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V. BHAGAT

v.

MRS. D. BHAGAT

NOVEMBER 19, 1993

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[KULDIP SINGH AND B.P. JEEVAN REDDY, JJ.]

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Hindu Marriage Act 1955—Section 13 (i)(ia)—Cruelty—What is—Can be broadly defined—That conduct which inflicts upon the other party such mental pain and suffering as would make it impossible for that party to live with the other—Must be of such nature that the parties cannot be reasonably expected to live with each other—While arriving at such conclusion, regard must be had to the social status, educational level of the parties etc. petition for divorce filed by husband—Averments in wife's written statement—Alleging mental instability on the part of the husband—Questions to husband in cross-examination suggesting mental instability of husband and his entire family—Held, amount to mental cruelty.

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Hindu Marriage Act 1955—Section 13—Divorce—Practice and procedure—Divorce can be granted on the basis of pleadings and other admitted material without full trial only where there are really extraordinary features to clear up an insoluble mess—Irretrievable breakdown of marriage not a ground by itself but a relevant circumstance.

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The Appellant husband, a practising Advocate of the Supreme Court and the Delhi High Court filed a Petition against the Respondent-wife, a senior executive in a public sector corporation for divorce on the ground of adultery. In the written statement the wife, while denying the allegation of adultery, attributed the same to mental instability of the husband. In view of this allegation, the husband amended his petition to add a new ground of divorce viz. mental cruelty.

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The Petition remained pending for over 8 years, first in the District Court at Delhi and thereafter in the Delhi High Court to which it had been transferred. Against an order of the High Court striking out a large number of paragraphs from the petition of divorce, the husband filed an appeal to the Supreme Court (Civil Appeal No. 424 of 1987) which was allowed on 19th February 1987 with directions for expeditious disposal of the divorce petition. However, the matter remained pending and the

Supreme Court gave further directions for expeditious hearing on May 1, 1991. In the course of protracted cross-examination of the husband, Senior Counsel for the wife put several questions to him suggesting that he and several members of his family including his grandfather were lunatics and that a streak of insanity was running in the family. When the husband protested against these questions, Senior Counsel clearly stated that the question were being put because it was the wife's case that the husband's entire family were lunatics. A B

At the time when the husband's evidence was over and the wife's evidence was being recorded the husband moved the present application I.A. No. 1 of 1993 in civil Appeal No. 424 of 1987 (Which was disposed of on 19th February, 1987), praying for further directions for expeditious disposal. The Supreme Court explored the possibilities of a settlement, but none materialised. In this background, Counsel for the Petitioner made a plea to grant divorce on the ground of cruelty evidenced by the averments in the wife's written statement and the questions put in cross-examination, notwithstanding the earlier dismissal of an application making a similar prayer by the Delhi High Court and the dismissal of a Special Leave Petition against the said order by the Supreme Court. It was contended on behalf of the husband that the marriage had broken irretrievably. C D

On the other hand Counsel for the wife contended *inter alia* she was always prepared to live with her husband and that the pleas taken in her written statement were merely her reactions to the unjustified and unwarranted aspersions cast on her character. E

Accepting the husband's plea for grant of divorce on the ground of cruelty, the Court withdrew the Petition for Divorce (HM Case No. 1 of 1986 pending in the Delhi High Court) to itself, allowed the same and declared the marriage to be dissolved, while holding that the allegations of the Husband regarding adultery were not proved and that the honour and character of the Respondent-wife stood vindicated. F G

HELD : 1. This is an unusual case calling for an unusual solution. This divorce petition has been pending for more than 8 years, and is still at the state of trial. A good part of the life of both the parties is consumed in this litigation and yet the end is not in sight. The parties have crossed the point of no return long ago. The nature of the allegations levelled H

A against each other shows the intense hatred and enomosity each bears towards the other. The desirability of allowing the continuation of divorce proceedings in the particular facts and circumstances of this case is open to grave doubt. The matter may take more than a year at the minimum to conclude in the High Court and there is the right of appeal to the losing party. Both parties are well settled and the children are grown up and on their own. Both parties have levelled serious allegations against each other.

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[805-C-H, 806-A]

C 2. "Cruelty" contemplated by Section 13(ia) of the Hindu Marriage Act 1955 is both physical and mental. It is not possible to define "mental cruelty" exhaustively. After the marriage Laws (Amendment) Act, 1976, it is not necessary for the party claiming divorce to prove that the cruel treatment is a such a nature as to cause an apprehension - a reasonably apprehension - in his/her mind that it will be harmful or injurious for him/her to live with the other party. [807-G-H, 808-A]

D 3. In determining the kind of mental cruelty that is required to be established it must be kept in mind that cruelty mentioned in Section 13(ia) is a ground for divorce and also for judicial separation under Section 10. Another circumstance that must be kept in mind is that even where the marriage has irretrievably broken down the Hindu Marriage Act even after the 1976 (Amendment) Act does not permit dissolution of marriage on that ground. [808-F-G]

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F 4. Mental cruelty in Section 13(1)(ia) can be broadly defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct continue to live with the other party. While arriving at such conclusion, regard must be had to the personal status, educational level of the parties, the society they move in, the possibility or otherwise of the partners even living together in case they are already living apart and all other relevant facts and circumstances which is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a

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case of accusations and allegations, regard must also be had to the context in which they were made. [808-H, 809-A-D] A

Gollins v. Gollins, [1964] A.C. 644; *N.G. Dastane v. S. Dastane*, AIR (1975) SC 1534; *Shobha Rani v. Madhukar Reddy*, [1988] 1 SCC 105 and *Chandrakala Trivedi v. S.P. Trivedi*, (1993) 3 SCALE 541, relied on. B

5. In the facts and circumstances of the present case, making such allegations in the pleadings and putting such question to the husband while he is in the witness box, is bound to cause him intense mental pain and anguish, besides affecting his career and professional prospects. It is going far beyond the reasonable limits of her defence. These assertions cannot but constitute mental cruelty of such a nature that the husband, situated as he is and in the context of the several relevant circumstances cannot reasonably be asked to live with the respondent hereafter. C

[813-B-G]

6. In the facts and circumstances, considering the nature of allegations of the parties against each other, the wife is deliberately feigning a position which is wholly unnatural and beyond the comprehension of a reasonable person. Her stand that she wants to live with her husband indicates that she has resolved to live in agony only to make life a miserable hell for the husband as well. This type of callous attitude in the context of the facts of the case leaves no manner of doubt that the wife is bent upon treating the husband with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together or living together again. The marriage between the parties should be dissolved under Section 13(i)(ia) of the Hindu Marriage Act. Having regard to the particular facts and circumstances, it is a fit case for cutting across the procedural objections to give a quietus to the matter. [814-A-C] D E F

7. It is clarified that a decree for divorce cannot follow merely because there are allegations and counter allegations or because of mere delay in disposal of divorce proceedings. Irretrievable breakdown is not a ground by itself, though it is a relevant circumstance. There must be some really extraordinary features to warrant grant of divorce on the basis of pleadings (and other admitted material) without a full trial. This can be resorted to only to clear up an insoluble mess, when the Court finds it in the interests of both parties. [814-D-E] G H

A CIVIL APPELLATE JURISDICTION : I.A. No. 1 of 1993 in Civil Appeal No. 424 of 1987.

From the Judgment and Order dated 10.10.86 & 18.11.86 of the Delhi High Court in I.A. Nos. 2149 & 4235 and I.A. Nos. 5782 & 6071/86 in Matrimonial case No. 1 of 1986.

B G.L. Sanghi and Ashok Grover for the Appellant.

Bawa Shiv Charan Singh, Mrs. Kawaljit Kochhar and J.D. Jain for the Respondent.

C The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. This is an unusual case calling for an unusual solution. The husband sued for divorce on the ground that the wife is guilty of adulterous course of life. The wife not only denied the allegation -she attributed the allegation to lack of mental equilibrium of the husband.

D The husband then amended his petition; he alleged a new ground for divorce viz., mental cruelty. According to him, the allegations made in the written statement *per se* constitute cruelty which entitle him straightaway to a divorce without going into the original allegation of adultery. He is also relying upon certain question put to him in cross-examination by the counsel for the respondent and the said counsel's explanatory statement made in that connection. We may elaborate.

F The petitioner-applicant, Shri V. Bhagat is an Advocate practising in this Court and Delhi High Court. He is now aged about 55 years. The respondent-wife is working at present as the Vice-President of I.T.D.C., a Public Sector Corporation. She is aged about 50 years. They were married in the Year 1966. They have two grown-up children now-a son and a daughter. The son is a doctor while the daughter holds a degree in M.B.A. and is working with an American Company in California.

G The respondent was working in a Television Company at the time of her marriage. After the birth of a child she left the job in August, 1967. The respondent started working again from the year, 1972 onwards. To start with she was employed in a Travel Agency. Somewhere around 1978-79, the petitioner began suspecting her of infidelity. According to him, when he questioned the respondent of her adulterous behaviour, she

H admitted the same and asked to be pardoned. The wife denies this. She

says, she never made any such admission and that the allegation is a totally false one. From 1980 onwards the petitioner was making attempts to obtain a divorce by consent. The respondent was not willing. On May 28, 1985, he instituted the present petition for divorce in the District Court, Delhi. The divorce petition runs into more than 160 paragraphs. The main ground is adultery. According to husband, the wife is an incorrigible adulteress. The respondent filed the written statement denying the allegations. The written statement, if anything, is even lengthier and more voluminous than the divorce petition. She had denied the allegation *in toto*. According to her, the husband is like Othello - a pathologically suspicious character.

On February 5, 1986, the petition for divorce was withdrawn and transferred to the High Court of Delhi. It was assigned to Justice H.C. Goel. The learned Judge struck out a large number of paragraphs from the petition for divorce. Against the order of the learned judge, the petitioner approached this Court by way of an appeal which was allowed on February 19, 1987. On that occasion, this Court directed the learned Chief Justice of the Delhi High Court to nominate a learned Judge to take up the divorce petition and dispose it of as expeditiously as possible. It was directed that the matter may be heard on day-to-day basis as far as possible.

In May 1987, the petitioner filed an interlocutory application before the High Court for passing a decree of divorce on the basis of the averments made by the respondent in her written statement/counter. According to him, those allegations amounted to cruelty against him and furnished adequate grounds for passing a decree of divorce. He then filed an application in this Court to withdraw the said interlocutory application to the file of this Court and grant the relief prayed for by him. This Court refused to do so. The interlocutory application filed by him was dismissed by the High Court. Thereafter, he amended his petition for divorce and again filed another interlocutory application for granting divorce on the basis of the averments made by the respondent in her written statement. This application too was dismissed by the High Court. It is stated that the Special Leave Petition filed against the same was also dismissed by this Court. The trial is in progress now. Petitioner's evidence is over and the wife's statement is being recorded. At this stage, the present application - I.A. No. 1 of 1993 - I filed in Civil Appeal No. 424 of 1987 (which was disposed of on February 19, 1987). The prayer in the application is to give appropriate direction for speedy disposal of the divorce petition. In this

A application the petitioner has made the following averments : The petition for divorce is pending over the last 8 years. The respondent has indulged in dilatory tactics to protract the litigation. The respondent spent more than 11 months in cross-examining the petitioner alone (February 19, 1992 to January 1993). While the examination-in-chief is mere 30 pages, the cross-examination runs into more than 150 pages - most of it irrelevant and unnecessary. The Trial Judges are unable to stop the vexatious cross-examination by the counsel for the respondent. The repeated directions from this Court to dispose of the divorce petition as expeditiously as possible and on day-to-day basis did not have the desired effect. As many as five learned Judges of the High Court have tried this matter, but still it is at the stage of recording of evidence. The evidence of the respondent-wife is yet to be completed. As a matter of fact, on May 1, 1991, this Court was constrained to observe; "we are inclined to agree with the counsel for the petitioner that the directions have not been followed and the matter has unnecessarily been protracting. We request the learned Chief Justice of the High Court to personally look into the matter and allot case to a learned Judge on the appellate side who can deal with the matter day-to-day and have it disposed of within a reasonable time, say, within three to four months from today." The petitioner complains that even though a period of more than 28 months has elapsed since the said order, the matter is still at the stage of trial.

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 In her counter filed to this application, the respondent stated that she is in no way responsible for the delay in disposal of the divorce petition and that in fact the petitioner himself is responsible for the delay. Since submitted that almost every order passed by the Delhi High Court was challenged by him by way of Special Leave Petition in this Court and that he has also been making allegations against the learned Judges trying the petition as and when they passed orders unfavourable to him.

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 In this application (I.A. No. 1 of 1993), this Court directed on May 3, 1993, both the parties to be present in person in the Court with a view to explore the possibility of a settlement. On the next date, i.e., May 7, 1993, the respondent was not present. The matter was adjourned to July 19, 1993. On July 19, 1993, the parties were heard for some time and the Court suggested to the parties to find a via-media to settle the matter. The parties sought for an adjournment. The matter was adjourned to August 6, 1993. H On 6th August, the matter was again adjourned to 16th August on which

date we were told that the parties could not arrive at any settlement, whereupon the arguments of the counsel for the parties were heard. In the background of the orders of this Court made in this I.A., referred to above, learned counsel for the petitioner reiterated his plea to grant a divorce on the ground of cruelty evidenced by the averments in her counter and the questions put to him in the cross-examination. Counsel submitted that the marriage between the parties has broken down irretrievably. Having regard to the nature of allegations and counter allegations made by the parties against each other, there is hardly any room for their coming together. The petitioner has been trying to obtain divorce right from the year 1980. For five years he tried to get at by consent, failing which he approached the Court. Eight years have passed by and inspite of the repeated order of this Court, even the trial is not yet over. The petitioner is now 55 years old. A good part of the life of both the parties has been spent in rancour and litigation. *De hors* the allegations of adultery originally made in the petition for divorce, the petitioner is entitled to divorce on the basis of the additional ground put in by way of amendment viz., cruelty - mental cruelty by wife. The averments made in her counter and the question put by her counsel in the cross-examination of the petitioner do constitute clear acts of cruelty. In view of the said averments/questions, no further material is necessary to establish the said additional ground. In her written statement, the respondent has alleged that the petitioner is "suffering from mental hallucination" that his is a "morbid mind.....for which he needs expert psychiatric treatment" and further that "the petitioner is suffering from paranoid disorder. He needs expert psychological treatment.....He is incoherent in his thinking.....The Petitioner is a mental patient. The petitioner needs treatment by a psychiatrist to whom he was directed by his own sister.....He is a patient and needs treatment and restoration of normal mental health..... The petitioner needs psychological treatment to make him act a normal person" and so on and so forth. In the cross-examination of the petitioner, the Senior Advocate appearing for the respondent-wife put several questions suggesting that the petitioner and the several members of his family including his grandfather are lunatics and that a streak of insanity is running in the entire family. When he protested against the said questions, the leaned Senior Advocate made the following statement in the Court - "all of your (petitioner's) family including your grandfather and other are lunatics with streets of insanity running in the entire family; this is the respondent's case; and that is why these questions

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- A have been asked." The said questions were put and the said statement was made by her Advocate at the instructions of the respondent. Notwithstanding the dismissal of a similar application by the Delhi High Court and the dismissal of a special leave petition there-against by this Court, this is a fit and proper case - and this is the most appropriate stage at which - the
- B petitioner should be granted divorce on the ground of cruelty. The situation has become intolerable, says the counsel.

- The learned counsel for the respondent, on the other hand, reiterated his submission that the respondent was not responsible for the delay; that in fact the petitioner has himself been delaying the proceedings and that the questions put to him in cross examination and the defense taken in the written statement are merely the reactions of the wife to unjustified and unwarranted aspersions cast upon her character. The respondent has only been trying to explain that the several serious allegations levelled against her are the product of a sick mind and are mere
- C figments of his imagination. She submitted that her children and even
- D sisters and mother of the petitioner are siding her in this dispute and that the petitioner alone, alienated from his entire family, is persecuting her. It is submitted that she is only trying to defend her honour, self-respect and standing in society. It is pointed out that she is holding a fairly high office in a Public Sector Corporation and it is her duty to herself, her children
- E and to the families of her husband and herself to disprove the unfounded allegations levelled against her. She has submitted that she is not agreeable to divorce on any ground whatsoever and that she is always prepared to live with the petitioner. It is only the petitioner who is keeping himself away from her company and has confined himself to one room, whereas she
- F children and her mother-in-law live in the house as usual.

- It is said that marriages are made in Heaven, that may be so, but this one has turned into a Hell for sure. The allegations and the counter-allegations are indicative of the intense hatred and rancour between the parties. Any reconciliation is out of question. The question before us is whether in
- G all the facts and circumstances of the case, what should be do? Three courses are open. One is to look to the prayer in the application and reject it in view of two earlier directions to the same effect. Two, make another request (third one) to the High Court to dispose of the matter expeditiously and three, to explore whether any solution can be found to the predicament
- H in which the parties are now placed. So far as the first two alternatives are

concerned, it may be noted, there have been two such directions by this Court earlier, one in the year 1987 and the other in the year 1991. The advisability of a third such direction - request - is open to question. If two such requests/directions had no effect, it is doubtful that a third direction would yield any better result. It may be an exercise in futility besides being inadvisable. In the facts and circumstances of this case, we are inclined to explore the third alternative.

That this is a rather unusual case can hardly be disputed. The divorce petition has been pending for more than 8 years. With a view to expedite its disposal it was transferred from the District Court to the High Court. This Court repeatedly requested (in 1987 and 1991) the High Court to try the matter on a day-to-day basis and dispose of it expeditiously. The petition is still at the stage of trial. It is not possible for us to apportion the blame. Each side attributes it to the other. Five learned Judges of the High Court have tried their hand at the case, but it still remains at the stage of trial. The cross-examination of the petitioner alone took one full year. The cross-examination of the respondent is yet to begin. Having regard to the number of allegations made by the petitioner in his divorce petition and the material relied upon by him, it may safely be presumed that the cross-examination of the Respondent would take as much time as the cross-examination of the petitioner, if not more. Each party, it appears, is out to punish the other for what the other is supposed to have said or done. This appears to be the single thought ruling their lives today. A good part of the life of both the parties is consumed in this litigation and yet the end is not in sight. The assertion of the wife that she wants to live with the husband even now, appears to be but a mere assertion. After all the allegations made against her in the petition and the allegations levelled by her against the petitioner, living together is out of question. Reconciliation is not in the realm of possibility. For the parties to come together, they must be superhumans, which they are not. The parties have crossed the point of not return long ago. The nature of the allegations levelled against each other shows the intense hatred and animosity each bears towards the other. The marriage is over except in name. The desirability of allowing the continuation of the divorce proceedings in the particular facts and circumstances of this case, is open to grave doubt. The matter may take more than a year - at the minimum - to conclude in the High Court and then there is the right of appeal to the losing party. Both the parties are well-settled. The children are grown-up and are on their own.

A It is significant to note that this is not a case where allegations are made only by one party against the other; both have levelled serious allegations against the other. The husband calls the wife an adulteress and the wife calls the husband a lunatic.

B The question, however, is whether the allegations made by the respondent-wife do constitute mental cruelty. The allegations in her written statement and her counsel's explanatory statement in Court have already been set out hereinabove. The respondent has asserted in her written statement that she "has every right to make correct statement of facts to defend herself against the wanton, imaginary and irresponsible allegations".

C Clause (ia) of Section 13 specifies cruelty as one of the grounds of divorce. In so far as relevant Section 13 reads.

"Section 13 : *DIVORCE*

D (1) Any marriage solemnised, whether before or after the commencement of this Act may on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party –

E (ia) has after the solemnization of the marriage treated the petitioner with cruelty."

Cruelty contemplated by the sub-clause is both physical and mental. We are concerned herein with the latter. It is not possible to define 'mental cruelty' exhaustively. As observed by Lord Reid in *Gollins v. Gollins*, (1964) A.C. 644:

F "No one has ever attempted to give a comprehensive definition of cruelty and I do not intend try to do so. Much must depend on the knowledge and intention of the respondent, on the nature of his (or her) conduct, and on the character and physical or mental weaknesses of the spouses, and probably no general statement is equally applicable in all cases except the requirements that the party seeking relief must show actual or probable injury to life, limb or health.

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H It is easy to see that the origin of this requirement is the decisions in the wellknown case of *Russel v. Russel*."

To the same are the observations of Lord Pearce (at 695) :

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"It is impossible to give a comprehensive definition of cruelty, but when reprehensible conduct or departure from normal standards of conjugal kindness causes injury to health or an apprehension of it, is, I think, cruelty if a reasonable person, after taking due account of the temperament and all the other particular circumstances would considered that the conduct complained of is such that this spouse should not be called on to endure it

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I agree with the Lord Merriman whose practice in cases of mental cruelty was always to make up his mind first whether there was injury or apprehended injury to health. In the light of that vital fact the Court has then to decide whether the sum total of the reprehensible conduct was cruel. That depends on whether the cumulative conduct was sufficiently weighty to say that from a reasonable person's point of view, after a consideration of any excuse which this respondent might have in the circumstances, the conduct such that this petitioner ought not to be called on to endure it

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The particular circumstances of the home, the temperament and emotions of both the parties and their status and their way of life, their past relationship and almost every circumstance that attends the act or conduct complained of may all be relevant."

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The reference to "injury to life, limb or health" in the above passages must be understood in the context of the requirements of the divorce law then obtaining in the United Kingdom.

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The change of law brought about by the Hindu Marriage Laws (Amendment) Act, 1976 deserves notice. Prior to the said Amendment Act cruelty was not a ground for claiming divorce under the Hindu Marriage Act. It was a ground only for claiming judicial separation under Section 10. By the said Amendment Act, cruelty was made a ground for divorce as well - evidently in recognition of the changing mores of the Society. While doing so, it is significant, the words as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party, " qualifying the expression "cruelty" in Section 10(1)(b), were omitted by Parliament. It is therefore, not neces-

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- A sary for the party claiming divorce to prove that the cruel treatment is of such a nature as to cause an apprehension - a reasonable apprehension - in his/her mind that it will be harmful or injurious for him/her to live with the other party. Now what does this change mean? Surely, the deletion of the said words could not have been without a purpose. The cruelty of the nature described in Section 10(1)(b) has been explained in this Court's
- B decision in *Dastane v. Dastane*, A.I.R. (1975) S.C. 1534. Chandrachud, J., speaking for the Bench, held that where an allegation of cruelty is made, the inquiry has to be "whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent."
- C The learned Judge held further ; "it is not necessary, as under the English law, that the cruelty must be of such a character as to cause "danger" to life, limb of health or as to give rise to a reasonable apprehension of such a danger. Clearly, danger to life, limb or health or a reasonable apprehension of it is a higher requirement than a reasonable apprehension that it is harmful or injurious for one spouse to live with the other But under
- D Section 10(1)(b), harm or injury to health, reputation, the working-career or the like, would be an important consideration in determining whether the conduct of the respondent amounts to cruelty. Plainly, what we must determine is not whether the petitioner has proved the charge of cruelty having regard to the principles of English law, but whether the petitioner
- E proves that the respondent has treated him with such cruelty as to cause a reasonable apprehension in his mind that it will be harmful or injurious for him to live with the respondent." This requirement is no longer present in Section 13(1)(ia).
- F If so, the question arises what kind of cruel treatment does clause (ia) contemplate? In particular, what is the kind of mental cruelty that is required to be established? Where answering these questions, it must be kept in mind that the cruelty mentioned in clause (ia) is a ground now for divorce as well as for judicial separation under Section 10. Another circumstance to be kept in mind is that even where the marriage has
- G *irretrievably* broken down, the Act, even after the 1976 (Amendment) Act, does not permit dissolution of marriage on that ground. This circumstance may have to be kept in mind while ascertaining the type of cruelty contemplated by Section 13(ia).

- H Mental cruelty in section 13(1)(ia) can broadly be defined as that

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

At this stage, we may refer to a few decisions of this Court rendered under Section 13(1) (ia). In *Shobha Rani v. Madhukar Reddy*, [1988] 1 S.C.C. 105, Justice K. Jagannatha Shetty, speaking for the Division Bench, held :

"Section 13(1)(ia) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental, the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and *per se* unlawful or illegal. Then the impact

A or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

B It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judge and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in *Sheldon v. Sheldon*, [1966] 2 All ER 257, 259" the categories of cruelty are not closed". Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty."

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G It was a case where the wife was a postgraduate in Biological Sciences while the husband was a doctor. The wife moved the Court for divorce on the ground of cruelty. According to her, she had no amount of Rupees two lakhs in Fixed Deposit in a bank apart from a house property, that her mother-in-law used to make constant demands of money, and that the respondent-husband supported his mother therein. She did not report the same to her parents because she was afraid that if she informed her parents, something may be done to her. The respondent-husband himself H admitted in a letter written to the wife that the demand for dowry by his

parents was nothing wrong. On the above facts, it was held that the ground of cruelty was established and divorce was granted. The following further observations of Shetty, J. appear to us relevant :

"Section 13(1)(ia) of the Hindu Marriage Act provides that the party has after solemnization of the marriage treated the petitioner with cruelty. What do these words mean? What should be the nature of cruelty? Should it be only intentional, wilful or deliberate? Is it necessary to prove the intention in matrimonial offence? We think not. We have earlier said that cruelty may be of any kind and any variety. It may be different in different cases. It is in relation to the conduct of parties to a marriage. That conduct which is complained of as cruelty by one spouse may not be so for the other spouse. There may be instances of cruelty by the unintentional but inexcusable conduct of any party. The cruel treatment may also result by the cultural conflict of the spouse. In such cases, even if the act of cruelty is established, the intention to commit suicide cruelty cannot be established. The aggrieved party may not get relief. We do not think that that was the intention with which the Parliament enacted Section 13(1)(ia) of the Hindu Marriage Act. The context and the set up in which the word 'cruelty' has been used in the section, seems to us, that intention is not a necessary element in cruelty. That word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment."

In *Smt. Chanderkala Trivedi v. Dr. S.P. Trivedi*, (1993) 2 SCALE 541, the husband sued for divorce on the ground of cruelty by wife. The wife filed a written statement wherein she attributed adultery to the husband. In reply thereto the husband put forward another allegation against the wife that she was having undesirable association with young boys. Considering the mutual allegations, R.M. Sahai, J., speaking for Division Bench, observed:

- A "Whether the allegation of the husband that she was in the habit of associating with young boys and the findings recorded by the three courts are correct or not but what is certain is that once such allegations are made by the husband and wife as have been made in this case then it is obvious that the marriage of the two cannot in any circumstance be continued any further. The marriage appears to be practically dead as from cruelty alleged by the husband it has turned out to be at least intimacy of the husband with a lady doctor and unbecoming conduct of a Hindu wife."
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- C It was argued on behalf of the husband that the wife has failed to establish the charge of adultery levelled against him and that the charge of adultery must be proved beyond reasonable doubt. Dealing with the argument, the learned Judge observed :

- D "But we do not propose to examine it as we are satisfied that the marriage is dead and the findings of fact cannot be set aside by this Court except that the appeal can be sent back to Division Bench to decide it again, which would mean another exercise in futility leading to tortuous litigation and continued agony of the parties."

- E In the light of the principles enunciated hereinabove, we may now examine whether the allegations made by the wife in her written statement and the question put by her counsel to the petitioner in cross examination amount to mental cruelty within the meaning of the said Sub-clause? The relevant portions of the written statement have already been set out by us
- F hereinbefore. We have also set out in the said paragraph the explanatory statement made by the respondent's counsel in Court in justification of the questions put by him to the petitioner in his cross-examination. It is true the said averments must be read in the context in which they were made. At the same time, it must be remembered that the wife was merely defending herself against what are, according to her, totally unfounded
- G allegations and aspersions on her character. It was not necessary for her to go beyond that and allege that the petitioner is a mental patient, that he is not a normal person, that he requires psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations - and to crown it all, to allege that he and all the members
- H of his family are a bunch of lunatics. It is not as if these words were uttered

in a fit of anger or under an emotional stress. They were made in a formal pleading filed in the Court and the question to that effect were put by her counsel, at her instructions, in the cross-examination. Even in her additional written statement she has asserted her right "to make correct statement of facts to defend herself against the wanton, imaginary and irresponsible allegations". These are not the mere protestations of an injured wife; they are positive assertions of mental imbalance and streak of insanity in the mental build up of the husband. The husband is an advocate practising in this Court as well as in Delhi High Court. The divorce petition is being tried in Delhi High Court itself. Making such allegations in the pleadings and putting such questions to the husband while he is in the witness-box, is bound to cause him intense mental pain and anguish besides affecting his career and professional prospects. It is not as if the Respondent is seeking any relief on the basis of these assertions. The allegations against her may not be true; it may also be true that the petitioner is a highly suspicious character and that he assumes things against wife which are not well- founded. But on that ground, to say that the petitioner has lost his normal mental health, that he is a mental patient requiring expert psychological treatment and above all to brand him and all the members of his family including his grandfather as lunatics, is going far beyond the reasonable limits of her defence. It is relevant to notice that the allegations of the wife in her written statement amount in effect to "psychopathic disorder or any other disorder" within the meaning of the Explanation to clause (iii) of sub-section (1) of Section 13, though, she has not chosen to say that on that account she cannot reasonably be expected to live with the petitioner-husband nor has she chosen to claim any relief on that ground. Even so, allegations of 'paranoid disorder', 'mental patient, 'needs psychological treatment to make him act a normal person' etc. are there coupled with the statement that the petitioner and all the members of his family are lunatics and that a streak of insanity runs through his entire family. These assertions cannot but constitute mental cruelty of such a nature that the petitioner, situated as he is and in context of the several relevant circumstances, cannot reasonably be asked to live with the respondent thereafter. The husband in the position of the petitioner herein would be justified in saying that it is not possible for him to live with the wife in view of the said allegations. Even otherwise the peculiar facts of this case show that the respondent is deliberately feigning a posture which is wholly unnatural and beyond the comprehension of a reasonable person. She has

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A been dubbed as an incorrigible adulteress. She is fully aware that the marriage is long dead and over. It is her case that the petitioner is genetically insane. Despite all that, she says that she wants to live with the petitioner. The obvious conclusion is that she has resolved to live in agony only to make life a miserable-hell for the petitioner as well. This type of callous attitude in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the petitioner with mental-cruelty. It is abundantly clear that the marriage between the parties has broken down irretrievably and there is no chance of their coming together, or living together again. Having regard to the peculiar features of this case, we are of the opinion that the marriage between the parties should be dissolved under Section 13(1)(ia) of Hindu Marriage Act and we do so accordingly. Having regard to the peculiar facts and circumstances of this case and its progress over the last eight years - detailed hereinbefore - we are of the opinion that it is fit case for cutting across the procedural objections to give a quietus to the matter.

D Before parting with this case, we think it necessary to append a clarification. Merely because there are allegations and counter-allegations, a decree of divorce can not follow. Nor is mere delay in disposal of the divorce proceedings by itself a ground. There must be really some extraordinary features to warrant grant of divorce on the basis of pleadings (and other admitted material) without a full trial. Irretrievable break-down of the marriage is not a ground by itself. But while scrutinising the evidence on record to determine whether the ground(s) alleged is made out and in determining the relief to be granted, the said circumstance can certainly be borne in mind. The unusual step as the one taken by us herein can be resorted to only to clear up an insoluble mess, when the Court finds it in the interest of both the parties.

G The petition for divorce H.M. Case No. 1 of 1986 pending in the Delhi High Court is withdrawn to the file of this Court and is allowed. This marriage between the parties is dissolved. In the circumstances, the allegations levelled by the petitioner against the wife are held 'not proved'. The honour and character of the respondent-wife stands vindicated.

There shall be no order as to costs.

R.R.

Appeal disposed of.