

Before M. Jeyapaul & Augustine George Masih, JJ.

DINESH KOTWAL—Appellant

versus

ANJU KOTWAL—Respondent/X-Objector

**FAO-M No. 195 of 2010 and
X-Objections-62-CII of 2010**

April 06, 2017

A. *Hindu Marriage Act, 1955—S.13(1)(i-a)—Divorce—Wife practicing reiki—Allegation of cruelty and desertion by husband—Wife's stand she learnt reiki to acquire peace of mind—Not established that wife renounced the world—No ground for divorce.*

Held that, there is no evidence to establish that the respondent is practicing as a reiki healer, in spite of the fact that the respondent disputed such allegation. The respondent has rightly took a stand that she had learnt reiki to acquire peace of mind. Unless it is established that a spouse has renounced the world, mere allegation that a spouse has learnt reiki cannot at all be a ground for divorce.

(Para 10)

Further held that, therefore, on the basis of general allegations made by the appellant against the respondent as regards cruelty and desertion, the appellant is not entitled to a decree of divorce as rightly held by the learned trial Court.

(Para 11)

B. *Hindu Marriage Act, 1955—S.13(1)(i-a)—Divorce—Cruelty—Allegation of Extra marital relationship of husband during pendency of main petition—Held, allegation of cruelty either in written statement or in proceedings subsequent thereto, would not amount to cruelty unless established that such allegation of cruelty levelled with ulterior motive to tarnish image and reputation of husband.*

Held that, allegation of cruelty made by the wife either in the written statement or in the proceedings subsequent thereto, would not, per se, amount to cruelty. But if it is factually established that such an allegation of cruelty has been leveled with an ulterior motive to tarnish the image and reputation of the appellant, it will definitely amount to

cruelty. Allegation of adultery if found factually true would never amount to cruelty.

(Para 25)

C. Hindu Marriage Act, 1955—S.13(1)(i-b)—Divorce—Adultery—Letter written by husband to wife establishes that he developed intimacy outside his marital relationship— Photographs show that husband developed intimacy with woman as alleged by wife— Allegation of adultery against husband not unfounded.

Held that, admittedly written by the appellant to the respondent-wife. Of course, as contended by learned counsel for the appellant, it may be a self-reflection. But the fact remains that such a self-reflection had been couched in the form of a letter to the respondent. The appellant has categorically admitted that this letter was written by him to his wife. The seminal lines found in the letter addressed by the appellant to his wife clearly establish without any ambiguity that he had developed intimacy at least with one woman outside his marital relationship, as rightly alleged by the respondent-wife.

(Para 29)

Further held that, photographs Ex.P15 to Ex.P17 completely clinch the issue that the appellant had developed intimacy with the woman alleged by the respondent. Therefore, we have no hesitation to hold that the respondent-wife has not come out with any unfounded allegation of adultery. We are of the firm view that her allegation is loaded with truth.

(Para 30)

D. Civil Procedure Code,1908—O.1, Rl.10—Hindu Marriage Act, 1955—S.13—Impleadment of woman alleged in extra-marital affair—Held, no provision under the Act, 1955 which mandates that such a party should be impleaded.

Held that, learned counsel appearing for the appellant submitted that Lillu Chaudhary, the woman referred to by the respondent, cannot be condemned without giving a fair hearing. In the fact of the above materials in the shape of Ex.P15 to P17 and Ex.P21, impleadment of Lillu Chaudhary is only an empty formality. Even otherwise, under the scheme of Hindu Marriage Act, 1955, there no provision which mandates that such a party should be impleaded before ever granting the relief sought for under Section 13 of the said Act. Therefore, the above submission made by learned counsel appearing for the appellant is found to be not impressive.

(Para 32)

E. *Hindu Marriage Act, 1955—S.13(1)(i-b)—Cross-objections by wife for dismissal of divorce petition filed by husband on the ground that cruelty alleged by husband condoned by him during pendency of proceedings—Held, except admission made by husband that he had to be in the company of wife along with children who had come from foreign country, no evidence to establish that husband and wife started cohabiting with each other after petition for divorce was filed by husband.*

Held that, cross-objections raised by the respondent-wife. She has filed an application before the trial Court praying for dismissal of the petition filed under Section 13 of the Hindu Marriage Act, 1955 by the husband seeking divorce on the ground of cruelty, as the appellant and the respondent had reunited and started living together happily. Except the admission made by the appellant that he had to be in the company of the respondent along with the children who had come down from foreign country, there is no evidence to establish that the appellant and the respondent have started cohabiting with each other after the petition for divorce was filed by the appellant.

(Para 33)

Further held that, trial Court has rightly rejected the application praying for dismissal of the petition filed by the appellant for divorce on the plea that they had joined and started living together as husband and wife which would amount to condoning the cruelty allegedly committed by the respondent.

(Para 34)

Raman Mahajan, Advocate
for the appellant.

Rajiv Kataria, Advocate
for the respondent/X-Objector.

M. JEYAPPAUL, J.

(1) Appellant-husband Dinesh Kotwal has challenged the dismissal of his petition filed under Section 13 of the Hindu Marriage Act, 1955 seeking divorce on the grounds of desertion and cruelty. The respondent-wife Anju Kotwal has challenged in her X-objections the rejection of her application praying for dismissal of the petition filed by her husband, the appellant herein, on the ground that cruelty alleged by her husband had been condoned by him during the pendency of

proceedings.

(2) The brief facts of the petition filed by the appellant are that the marriage of the appellant with the respondent was solemnized in the month of March, 1981 at Bhopal as per Hindu rites and ceremonies. They were blessed with one male child on 15.1.1982 and a female child on 15.12.1983. Though the appellant took care of the respondent, the attitude of the respondent was indifferent and arrogant towards the appellant. The respondent had developed hatred towards the appellant and his parents and had been successful in isolating the appellant from his parents. The respondent had been very cunning and selfish. She used to pick up quarrels without any rhyme or reason. In the month of May, 1988, the appellant was transferred to Jodhpur. But the respondent refused to accompany him. The respondent is working as Reiki Healer. She is of dubious and vicious nature. The appellant visited his house at Panchkula during the month of September, 2000. The behaviour of the respondent was abnormal and arrogant and as a result of which the appellant had to abandon his own house and spend the night at railway station before returning to Jodhpur. The respondent came along with daughter born out of the wedlock to Jodhpur and created violent scenes. Even after the appellant was transferred to Chandigarh in the month of May 2001, the respondent did not give any attention to the appellant. She, in fact, completely renounced the world and is dedicated herself to reiki. For all the above reasons the appellant has sought for divorce.

(3) The brief averments made by the respondent-wife in the written statement are that she was always respectable to the appellant and his parents. She never committed cruelty as alleged by the appellant. It was only the appellant who committed acts of cruelty. She had been serving and looking after the appellant to the best of her capability. The appellant had not taken his family to Jodhpur on the ground that he did not have a good accommodation at Jodhpur. The respondent had learnt reiki for her own peace, but she never worked as reiki healer. The appellant used to treat the respondent and her children as intruders as and when they visited Jodhpur. On 25.1.2001, when the respondent along with her daughter reached Jodhpur, the appellant did not allow them to enter into his house. They were helped by a neighbour who called the police. The appellant informed the respondent that he wanted to remarry and appealed to the respondent to agree for mutual divorce. He gave some photographs of a lady whom he wanted to remarry. As the respondent did not agree for the proposal of the appellant, she was severely beaten by the appellant. Contending that the

appellant had come out with false and frivolous allegations, the respondent prayed for dismissal of the petition filed under Section 13 of the Hindu Marriage Act.

(4) The respondent filed an application during the pendency of the petition filed by the appellant under Section 13 of the Hindu Marriage Act praying for dismissal of the petition for the simple reason that the appellant had condoned the alleged cruelty. The appellant rejoined the respondent on 22.7.2007. The appellant and the respondent proceeded to Bombay, Shirdi, Alora and Goa from 16.9.2008 to 24.9.2008. The respondent joined the appellant at Lucknow where he had been transferred and lived with him for about 4 days. It was contended by the respondent that the acts of cruelty alleged by the appellant against the respondent had been condoned by him. Therefore, the petition filed under Section 13 of the Hindu Marriage Act deserves to be dismissed.

(5) The appellant submitted a reply to the above application disputing the core allegation that he rejoined the respondent and lived with her happily right from 22.7.2007.

(6) On the side of the appellant, he was examined as PW1 and one Dalbir Singh as PW2 and Bihar Lal, Clerk as PW3. The respondent had examined herself as RW1.

(7) The trial Court having analyzed the entire evidence on record came to the conclusion that the appellant had come out with general allegation of cruelty. No specific incident of cruelty was averred to and established by the appellant. Though the trial Court found that there was no substance in the application filed by the respondent praying for dismissal of the petition filed by the appellant on the ground that he had condoned the act of cruelty, the trial Court dismissed the petition filed by the appellant as he failed to establish the grounds alleged.

(8) We heard the elaborate submissions made by learned counsel appearing for the appellant and the counsel appearing for the respondent.

(9) It has been alleged by the appellant that the attitude of the respondent was indifferent and arrogant towards him. The outcome of the alleged indifferent attitude and the arrogance of the respondent was not at all detailed in the petition, nor was any evidence let-in with respect thereto. There was no evidence as to what sort of hatred was developed by the respondent towards the appellant. No details of

cunning and selfish nature of the respondent had been portrayed by the appellant. It was alleged that the respondent used to pick up quarrels without any rhyme or reason. Petty quarrels in the family are the direct outcome of the wear and tear in the matrimonial life. But the same cannot be a ground for divorce.

(10) There is no evidence to establish that the respondent is practicing as a reiki healer, in spite of the fact that the respondent disputed such allegation. The respondent has rightly took a stand that she had learnt reiki to acquire peace of mind. Unless it is established that a spouse has renounced the world, mere allegation that a spouse has learnt reiki cannot at all be a ground for divorce.

(11) Therefore, on the basis of general allegations made by the appellant against the respondent as regards cruelty and desertion, the appellant is not entitled to a decree of divorce as rightly held by the learned trial Court.

(12) Learned counsel appearing for the appellant vehemently submitted that the allegation made in the written statement that the appellant had expressed his desire to marry another lady showing a photograph would amount to cruelty, as it had caused pain and agony to the appellant. Further, referring to the averments in the application filed by the appellant seeking amendment of the pleadings which was dismissed by the trial Court and ultimately dismissed by the revisional Court as well the application filed praying for dismissal of the petition under Section 13 of the Hindu Marriage Act on the ground that the appellant had condoned the cruelty, he submitted that the respondent has specifically alleged without any basis that the appellant had developed extra marital relationship with one Lillu Chaudhary which would definitely amount to cruelty, as it has caused pain and agony to the appellant. Despite the fact that there was no specific issue framed by the trial Court as to whether the appellant is entitled to divorce on the allegation of extra marital relationship levelled by the respondent, inasmuch as the parties have let-in evidence to establish such an allegation and controvert the same through their respective evidence, the trial Court should have granted the relief of divorce sought for by the appellant.

(13) *Per contra*, learned counsel for the respondent referring to a decision of the Division Bench of this Court submitted that unless the appellant amended the pleadings seeking divorce on the ground that the respondent had alleged extra marital relationship which caused cruelty to him and the trial Court framed relevant issues permitting the parties

to lead evidence relating thereto, the Court cannot jump to a conclusion that there was cruelty on account of the allegation made by the respondent as regards the extra marital relationship of the appellant in the application filed during the pendency of the main petition under Section 13 of the Hindu Marriage Act. It is his further submission that the respondent had, in fact, adduced evidence to substantiate her allegation that the appellant had developed close intimacy with a lady. Further, it is his submission that the petition filed by the appellant under Section 13 of the Hindu Marriage Act on the ground of cruelty should have been thrown out based on the application filed by the respondent giving graphic account of the reunion of the parties which would amount to condonation of cruelty, if any.

(14) In *Paras Ram* versus *Kamlesh*¹, the Division Bench of this Court has held as follows:-

“13. Once the aforesaid conclusion has been arrived at that a mere allegation of adultery without more does not amount to legal cruelty. It is manifest that in order to succeed on this ground the petitioner must establish the falsity of such an allegation. The burden of proof, however, being a negative burden would in the initial stage be a light one. It would, therefore, become necessary that the petitioner in such a situation would have to amend the petition and plead the false allegation of adultery amounting to cruelty as a specific ground for matrimonial relief. It is only when this has been made a ground of attack that the petitioner can possibly take advantage of such an allegation, if proved false. Unless the truth or falsity of such allegation made in the written statement is put to trial in the manner aforesaid and it is established one way or the other no legal consequences can flow therefrom for the purpose of Section 13(1)(1a) of the Act. It is, therefore, necessary in such a situation that not only the requisite amendment should be made but a specific and clear issue with regard thereto be framed so that the parties should go to trial thereon with their eyes open. We cannot but view with disfavour the framing of rather omnibus issue in matrimonial matters as appears to be the situation in the solitary issue framed in his case.”

¹ 1982 AIR(Punjab) 60

(15) That was a case where the respondent-wife filed a written statement and subsequently sought amendment thereof alleging specifically that the appellant-husband had illicit relations with some women in the village. It was argued based on such averment in the written statement that the allegation of extra martial relationship made by the wife in the written statement would *per se* amount to legal cruelty. But the Court in the above decision had held that factually true allegation of adultery would never amount to cruelty. But this Court has observed that the appellant would have to amend the petition in the light of the allegations made in the written statement by the respondent and plead for the relief of divorce on the allegation of adultery amounting to cruelty. After the requisite amendment was made with the permission of the Court, specific issue with regard thereto will have to be framed to enable the parties to lead evidence touching upon the above specific issue.

(16) Citing the following decisions of the Hon'ble Supreme Court, it was argued by learned counsel appearing for the respondent that subsequent events shall be taken into consideration to arrive at the conclusion that cruelty was committed. There was no necessity for the appellant to take steps to amend the petition and persuade the Court to formulate necessary issues, as held by the Division Bench of this Court.

(17) In *Dr. (Mrs.) Malathi Ravi, M.D. versus Dr. B.D. Ravi, M.D.*², it has been held by the Hon'ble Supreme Court as follows:-

“23. From the acceptance of the reasons of the High Court by this Court, it is quite clear that subsequent events which are established on the basis of non-disputed material brought on record can be taken into consideration. Having held that, the question would be whether a decree for divorce on the ground of mental cruelty can be granted. We have already opined that the ground of desertion has not been proved. Having not accepted the ground of desertion, the two issues that remain for consideration whether the issue of mental cruelty deserves to be accepted in the obtaining factual matrix in the absence of a prayer in the relief clause, and further whether the situation has become such that it can be held that under the existing factual scenario it would not be proper to keep the marriage ties alive. Learned counsel for the appellant has urged with vehemence that when

² 2014 (3) RCR (Civil) 621

dissolution of marriage was sought on the ground of desertion alone, the issue of mental cruelty can neither be raised nor can be addressed to. Regard being had to the said submission, we are constrained to pose the question whether in a case of the present nature we should require the respondent- husband to amend the petition and direct the learned Family Judge to consider the issue of mental cruelty or we should ignore the fetter of technicality and consider the pleadings and evidence brought on record as well as the subsequent facts which are incontrovertible so that the lis is put to rest. In our considered opinion the issue of mental cruelty should be addressed to by this Court for the sake of doing complete justice. We think, it is the bounden duty of this Court to do so and not to leave the parties to fight the battle afresh after expiry of thirteen years of litigation. Dealing with the plea of mental cruelty which is perceptible from the material on record would not affect any substantive right of the appellant. It would be only condoning a minor technical aspect.”

(18) In the above case, it has been categorically held by the Hon'ble Supreme Court that subsequent events which are established on the basis of non-disputed materials brought on record can be taken into consideration by the Court. The Court can ignore the technical plea that, as per the procedure, amendment should have been introduced with regard to the subsequent events in the pleadings of the parties. The Court is well within its rights to consider the pleadings and the evidence brought on record as well as the subsequent facts and pass a judgement.

(19) In *Vishwanath versus San. Sarla Vishwanath Agrawal, JT*³, it has been observed as follows:-

“36. Presently to the subsequent events. The courts below have opined that the publication of notice in the daily “Lokmat” and the occurrence that took place on 1 .10.1995 could not be considered as the said events occurred after filing of the petition for divorce. Thereafter, the courts below have proceeded to deal with the effect of the said events on the assumption that they can be taken into consideration. As far as the first incident is concerned, a

³ 2012(6) SC 62

view has been expressed that the notice was published by the wife to safeguard the interests of the children, and the second one was a reaction on the part of the wife relating to the relationship of the husband with Neeta Gujrathi. We have already referred to the second incident and expressed the view that the said incident does not establish that there was an extra marital relationship between Neeta and the appellant. We have referred to the said incident as we are of the considered opinion that the subsequent events can be taken into consideration. In this context, we may profitably refer to the observations made by a three-Judge Bench in the case of A. Jayachandra (supra) :-

“The matter can be looked at from another angle. If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct.”

(20) A plea was set up in the above case which had arisen out of the matrimonial dispute between the spouses that an event which took place subsequent to the filing of the petition for divorce shall not be considered. But the Hon'ble Supreme Court was firm in its view that acts subsequent to the filing of the petition can be taken into consideration. When the plea of condonation of cruelty can be permitted to be taken up during the course of proceedings, subsequent event which may amount to cruelty can also be permitted to be taken up by the spouse concerned.

(21) In *Nedunuri Kameswaramma* versus *Sampati Subba Rao*⁴, it has been held by the Hon'ble Supreme Court as follows:-

“The appellant had already pleaded that this was jeroyti land, in which a pasta in favour of her predecessors existed, and had teased the suit on a kadapa, which showed a sub-tenancy. It was the respondent who had pleaded that this was a Dharmila inam and not jeroyti land, and that he was in possession of the kudiwaram rights though his predecessors for over a hundred years, and had become an occupancy tenant. Though the appellant had not mentioned a Karnikam service inarm, parties well understood that the two cases opposed to each other were of Dharmila

⁴ 1963 AIR (SC) 884

Sarvaumbala inam as against a Karnikam service inam. The evidence which has been led in the case clearly showed that the respondent attempted to prove that this was a Dharmila inam and to refute that this was a Karnikam service inam. No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case.”

(22) In the above case, the parties having well understood the pleadings, let in evidence touching upon the core issue involved in the case. Under such circumstances, it was held by the Hon'ble Supreme Court that failure on the part of the trial Court to frame a particular issue would not prove fatal to the case.

“Furthermore, as indicated hereinbefore, the plaintiff sought for a decree for eviction against the defendant also on the ground of commission of nuisance. It is true that the trial court did not frame any specific issue therefor but a bare perusal of the judgment passed by the learned trial court will clearly demonstrate that the parties were aware thereof and not only adduced evidence in that behalf but also advanced their respective submission in relation thereto. The court of appeal formulated two specific questions, for determination of the appeal, one of them being:

“Whether the appellant had created nuisance in the premises in question?”

It was held:

“On the point of nuisance, though, no issue was framed by the lower court yet it is clear on the basis of relevant pleadings and evidence produced that the parties were well familiar with the existence of the said issues. Under the circumstances, in face of the want of framing of issues, the prejudice was not caused nor the proceedings were vitiated, it is not proper to remand the case back in view of the decision of the Supreme Court reported as AIR 1963 Supreme Court 884.”

(24) In the above case as well, the Hon'ble Supreme Court has held that non-framing of issue will not go to the root of the matter

insasmuch as both the parties had adduced sufficient evidence touching upon the core issue involved in the case and the Court also decided such an issue.

(25) In the light of the above decisions pronounced by the Hon'ble Supreme Court, we are of the considered view that the allegation of cruelty made by the wife either in the written statement or in the proceedings subsequent thereto, would not, *per se*, amount to cruelty. But if it is factually established that such an allegation of cruelty has been leveled with an ulterior motive to tarnish the image and reputation of the appellant, it will definitely amount to cruelty. Allegation of adultery if found factually true would never amount to cruelty. Further, in our considered view, the decision of Division Bench of this Court that in case the respondent-wife came out with an allegation of adultery in the written statement or in the collateral proceedings, the appellant-husband should file an application for amendment of the prayer for divorce on the ground of allegation of adultery and the Court shall also discharge its obligation to specifically frame issue with regard thereto has been completely watered down by the above decisions of the Hon'ble Supreme Court cited by the counsel for the appellant. In other words, if the allegation of adultery has been leveled by the respondent in the written statement or in any other subsequent proceedings, there was no necessity for the appellant-husband to initiate steps to amend the petition to incorporate a prayer for divorce on the ground of cruelty alleged by the respondent-wife. Even if the issues have not been framed, when the parties have understood the pleadings and counter-pleadings of the respective parties and proceeded to trial leading evidence touching upon the core issue as to whether the allegation of adultery was true or not, the Court is competent to take a decision as to whether any such cruelty was committed by the respondent-wife. In other words, the plea of the appellant-husband that he is entitled to a decree of divorce on the basis of the unfounded allegation of adultery cannot be thwarted just because the amendment was not made at his instance and relevant issue was not formulated.

(26) Even unfounded allegations of adultery made subsequent to the initial proceedings can be taken serious note of by the Court of law while deciding the plea for divorce set up by the party concerned.

(27) Let us now advert to the allegation of adultery leveled by the respondent-wife against the appellant. The fact remains that both the parties have sufficient adduced evidence touching upon such an

allegation made by the respondent, though there was no specific formulated by the trial Court with reference thereto.

(28) Ex.R1 to Ex.R-3, the letters written in the year 1994-1995, demonstrate that the relationship of the respondent with his mother-in-law was quite normal. No proof was adduced by the appellant to establish that the respondent had neglected his parents. Ex.P21 is found to be a letter addressed to the respondent by the appellant. The material portion of the letter reads as follows:

“I love u and I love her too.

I can live without both.

Both can live without me.

xxxxx

Kids at this stage need me more than both the women.

xxxx

Many women find me sexy and I find all women sexy in one way or the other.

xxxx

I have broken my parents dreams and desires because of my weakness for opposite sex. May be I am over-sexed and it is in my genes.”

(29) The above epistle has been admittedly written by the appellant to the respondent-wife. Of course, as contended by learned counsel for the appellant, it may be a self-reflection. But the fact remains that such a self-reflection had been couched in the form of a letter to the respondent. The appellant has categorically admitted that this letter was written by him to his wife. The seminal lines found in the letter addressed by the appellant to his wife clearly establish without any ambiguity that he had developed intimacy at least with one woman outside his marital relationship, as rightly alleged by the respondent-wife.

(30) The photographs Ex.P15 to Ex.P17 completely clinch the issue that the appellant had developed intimacy with the woman alleged by the respondent. Therefore, we have no hesitation to hold that the respondent-wife has not come out with any unfounded allegation of adultery. We are of the firm view that her allegation is loaded with truth.

(31) The respondent-wife is prepared to forget everything and join the appellant. But it is only the appellant who contends that there is no possibility of joining with respondent to lead the matrimonial life. Under such circumstances, the question of desertion allegedly committed by the respondent does not even vaguely arise.

(32) Learned counsel appearing for the appellant submitted that Lillu Chaudhary, the woman referred to by the respondent, cannot be condemned without giving a fair hearing. In the fact of the above materials in the shape of Ex.P15 to P17 and Ex.P21, impleadment of Lillu Chaudhary is only an empty formality. Even otherwise, under the scheme of Hindu Marriage Act, 1955, there no provision which mandates that such a party should be impleaded before ever granting the relief sought for under Section 13 of the said Act. Therefore, the above submission made by learned counsel appearing for the appellant is found to be not impressive.

(33) Let us now take up the cross-objections raised by the respondent-wife. She has filed an application before the trial Court praying for dismissal of the petition filed under Section 13 of the Hindu Marriage Act, 1955 by the husband seeking divorce on the ground of cruelty, as the appellant and the respondent had reunited and started living together happily. Except the admission made by the appellant that he had to be in the company of the respondent along with the children who had come down from foreign country, there is no evidence to establish that the appellant and the respondent have started cohabiting with each other after the petition for divorce was filed by the appellant.

(34) Therefore, in our considered view, the trial Court has rightly rejected the application praying for dismissal of the petition filed by the appellant for divorce on the plea that they had joined and started living together as husband and wife which would amount to condoning the cruelty allegedly committed by the respondent.

(35) In the above facts and circumstances, it is held that the appellant has come out with general allegations of cruelty which are found to occur in day-to-day family life. No specific instance of cruelty which had tormented him and made him to suffer the pain and agony had been pleaded and established by the appellant-husband. The allegation of adultery made by the respondent-wife is well founded. Therefore, such an allegation would not amount to cruelty. Further, the weak moral fibre of the appellant would have forced the respondent to live separately. Even otherwise, she is prepared to join the appellant

forgetting the conduct of the appellant. Therefore, the allegation of desertion attributed to the respondent also does not survive for consideration.

(36) For all these reasons, we find that the trial Court has rightly held that the appellant is not entitled to divorce on the ground of cruelty and desertion. Hence, the appeal as well as cross-objection stands dismissed.

Ritambra Rishi