



No.302 of 1996 whereby the High Court has dismissed the appeal filed by the husband-appellant.

Facts giving rise to this appeal are:

The marriage took place between the appellant and the respondent on 26.02.1993 and a female child was born on 6.12.1993.

In the petition filed by the appellant, it was alleged that soon after the marriage the respondent was behaving in a cruel manner derogatory to the appellant and the family members; that the respondent avoided staying in the matrimonial home and never remained there for more than 25 days together; and that after leaving the matrimonial

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home on 19.5.1993 while she was pregnant with the child, the respondent never returned to live with the appellant. It was also alleged that the father of the respondent is a retired Sub-Inspector of the Delhi Police and brother is a Constable and both used to extend threats to the appellant and his family members that they would be implicated in false cases.

Respondent in her written statement stated that on 14.09.1994, the appellant and his family members gave her a severe beating which led to her being medically examined by the doctors at Ram Manohar Lohia Hospital. A copy of the extract of the MLC register on that date was enclosed to the written statement. It was also stated that the appellant and his mother had taken the jewellery of the respondent and given it to the wife of the appellant's brother and on asking, respondent was again assaulted and sought to be burnt alive by the family members of the appellant.

The trial Court after examining the evidence came to the conclusion that no case of cruelty had been made out as alleged by the appellant. The Trial Court held that considering that the respondent had been turned out of the matrimonial house and had been given beatings for which she

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was medically examined, it was the respondent who was treated cruelly

by the appellant.

Being aggrieved, the appellant preferred an appeal in the High Court.

The High Court, by the impugned order, while dismissing the appeal filed by the appellant-husband, observed in paras 13 & 17 as under:

"13. ...The respondent has categorically stated in her examination-in-chief that the appellant and her in laws beat her mercilessly on 14.09.1994 as a result of which she was medically examined at the Ram Manohar Lohia Hospital, New Delhi on 15.09.1994. She has also withstood the cross-examination on this aspect. On a reading of the entire evidence, it is not possible to conclude that the appellant has been able to establish that the respondent treated him with cruelty.

17. In the instant case, the respondent wife has both before the trial Court and this Court been able to demonstrate that far from treating the appellant with cruelty, she in fact suffered cruelty at the hands of the appellant. To grant divorce to the appellant despite this only on the ground of irretrievable breakdown would not, in the view of this Court, be doing justice to the respondent."

We are not inclined to interfere with the finding of fact of both the courts below that it was the appellant who treated the respondent with cruelty, rather than the other way around.

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Learned counsel appearing for the appellant has strenuously argued that the marriage between the parties be dissolved on the ground of irretrievable breakdown.

In this connection it may be noted that in Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') there are several grounds for granting divorce e.g. cruelty, adultery, desertion etc. but no such ground of irretrievable breakdown of the marriage has been mentioned for granting divorce. Section 13 of the Act reads as under:

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

- (i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or
- (i-a) has, after the solemnization of the marriage,

treated the petitioner with cruelty; or

(i-b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(ii) has ceased to be a Hindu by conversion to another religion; or

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

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(iv) has been suffering from a virulent and incurable form of leprosy; or

(v) has been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive."

On a bare reading of Section 13 of the Act, reproduced above, it is crystal clear that no such ground of irretrievable breakdown of the marriage is provided by the legislature for granting a decree of divorce. This Court cannot add such a ground to Section 13 of the Act as that would be amending the Act, which is a function of the legislature.

Learned counsel for the appellant has stated that this Court in some cases has dissolved a marriage on the ground of irretrievable breakdown. In our opinion, those cases have not taken into consideration the legal position which we have mentioned above, and hence they are not precedents. A mere direction of the Court without considering the legal position is not a precedent. If we grant divorce on the ground of irretrievable breakdown, then we shall by

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judicial verdict be adding a clause to Section 13 of the Act to the effect that irretrievable breakdown of the marriage is also a ground for divorce. In our opinion, this can only be done by the legislature and not by the Court. It is for the Parliament to enact or amend the law and not for the Courts. Hence, we do not find force in the submission of the learned counsel for the appellant.

Had both parties been willing we could, of course, have granted a divorce by mutual consent as contemplated by Section 13B of the Act, but in this case the respondent is not willing to agree to a divorce.

For the aforesaid reasons, this appeal is dismissed. No order as to costs.

.....J.  
[MARKANDEY KATJU]

.....J.  
[V.S.SIRPURKAR]

NEW DELHI;  
FEBRUARY 27, 2009.