept completely silent and did not approach either the police or any child welfare authority or any other person who could be brought as witness, regarding such conduct. Hence, on a preponderance of probability, it is evident that the said allegation had no basis whatsoever, thus denuding the sole justification for the appellant insisting upon separate residence from the respondent's mother.

- 60.** In *Narendra (supra)*<sup>5</sup>, the Hon'ble Supreme Court observed that a son maintaining his parents is absolutely normal in Indian culture and ethos and that in a Hindu society it is a pious obligation of the son to maintain the parents. It was further held that normally no husband would tolerate the insistence to separate from his old parents and other family members who are also dependent on him and persistent efforts in that regard by the appellant-wife would be torturous for the husband, amounting to cruelty.

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<sup>5</sup> *Narendra vs. K. Meena*, reported at (2016) 9 SCC 455

- 61.** To be fair to the appellant, such observations in *Narendra (supra)*<sup>6</sup> were not absolute and made in the context of the facts of the said case, where the insistence by the wife was for the sole purpose of enjoying the income of the appellant-husband exclusively.
- 62.** Moreover, society has evolved much over the past decade, after the said judgment was rendered, and has progressed substantially beyond the patriarchal and conservative mind-set that it is the noble duty of the wife to serve the husband and his family and a wife cannot insist upon exclusive conjugal life with her husband, particularly in the context of the modern-day unitary families. However, such liberal approach cannot be taken to such an extreme that it itself becomes a conservative dogma.
- 63.** It is not the background or the opinion of the Judge which is being tested in a matrimonial matter but the context and background of the particular couple which is before the Court.
- 64.** In the facts of the present case, it is an admitted position that the respondent-husband has a widow mother who is dependent on the husband. It is nobody's case that the widow mother has her own income and is not dependent on the respondent. There is no denial to such assertion of the respondent from the end of the appellant-wife. The appellant-wife seeks to justify her insistence on separate living on the sole ground of alleged molestation of her minor son by her mother-in-law.
- 65.** However, as held above, such allegation is completely unsubstantiated and uncorroborated not only by independent witnesses but also by contemporaneous conduct of the wife. Hence, since the very premise of

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<sup>6</sup> *Narendra vs. K. Meena*, reported at (2016) 9 SCC 455

such insistence loses relevance, the insistence would indeed tantamount to cruelty. Separate living for its own sake has its place but cannot be isolated from the family background of the spouses. The respondent-husband lives with his widow mother, who is dependent on him. Thus, separation for the sake of it in such context would indeed amount to cruelty on the part of the wife, thus attracting the paradigm of *Narendra (supra)*<sup>7</sup>.

**66.** The next ingredient of the alleged cruelty is the allegation of the appellant-wife that there was misappropriation of her parental property by the respondent-husband in conspiracy with a developer. Surprisingly, there is no such pleading in the wife's written statement and such allegation comes in her examination-in-chief for the first time. In her cross-examination, the appellant-wife admits that she has no knowledge of the particulars of such property in respect of which the respondent tried to swindle her, that she had lodged no complaint in that regard, has no supporting document and had not pleaded the same in the written statement. Further, admittedly, no proceeding had been initiated by the developer and the power of attorney allegedly executed by her in favour of the developer was not revoked. Also, the appellant-wife did not produce any development agreement to substantiate her claim.

**67.** Thirdly, the appellant-wife alleged dowry demands by the respondent and his family without disclosing any particular thereof. The appellant has filed a domestic violence case seeking return of her articles, which is still pending and in which no direction for return of any article has been passed. On the contrary, when confronted with Exhibit-7, a Bengali receipt issued by the

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<sup>7</sup> *Narendra vs. K. Meena*, reported at (2016) 9 SCC 455

appellant-wife while taking back her ornaments on October 26, 2006, she baldly denies the same on the plea that the same was obtained on blank paper. Such stand, taken in her examination-in-chief, however, is belied by her cross-examination, where she admits having not only signed it but having written it. Furthermore, no contemporaneous or subsequent complaint was lodged by the appellant-wife as to signing on any blank paper or the same being converted to something unintended by her. Thus, the credibility of the appellant-wife as a witness itself is shaken on several counts. Moreover, in the absence of any proof or even any complaint of the receipt of the ornaments being obtained on a blank paper, fact remains that such receipt was actually written and admittedly signed by her, thus, falsifying the allegation (at least on a preponderance of probability) that the husband had forcibly retained the wife's articles or that any dowry demand was made.

- 68.** Fourthly, the wife denied in her examination-in-chief that the respondent-husband ever paid for her medical treatment or arranged for the same, although there was no such pleading in her written statement. Yet, in her cross-examination, the appellant-wife admitted that the respondent-husband had actually arranged her treatment at several hospitals.
- 69.** The credibility of the wife, as a witness, again, is shaken, which by now forms a pattern.
- 70.** Instead of explaining such conduct, learned counsel for the appellant-wife boldly relies on the fact of treatment for the wife being arranged by the respondent-husband to argue that there was "mutual trust and care"



between the parties and the marriage is still hunky-dory between the parties.

- 71.** The same pattern is repeated when the criminal case under Section 324 of the Indian Penal Code initiated by the wife (Burtolla P.S. Case No. 67/2016; GR Case No. 429/2016), alleging assault by the respondent with an iron scale on September 26, 2016, was dismissed and the husband was acquitted from the said case not only on the ground of lack of evidence of other witnesses, but also medical evidence to substantiate such allegation.
- 72.** Thus, the appellant-wife has been consistently making serious but baseless allegations against the respondent-husband, humiliating him and his family throughout the subsistence of the marriage.
- 73.** The respondent further alleged that on March 12, 2015, the appellant came to the business place of the respondent and harassed his uncle and aunt, which act was repeated substantially by the appellant time and again, when the appellant came to the business place of the respondent, used filthy language, damaged instrument and unleashed obnoxious behaviour in front of customers.
- 74.** The appellant does not deny the friction between the parties and having gone to the business place of the respondent, but contends that mere quarrels do not qualify as mental cruelty and that she had only gone to the husband's business place to seek an umbrella/rain-coat for her child. Such specious attempt to gain sympathy of the Court is not credible even to the most gullible of persons. There could be absolutely no reason for, or context in, the appellant taking her minor son to the husband's business place, all on a sudden and without rhyme or reason, at a juncture when the parties

had already been living separately for a considerable period, just to ask for an umbrella/rain-coat. It is not at all a normal course of conduct by an estranged couple. Thus, although the appellant-wife did not return permanently to her matrimonial home after being separated, she found the time to go to the workplace of the respondent-husband and pick up a quarrel.

- 75.** In the present case, there is no allegation that the appellant-husband has not paid maintenance for the wife and the child all along, either by orders of Court or otherwise. The appellant-wife also admits that the husband arranged for her medical treatment, when required, at different hospitals.
- 76.** The husband alleges that he went to the wife's residence with his uncle and aunt to bring her back, where untoward incidents happened and the wife misbehaved with them. The fact of the husband and his relatives going to her place is admitted by the wife. It is also admitted that there was quarrel between them. There is no reason as to why, if the wife wanted to come back to her matrimonial home permanently, she could not do so on such approach being made by the respondent-husband himself. Thus, *animus revertendi* is clearly missing on the part of the wife in the present case.
- 77.** The appellant-wife cites the admission of the respondent-husband that even after separation, they had lived together as spouses on certain stray occasions. Even going by the principle laid down in *Dr. N. G. Dastane (supra)*<sup>8</sup> as to condonation of cruelty, stray incidents of living together as husband and wife do not amount to condonation. In any event, as further held therein, condonation on the part of one spouse of the

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<sup>8</sup> *Dr. N. G. Dastane vs. Mrs. S. Dastane*, reported at (1975) 2 SCC 326

cruelty perpetrated by the other is always conditional upon such, or other, cruel acts not being repeated. Such implicit condition, even there was any condonation at all, was not fulfilled in the present case. Thus, the said stray incidents of living together cannot be elevated to the level of condonation of the cruelty of the appellant by the respondent.

**78.** Hence, we come to the conclusion that the appellant-wife is guilty of mental cruelty to the respondent-husband, thus furnishing a valid ground for divorce.

**(ii) Whether the marriage between the parties has broken down irretrievably and, if so, whether the same furnishes a ground for divorce**

**79.** It is an otherwise admitted position that although the couple lived together for about five years, they have since separated and have parted their ways for eleven years since. The Court-referred mediation between the parties has also failed, as is evident from the Mediator's report which is before the Court.

**80.** Thus, the ingredients laid down in *Samar Ghosh (supra)*<sup>9</sup>, as reiterated in *Rakesh Raman (supra)*<sup>10</sup>, as regards irretrievable breakdown of the marriage is fully satisfied. Paragraph Nos. 22 and 23 of *Rakesh Raman (supra)*<sup>9</sup>, which are germane in the context, are reproduced below:

**“22.** Irretrievable breakdown of a marriage may not be a ground for dissolution of marriage under the Hindu Marriage Act, but cruelty is. A marriage can be dissolved by a decree of divorce, inter alia, on the ground when the other party “has, after the

<sup>9</sup> *Samar Ghosh Vs. Jaya Ghosh*, reported at (2007) 4 SCC 511

<sup>10</sup> *Rakesh Raman Vs. Kavita*, reported at (2023) 17 SCC 433

*solemnisation of the marriage treated the petitioner with cruelty” [ Section 13(1)(i-a) of the Hindu Marriage Act, 1955] .*

**23.** *In our considered opinion, a marital relationship which has only become more bitter and acrimonious over the years, does nothing but inflict cruelty on both the sides. To keep the façade of this broken marriage alive would be doing injustice to both the parties. A marriage which has broken down irretrievably, in our opinion spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is therefore a ground for dissolution of marriage under Section 13(1)(i-a) of the Act.”*

**81.** The said landmark judgment marks a quantum departure from the earlier position of law. The Hon’ble Supreme Court had all along been suggesting to the Legislature that irretrievable breakdown of marriage may be considered to be incorporated in the statute book as a ground of divorce. However, it was formally recognized for the first time in *Rakesh Raman (supra)*<sup>11</sup> that although irretrievable breakdown of marriage by itself may not be a ground of dissolution of marriage, but where a marital relationship has only become bitter and acrimonious over the years, it does nothing but inflict cruelty on both the sides and keeping the façade of the broken marriage alive would be doing injustice to both the parties. Irretrievable breakdown of marriage itself spells cruelty to both the parties, as in such a relationship, each party is treating the other with cruelty. Importantly, it was held in such circumstances, it furnishes a ground for dissolution of marriage under the Section 13(1)(i-a) of the Hindu Marriage Act, has coming within the ambit of ‘mental cruelty’. The provisions of ‘cruelty’ under the Hindu Marriage Act and the Special Marriage Act are similar. Thus, the self-same proposition is applicable to both.

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<sup>11</sup> ***Rakesh Raman Vs. Kavita*, reported at (2023) 17 SCC 433**

**82.** In such view of the matter, we hereby come to the conclusion that the learned Trial Judge was justified in holding that the marriage between the parties has broken down irretrievably and, coupled with the cruelty otherwise meted out by the appellant-wife, furnished a ground for divorce.

**(iii) Whether the absence of any formal decree dismissing the counter claim of the appellant-wife vitiates the impugned judgment**

**83.** In the facts of the present case, both parties addressed the issue of restitution of conjugal rights as well in the suit. In any event, the said issue was inextricably connected with the consideration as to whether the appellant-wife was guilty of cruelty since in the event it was so, the separate living of the spouses would not be justified but would be attributable to the conduct of the appellant-wife herself.

**84.** Once the Trial Court came to the finding that the wife herself was guilty of mental cruelty and that the marriage between the parties has broken down irretrievably, there could not arise any further question of decreeing the counter claim for restitution of conjugal rights. The dismissal of the same remained a mere formality. Hence, the absence of any specific enumeration in the ordering portion and the decree as to the counter claim having been dismissed does not *per se* vitiate the impugned judgment, since the learned Trial Judge, nonetheless, arrived at the specific finding that the marital relation of the parties has irretrievably broken down and there is no place for reconciliation and in the light of such situation, there is no scope for allowing the respondent/wife's prayer for restitution of conjugal rights.

85. Thus, this issue is also held against the appellant.

**(iv) Whether the appellant's application under Order XLI Rule 27 of the Code ought to be allowed**

86. Order XLI Rule 27 of the Code has three components.

87. First, additional evidence can be permitted at the appellate stage if the Trial Court has refused to admit evidence which ought to have been admitted, which is not the present case.

88. Secondly, the party seeking to produce additional evidence has to establish that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed. Not a single justification has been given in the application filed by the appellant under Order XLI Rule 27 of the Code in the present appeal as to why the medical prescription now sought to be furnished was not produced by her despite getting ample opportunity to do so during the trial. Since the document pertains to an incident of January 2, 2014 and the appellant-wife has all along taken a specific defence as to forced abortion due to the conduct of the respondent-husband, and the document comes from the custody of the wife herself, there could not be any reason as to why, if she was duly diligent, the appellant-wife could not produce the same during trial. Hence, the foundational pleadings/evidence to satisfy Order XLI Rule 27(1)(aa) are found absent in the present case.

89. Such absence might only have been mitigated by the third situation contemplated in Order XLI Rule 27, which is where the Appellate Court

requires any document to be produced to enable it to pronounce judgment or for any other substantial cause, the latter having to be akin to the earlier part of the clause.

- 90.** Considering the said aspect of the matter, we find that the purported medical prescription now sought to be brought in evidence is an isolated prescription showing the termination of pregnancy by the appellant. By itself, in the absence of any corroborative evidence, which is completely absent in the present case, it cannot be said that such termination was at the instance or insistence of the respondent-husband. Thus, even an isolated act of forcible abortion, as pleaded by the wife in her written statement, would not be established even if such document is permitted to come on record as additional evidence.
- 91.** Rather, the appellant-wife embellished her initial pleading by alleging repeated forcible intercourse and forcible abortion at the behest of the respondent-husband, which stands completely unproved and/or without any basis in the pleadings. Such reckless allegation itself tantamounts to cruelty, but all the same, makes the purported medical prescription entirely irrelevant for adjudication of the appeal.
- 92.** *Sathyanath (supra)*<sup>12</sup> does not come to the aid of the appellant, since the Hon'ble Supreme Court, in the said judgment, merely observed that the objective of the provisions of Order XLI Rules 24 and 25 of the Code is that if evidence is recorded by the learned Trial Judge on all the issues, it would facilitate the First Appellate Court itself to decide the questions of fact, even by reformulating the issues if necessary. Only when the First Appellate

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<sup>12</sup> *Sathyanath and Another Vs. Sarojamani*, reported at (2022) 7 SCC 644



Court finds that there is no evidence led by the parties, the First Appellate Court can call upon the parties to lead evidence for such additional issue either before itself or before the Trial Court. This is not a case where no evidence was led by the parties. The parties contested the suit at length and adduced their independent evidence. Despite the same, no evidence was adduced by the appellant-wife regarding the allegation of forcible abortion at the behest of the respondent-husband.

- 93.** In any event, *Sathyanath (supra)*<sup>12</sup> does not lay down any proposition on Order XLI Rule 27 of the Code and on the face of the proposition laid down therein, it does come to the aid of the appellant in any manner whatsoever.
- 94.** Hence, no useful purpose would be served at all even if the document is permitted to produce as additional evidence, let alone the Appellate Court requiring such document to enable it to pronounce judgment. Hence, the said application, even if allowed, would serve no useful purpose. Hence, the application is hereby dismissed.
- 95.** In view of the above observations, the application for production of additional evidence as well as the appeal fails.

### **CONCLUSION**

- 96.** Accordingly, CAN 5 of 2026 is dismissed on contest.
- 97.** F.A.T. No. 100 of 2022 is dismissed on contest as well, thereby affirming the impugned judgment and decree of divorce dated December 30, 2021 passed by the learned Additional Principal Judge, Family Court at Calcutta in Matrimonial Suit No. 137 of 2015. The marriage between the parties is hereby dissolved by a decree of divorce.

- 98.** There will be no order as to costs.
- 99.** It is made clear that the above judgment shall not preclude the appellant-wife from applying for permanent alimony before the jurisdictional Court. If such an application is filed, the learned Trial Judge shall, upon permitting both parties to file their pleadings and affidavits of assets and upon giving an opportunity of hearing to both parties, decide the same independently in accordance with law, without being influenced unnecessarily by any of the observations made hereinabove.
- 100.** A formal decree be drawn up accordingly.

**(Sabyasachi Bhattacharyya, J.)**

I agree.

**(Supratim Bhattacharya, J.)**