Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8927-8928 OF 2012
[Arising out of S.L.P. (Civil) Nos. 37449-37450 of 2012
(CC.5877-5878 of 2012)]

U. Sree ... Appellant

Versus

U. Srinivas ... Respondent

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. The appellant-wife instituted F.C.O.P. No. 568 of 1997 under Section 9 of the Hindu Marriage Act, 1955 (for brevity 'the Act') in the Principal Family Court, Chennai for restitution of conjugal rights. The respondent-husband filed F.C.O.P. No. 805 of 1998 under Sections 13(1)(i-a), 26 and 27 of the Act read with Section 7 of the Family Courts Act, 1984 praying

for dissolution of marriage, custody of the child and return of jewellery and other items. The learned Family Judge jointly tried both the cases and, on the basis of the evidence brought on record, dismissed the application for restitution of conjugal rights preferred by the wife and allowed the petition of the husband for dissolution of marriage and held that the child would remain in the custody of the mother on the principle that welfare of the child is paramount, and further the husband was not entitled to return of jewels or any other item from the wife in the absence of any cogent evidence in that regard. The learned Family Judge, while passing the decree for dissolution of marriage, directed to pay permanent alimony of Rs. 5 lacs each to the wife and her minor son within a month.

3. Being dissatisfied by the common order, the appellant-wife preferred C.M.A. No. 1656 of 2010 and C.M.A. No. 1657 of 2010 in the High Court of Judicature at Madras and the Division Bench concurred with the conclusion as regards the decree

of dissolution of marriage as a consequence of which both the appeals had to meet the fate of dismissal. However, the Bench, apart from concurring with the grant of permanent alimony, directed the respondent-husband to pay a sum of maintenance amounting to Rs.12,500/- to the appellant-wife and her son from the date of order passed by the Chief Metropolitan Magistrate at Hyderabad till the date of the order passed by the High Court. Hence, the present two appeals have been preferred by special leave assailing the common judgment passed by the High Court in both the appeals.

4. The facts requisite to be stated for adjudication of the appeals are that the marriage between the appellant and the respondent was solemnized on 19.11.1994 at Tirupathi according to Hindu rites and customs. After entering into wedlock, they lived together at Vadapalani, Chennai. As tradition would warrant, she went to her parental home for delivery where a male child was born on 30th of May, 1995. The respondent celebrated the child's birth in his in-law's house and

thereafter, the wife stayed with her parents for sometime. She returned to Chennai on 4.10.1995 and there she lived with her husband till 3.1.1996. The case of the wife in her application for restitution of marriage is that on 3.1.1996, her father-in-law, without her consent, took her to her parental home and, thereafter, the husband without any justifiable reason withdrew from her society. All efforts made by her as well as by her parents to discuss with her husband and his family members to find out a solution went in vain. In this backdrop, a prayer was made for restitution of conjugal rights.

5. The husband resisted the aforesaid stand contending, inter alia, that there was total incompatibility in the marital relationship inasmuch as she found fault with his life style, his daily routine, his likes and dislikes and picked up quarrels on trivial issues. She threw tantrums only with the exclusive purpose that she should dominate the relationship and have her own way. At the time of practising and learning music in the presence of his father, who was also his “Guru”,

she hurled abuses and screamed which invariably followed with arguments and quarrels. Though she was expected, as per the customs, to show respect towards elders and to the senior artists, yet, throwing all traditional values to the wind, she would walk away by creating a scene to his utter embarrassment. His public image was totally ruined and reputation was mutilated. It was also alleged that she called her parents and threatened to initiate proceedings under the Indian Penal Code, 1860 with the help of her father, who was an I.A.S. officer in the Vigilance Department in the Government of Andhra Pradesh. With the efflux of time, the discord aggravated and the wife became more aggressive and did not allow her husband to go near her or the child. On 3.1.1996, when the wife expressed her desire to go to her parental home, he could not dare to object and she went with costly gifts received by him in India and abroad in recognition of his performance in music. Regard being had to the physical safety of the wife and the child, he

requested his father to escort them to Hyderabad. While she was at Hyderabad, she spread rumours among the relatives and friends pertaining to his fidelity, character and habits. It was further asserted by the husband that she had filed the petition only to harass him and, in fact, the manner in which he had been treated clearly exhibited mental cruelty and, therefore, the said relief should not be granted. It was averred that in view of the treatment meted out to the husband, dissolution of marriage was the only solution and not restitution of conjugal rights.

6. The respondent, in his petition for divorce, pleaded that after abandoning formal education, he pursued his career in music treating it as a concept of 'bhakti' or devotion. He had to continue his 'sadhana' as a daily routine under the guidance of his father as it was necessary to understand the nuances and the subtleties of music which could only be gathered by experience and acquisition of knowledge at the feet of a "guru" and also to keep alive "the Guru-Sishya Parampara". The aforesaid aspect of his life was not

liked by his wife and she always interrupted hurling abuses at him. Despite his best efforts to make his wife understand the family tradition and show reverence to the seniors in the sphere of music, she remained obstinate in her attitude and chose to walk away causing him not only embarrassment in public but also humiliation which affected his reputation and self respect. That apart, whenever the husband visited her at the parental home, he was deprived of conjugal rights and physically prevented from playing with the child. In spite of his sacrifice and efforts to adjust with her mental attitude, she remained adamant and her behavioural pattern remained painfully consistent. Gradually, her behaviour became very cruel and, eventually, he was compelled to file a case for judicial separation to which, as a counterblast, she filed a case for restitution of conjugal rights. She had communicated with her friends that she would like to see her husband behind bars on the ground of dowry harassment. She had also threatened that if he took part in any musical

concert at Hyderabad, his life shall be endangered. Put in such a situation, left with no other alternative, he was compelled to file a petition for dissolution of marriage.

7. As the factual narration would unfurl, the wife in the written statement asserted that she was aware of the importance of music, its traditional values and clearly understood the devotion and dedication as she herself was a `Veena' player and because of her sacrifice, her husband had gained reputation and popularity which also enhanced his financial status, but, with the rise, he failed to perform his duties as a husband. She denied the interruption in the practice sessions and controverted the factum of maltreatment. It was averred that as the husband had gained reputation, his parents and other relatives thought of a second marriage so that he could get enormous dowry. She denied the scandalous allegations and stated that she was proud of her husband's accomplishments. She justified her filing of petition before the Chief Metropolitan

Magistrate for grant of maintenance as he was absolutely careless and negligent to look after her and the child. It was further pleaded that the grounds mentioned in the petition were vexatious and frivolous and, therefore, there was no justification for grant of a decree of divorce.

8. The learned Family Judge framed seven issues and, considering the oral and documentary evidence brought on record, came to hold that the wife had treated the husband with cruelty; that she had not taken any steps for re-union and had deserted him for thirteen years without any valid reason and, hence, the husband was entitled for a decree of divorce and she was not entitled to have a decree for restitution of conjugal rights. The learned Family Judge directed that the custody of the child should remain with the mother and the husband had miserably failed to make out a case for return of jewels and other items. He granted permanent alimony as stated earlier.

9. Being grieved by the aforesaid decision of the learned Family Judge, the wife preferred two appeals. On behalf of the appellant-wife, it was urged before the High court that the judgment and decree passed by the Family Court regarding grant of divorce was passed on assumptions and presumptions; that she had suffered immense humiliation and hardship at the hands of the family members of the husband but the Family Court did not appreciate the said facet in proper perspective; that the finding relating to desertion by the wife was contrary to the evidence on record and, in fact, it was the case that the husband had left the wife in the lurch at her parental home and did not think for a moment to bring her back; that the allegation with regard to the interruption in the music learning sessions and her dislike of her husband had been deliberately stated to make out a case of mental cruelty; that certain documents had been placed reliance upon by the learned Family Judge though they were not admissible in evidence and further the documents

produced by the wife had not been properly appreciated and dealt with; and that the court below would have been well advised, in the obtaining factual matrix, to direct restitution of conjugal rights. It is worth noting that alternatively it was urged that the trial Court had committed an error in granting permanent alimony of Rs. 10 lacs in toto, regard being had to the income of the husband.

10. In appeal, the High Court, after noting the respective contentions advanced by the learned counsel for the parties, proceeded to appreciate the essential ingredients which are necessary to be established to sustain a petition under Section 9 of the Act. After referring to certain decisions in the field and the concept of mental cruelty as stated in Halsbury's Laws of England, 4th Edn., Vol. 13, para 623 and American Jurisprudence and the dictum laid down in ***N.G. Dastane v. S. Dastane[1], Rajani v. Subramaniam[2], Parveen Mehta v. Inderjit***

[1] (1975) 2 SCC 326
[2] AIR 1990 Kerala 1

Mehta[3], Gananath Pattnaik v. State of Orissa[4], Shobha Rani v. Madhukar Reddi[5], Manisha Tyagi v. Deepak Kumar[6], Sujata Uday Patil v. Uday Madhukar Patil[7], Chanderkala Trivedi v. Dr. S.P. Trivedi[8] and ***Pranay Majumdar v. Bina Majumdar[9],*** the High Court came to hold that the material brought on record showed that the wife had gone to the parental home on 3.1.1996 and made no efforts to get reunited with the husband and, as per the evidence on record, she had admitted in the testimony recorded in O.P. No. 568 of 1995 that the relations between her and her husband were cordial till she left the matrimonial home. The High Court found that her depositions were contradictory inasmuch as on one hand she had stated that she had been ill-treated and on the other that there was cordial relationship. As is noticeable, the High Court referred to the xerox copy of the letter Exhibit R-8 dated 18.10.1995 written in her handwriting to her

[3] (2002) 5 SCC 706
[4] (2002) 2 SCC 619
[5] (1988) 1 SCC 105
[6] (2010) 4 SCC 339
[7] (2006) 13 SCC 272
[8] (1993) 4 SCC 232
[9] (2007) 9 SCC 217

parents and observed that when the said letter was summoned from her father she stated that there was no such letter and on that ground the admissibility was called in question. The High Court opined that when the efforts were made to get the primary evidence and it could not be obtained, the secondary evidence could be adduced and that would be admissible under Section 65 of the Evidence Act. Be it noted, the English translation of the said letter was marked as Exhibit R-9 which indicated that the wife had clearly stated that she had spoken ill of her mother-in-law and others and had expressed her desire to seek divorce as she could not stay any longer in the matrimonial home. It was observed by the Bench that the conduct of the wife clearly established desertion and her behaviourial pattern exhibited mental cruelty meted out to the husband. The High Court also took note of the fact that a stage had reached where it had become well nigh impossible for the couple to live together. Regard being had to the totality of the circumstances, the

High Court gave the stamp of approval to the common judgment and decree passed by the learned Family Court.

11. We have heard Mrs. K. Sarada Devi, learned counsel for the appellant, and Mr. K. Ramamoorthy, learned senior counsel for the respondent. It is contended by Mrs. Sarada Devi that the learned Family Judge as well as the High Court had failed to appreciate that neither mental cruelty nor desertion had been established as per the law. It is contended by her that Exh. R-8 and R-9 were not admissible in evidence inasmuch as they could not be treated as secondary evidence as envisaged under Section 65 of the Evidence Act. It is further urged that the whole decision for granting divorce and denying restitution of conjugal rights has been based regard being had to the total break down of marriage but the said ground is not a legally permissible one to grant divorce.

12. Mr. K. Ramamoorthy, learned senior counsel appearing for the respondent, per contra, would

submit that the said observation is one of the facets, but the High Court has, after due deliberations, returned findings relating to cruelty and desertion and the same being founded on proper appreciation of the material on record, this Court should not interfere in exercise of appeal entertained by grant of leave under Section 136 of the Constitution of India.

13. At this juncture, we may note with profit that as a matter of fact, the High Court has observed that it has become well nigh impossible for the husband and the wife to live together and the emotional bond between the parties is dead for all purposes. We have noted this aspect for completeness, but we will not address the said facet and will restrict our delineation only towards the justifiability of the conclusions pertaining to mental cruelty and desertion.

14. Before we dwell upon the tenability of the conclusions of desertion and mental cruelty, we think it condign to deal with the submission whether the photostat copy of the letter alleged to have been written

by the wife to her father could have been admitted as secondary evidence. As the evidence on record would show, the said letter was summoned from the father who had disputed its existence. The learned Family Court Judge as well as the High Court has opined that when the person is in possession of the document but has not produced the same, it can be regarded as a proper foundation to lead secondary evidence. In this context, we may usefully refer to the decision in ***Ashok Dulichand v. Madahavlal Dube***[10] wherein it has been held that according to clause (*a*) of Section 65 of the Indian Evidence Act, secondary evidence may be given of the existence, condition or contents of a document when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the court, or of any person legally bound to produce it, and when, after the notice mentioned in Section 66, such person does not produce it. Thereafter, the Court addressed to the facts of the case and opined thus: -

[10] (1975) 4 SCC 664

> "In order to bring his case within the purview of clause (*a*) of Section 65, the appellant filed applications on July 4, 1973, before Respondent 1 was examined as a witness, praying that the said respondent be ordered to produce the original manuscript of which, according to the appellant, he had filed photostat copy. Prayer was also made by the appellant that in case Respondent 1 denied that the said manuscript had been written by him, the photostat copy might be got examined from a handwriting expert. The appellant also filed affidavit in support of his applications. It was, however, nowhere stated in the affidavit that the original document of which the photostat copy had been filed by the appellant was in the possession of Respondent 1. There was also no other material on the record to indicate that the original document was in the possession of Respondent 1. The appellant further failed to explain as to what were the circumstances under which the photostat copy was prepared and who was in possession of the original document at the time its photograph was taken. Respondent 1 in his affidavit denied being in possession of or having anything to do with such a document."

Be it noted, in this backdrop, the High Court had recorded a conclusion that no foundation had been laid by the appellant for leading secondary evidence in the shape of the photostat copy and this Court did not perceive any error in the said analysis.

15. In ***J. Yashoda v. K. Shobha Rani***[11], after analyzing the language employed in Sections 63 and 65 (a), a two-Judge Bench held as follows:-

> "Section 65, however permits secondary evidence to be given of the existence, condition or contents of documents under the circumstances mentioned. The conditions laid down in the said section must be fulfilled before secondary evidence can be admitted. Secondary evidence of the contents of a document cannot be admitted without non-production of the original being first accounted for in such a manner as to bring it within one or other of the cases provided for in the section."

16. In ***M. Chandra v. M. Thangamuthu and Other***[12]**,** It has been held as follows:-

> "It is true that a party who wishes to rely upon the contents of a document must adduce primary evidence of the contents, and only in the exceptional cases will secondary evidence be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which it may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasised that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where a

[11] (2007) 5 SCC 730

[12] (2010) 9 SCC 712

> party is genuinely unable to produce the original through no fault of that party."

17. Recently, in ***H. Siddiqui (Dead) by Lrs. v. A. Ramalingam***[13]**,** while dealing with Section 65 of the Evidence Act, this Court opined though the said provision permits the parties to adduce secondary evidence, yet such a course is subject to a large number of limitations. In a case where the original documents are not produced at any time, nor has any factual foundation been laid for giving secondary evidence, it is not permissible for the court to allow a party to adduce secondary evidence. Thus, secondary evidence relating to the contents of a document is inadmissible, until the non-production of the original is accounted for, so as to bring it within one or other of the cases provided for in the section. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It has been further held that mere admission of a document in evidence does not amount to its proof. Therefore, it is the obligation of the Court to decide the question of admissibility of a

[13] (2011) 4 SCC 240

document in secondary evidence before making endorsement thereon.

18. In the case at hand, the learned Family Judge has really not discussed anything relating to foundational evidence. The High Court has only mentioned that when the letter was summoned and there was a denial, the secondary evidence is admissible. In our considered opinion, such a view is neither legally sound nor in consonance with the pronouncements of this Court and, accordingly, we have no hesitation in dislodging the finding on that score.

19. The next facet which is to be dwelled upon is whether the appellant had treated her husband with mental cruelty. The legal sustainability of the said conclusion has to be tested keeping the photostat copy of the letter out of consideration. At the very outset, we may state that there is no cavil over the proposition as to what cruelty includes. Regard being had to the same, we shall refer to certain authorities.

20. In ***Samar Ghosh v. Jaya Ghosh***[14]***,*** a three-Judge Bench, after dealing with the concept of mental cruelty, has observed thus:-

> "*99*. … 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.
>
> *100*. 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…."

21. In ***Ravi Kumar v. Julmidevi***[15]***,*** this Court has expressed thus: -

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[14] (2007) 4 SCC 511

[15] (2010) 4 SCC 476

> "In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty.
>
> 20. Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial cases can be of infinite variety —it may be subtle or even brutal and may be by gestures and words."

22. Recently, this Court, in ***Vishwanath Agrawal, s/o Sitaram Agrawal v. Sarla Vishwanath Agrawal***[16]**,** while dealing with the conception of cruelty, has stated that it has inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperament and emotions that have been conditioned by the social status. The two-Judge

[16] (2012) 7 SCC 288

Bench referred to the decisions in ***Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasikhan***[17]***,*** ***Shobha Rani*** (supra)***, Sheldon v. Sheldon***[18]***, V. Bhagat v. D. Bhagat***[19]***, Parveen Mehta*** (supra)***, Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate***[20]***, A. Jayachandra v. Aneel Kaur***[21]***, Vinita Saxena v. Pankaj Pandit***[22]***, Samar Ghosh*** (supra) and ***Suman Kapur v. Sudhir Kapur***[23]***,*** and opined that when the evidence brought on record clearly establish a sustained attitude of causing humiliation and calculated torture on the part of the wife to make the life of the husband miserable, it would amount to mental cruelty. Emphasis was laid on the behavioral pattern of the wife whereby a dent is created in the reputation of the husband, regard being had to the fact that reputation is the salt of life.

23. In the case at hand, the husband has clearly deposed about the constant and consistent ill-treatment meted out

[17] (1981) 4 SCC 250
[18] (1966) 2 WLR 993
[19] (1994) 1 SCC 337

[20] (2003) 6 SCC 334
[21] (2005) 2 SCC 22
[22] (2009) 1 SCC 422
[23] (2009) 1 SCC 422

to him by the wife inasmuch as she had shown her immense dislike to his “sadhna” in music and had exhibited total indifference and, in a way, contempt to the tradition of teacher and disciple. It has graphically been demonstrated that she had not shown the slightest concern for the public image of her husband on many an occasion by putting him in a situation of embarrassment leading to humiliation. She has made wild allegations about the conspiracy in the family of her husband to get him re-married for the greed of dowry and there is no iota of evidence on record to substantiate the same. This, in fact, is an aspersion not only on the character of the husband but also a maladroit effort to malign the reputation of the family. The learned Family Judge as well as the High Court has clearly analysed the evidence and recorded a finding that the wife had treated the husband with mental cruelty. True it is, there is some reference in that regard to the photostat copy of the letter which we have not accepted as admissible in evidence but the other evidence brought on record clearly support the findings

recorded by the learned Family Judge and the High Court and the said finding remains in the realm of fact.

24. This Court, in ***State of U. P. v. Babul Nath***[24]***,*** while considering the scope of Article 136 as to when this Court is entitled to upset a finding of fact, has observed thus: -

> "*5*. At the very outset we may mention that in an appeal under Article 136 of the Constitution this Court does not normally reappraise the evidence by itself and go into the question of credibility of the witnesses and the assessment of the evidence by the High Court is accepted by the Supreme Court as final unless, of course, the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record."

25. In ***Bharat Coking Coal Ltd. v. Karam Chand Thapar & Bros. Pvt. Ltd.***[25]***,*** this Court opined that the jurisprudence under Article 136 stands out to be extremely wide but that does not, however, warrant intervention in a situation having concurrent set of facts and an appeal therefrom on the factual issue. The article

[24] (1994) 6 SCC 29

[25] (2003) 1 SCC 6

has been engrafted by the founding fathers of the Constitution for the purposes of avoiding mischief and injustice on the wrong assumption of law. The justice delivery system of the country prompts this Court to interfere under Article 136 of the Constitution when the need of the society stands established and the judgment, if left outstanding, would not only create prejudice but would also have an otherwise adverse effect on the society. Further elaborating, the Bench ruled thus:-

> "The jurisdiction under Article 136 stands out to be extremely wide but that does not, however, warrant intervention having concurrent set of facts and an appeal therefrom on the factual issue. The article has been engrafted by the founding fathers of the Constitution for the purposes of avoiding mischief of injustice on the wrong assumption of law. The justice delivery system of the country prompts this Court to interfere under Article 136 of the Constitution when the need of the society stands established and the judgment, if left outstanding, would not only create prejudice but would have an otherwise adverse effect on to the society — it is this solemn objective of administration of justice with which the Constitution-makers thought it prudent to confer such a power on to the Apex Court of the country. It is the final arbiter but only when the dispute needs to be settled by the Apex Court so as to avoid injustice and infraction of law."

26. In ***Ganga Kumar Srivastava v. State of Bihar***[26]**,** after referring to the earlier authorities, this Court culled out certain principles which would invite exercise of power of this Court under Article 136 of the Constitution:-

> (*i*) The powers of this Court under Article 136 of the Constitution *are very wide* but in criminal appeals this Court does not interfere with the concurrent findings of fact *save in exceptional circumstances*.
>
> (*ii*) It is open to this Court to interfere with the findings of fact given by the High Court, if the High Court has *acted perversely or otherwise improperly*.
>
> (*iii*) It is open to this Court to invoke the power under Article 136 only in *very exceptional circumstances* as and when a question of law of general public importance arises *or a decision shocks the conscience of the Court*.
>
> (*iv*) When the evidence adduced by the prosecution *fell short of the test of reliability and acceptability* and as such it is highly unsafe to act upon it.
>
> (*v*) Where the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or *where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record*.

[26] (2005) 6 SCC 211

27. In ***Dubaria v. Har Prasad and Another***[27]**,** it has been held that when there is infirmity in the decision because of excluding, ignoring and overlooking the abundant materials and the evidence, if considered in proper perspective, would have led to conclusion contrary to the one taken by both the High Court as well as the fora below, it would be open to this Court to interfere with the concurrent findings of fact.

28. Tested on the touchstone of the aforesaid principles, we have no trace of doubt that the finding returned by the Family Judge which has been given the stamp of approval by the High Court relating to mental cruelty cannot be said to be in ignorance of material evidence or exclusion of pertaining materials or based on perverse reasoning. In our view, the conclusion on that score clearly rests on proper appreciation of facts and, hence, we concur with the same.

29. Presently, we shall advert to the finding recorded by the learned Family Judge and the High Court relating to desertion by the wife. As the factual matrix would reveal,

[27] (2009) 9 SCC 346

both the Courts have proceeded on the base that the wife had not endeavored to reunite herself with the husband and there had long lapse of time since they had lived together as husband and wife. On the aforesaid foundation, the conclusion has been drawn that there is an *animus descerendi* on the part of the wife. To test the tenability of the said conclusion, we have perused the petition for divorce from which it is evident that there is no pleading with regard to desertion. It needs no special emphasis to state that a specific case for desertion has to be pleaded. It is also interesting to note that the petition was not filed seeking divorce on the ground of desertion but singularly on cruelty. In the absence of a prayer in that regard, we are constrained to hold that the conclusion arrived at as regards desertion by the learned Family Judge which has been concurred with by the High Court is absolutely erroneous and, accordingly, we overturn the same.

30. From the foregoing analysis, it is established that the husband has proved his case of mental cruelty which was the foundation for seeking divorce. Therefore, despite

dislodging the finding of desertion, we conclude and hold that the respondent husband has rightly been granted a decree of divorce.

31. The next issue that emerges for consideration pertains to the grant of permanent alimony. It is noticeable that the wife had filed a case for grant of maintenance and residence under the Hindu Adoptions and Maintenance Act, 1956 at Hyderabad. The High Court has granted Rs. 12,500/- per month from the date of filing of the petition for maintenance and Rs.5 Lacs each to the wife and son towards permanent alimony. Whether the High Court should have granted Rs.12500/- as maintenance need not be addressed by us inasmuch as we are inclined to deal with this issue of grant of permanent alimony in a different backdrop. As is evincible from the orders of this Court when the matters were listed on 9.4.2012, the Court had taken note of the fact that the wife and son have been living separately at Hyderabad for about 16 years and, in that context, the following order was passed :-

> "Looking to the financial and social status of the parties, we request the learned senior counsel appearing for the respondent to ask his client to arrange for one flat for the petitioner and their so that they can live in the said flat comfortably.
>
> On this suggestion, being given by the Court, learned senior counsel appearing for the respondent prayed for time to seek instructions."

32. On 30.4.2012, the following order came to be passed:-

> "As per the Order passed by this Court on 09.04.2012, learned senior counsel appearing for the respondent-husband informed that respondent is ready and willing to buy a flat for the petitioner in Hyderabad, so that she will have a roof over her head for all the times to come.
>
> However, the details of the same are required to be worked out.
>
> It is, therefore, desirable that both the parties should remain present in this Court on 10.07.2012.
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> Without prejudice, a sum of Rs. 10 lakhs by way of Demand Draft is being paid by the respondent- husband to petitioner-wife. Other Rs. 10 lakhs is in deposit with the Family Court at Chennai. Petitioner will be at liberty to withdraw this amount."

33. We have reproduced the aforesaid orders to highlight that the husband had agreed to buy a flat at Hyderabad. However, when the matter was listed thereafter, there

was disagreement with regard to the locality of the flat arranged by the husband and, therefore, the matter was heard on merits. We have already opined that the husband has made out a case for divorce by proving mental cruelty. As a decree is passed, the wife is entitled to permanent alimony for her sustenance. Be it stated, while granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. In ***Vinny Parmvir Parmar v. Parmvir Parmar***[28]***,*** while dealing with the concept of permanent alimony, this Court has observed that while granting permanent alimony, the Court is required to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party.

[28] (2011) 13 SCC 112

34. Keeping in mind the aforesaid broad principles, we may proceed to address the issue. The respondent himself has asserted that he has earned name and fame in the world of music and has been performing concerts in various parts of India and abroad. He had agreed to buy a flat in Hyderabad though it did not materialise because of the demand of the wife to have a flat in a different locality where the price of the flat is extremely high. Be that as it may, it is the duty of the Court to see that the wife lives with dignity and comfort and not in penury. The living need not be luxurious but simultaneously she should not be left to live in discomfort. The Court has to act with pragmatic sensibility to such an issue so that the wife does not meet any kind of man-made misfortune. Regard being had to the status of the husband, the social strata to which the parties belong and further taking note of the orders of this Court on earlier occasions, we think it appropriate to fix the permanent alimony at Rs 50 lacs which shall be deposited before the learned Family Judge within a period of four months out of which Rs.20 lacs shall be kept in a fixed deposit in the name of the son in a

nationalized bank which would be utilised for his benefit. The deposit shall be made in such a manner so that the respondent wife would be in a position to draw maximum quarterly interest. We may want to clarify that any amount deposited earlier shall stand excluded.

35. On the basis of the forgoing discussion, the decree for dissolution of marriage is affirmed only on the ground of mental cruelty which eventually leads to dismissal of the appeals. The parties shall bear their respective costs.

.....J.
[K. S. Radhakrishnan]

New Delhi; .....J.
December 11, 2012 [Dipak Misra]