* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : 12th December 2023

\+ MAT. APP. (F.C) 135/2016 & CM APPL. 8195/2018

OMAR ABDULLAH .... Appellant

versus

PAYAL ABDULLAH .... Respondents

Advocates who appeared in this case:

For the Appellant: Ms. Malavika Rajkotia with Mr. Ramakant Sharma, Ms. Trisha Gupta, Ms. Ekta Sharma, Ms. Purva Dua, Mr. Sajal Arora, Mr. Prateek Avasthi and Mr. Mayank Grover, Advocates.

For the Respondents: Mr. Prosenjeet Banerjee, Ms. Shreya Singhal, Mr. Sarthak Bhardwaj, Ms. Anshika Sharma, Ms. Pranaya Sahai and Ms. Akriti Anand, Advocates.

CORAM: -
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

SANJEEV SACHDEVA, J.

1. Appellant/Husband impugns judgment and decree dated 30.08.2016 passed by the Family Court, whereby the petition filed by the appellant seeking divorce under Section 18 of the Foreign Marriage Act 1969 read with Section 27(1)(B) and (D) of the Special Marriage Act, 1954 on the grounds of desertion and cruelty has been dismissed.

2. Appellant husband, a Muslim got married to Respondent wife, a Hindu on 01.09.1994 under Civil Law in England. It is an admitted position that both parties are permanent residents of India and there is no dispute that the family court at Delhi had the jurisdiction to adjudicate the petition.

3. Appellant filed the petition alleging that their marriage has irretrievably broken down and that parties have been living separately since 2009, although they had not enjoyed conjugal relations since 2007. As per the Appellant, he has been residing in Srinagar since 2009 and was serving as the Chief Minister of the State of Jammu and Kashmir and Respondent had chosen to reside in Delhi with their children.

4. As per the Appellant Respondent refused to accompany him to Kashmir in 2002, when he moved there in order to prepare himself for the elections and this resulted in the Petitioner having to fly to Delhi on the weekends to meet his children. It is alleged that the Respondent has alienated the children from the Appellant which is evident from the SMS exchange between them and the Appellant. He further alleges that the Respondent had an uncomfortable relationship with the Appellant's family, due to which he was forced to distance himself from his own family to keep the peace in his marriage. It is contended that Respondent would never attend holidays with the Appellant's

family, nor would she allow the children to do so.

5. As per the Appellant the fact that Respondent has been irrationally refusing any and all discussion for an amicable separation/divorce, it also amounts to cruelty. It is alleged that appellant had made sincere efforts to settle the disputes, however the Respondent has refused any dialogue.

6. Per contra, Respondent contends that the petition does not disclose any cruelty and as such the petition is liable to be dismissed for want of cause of action. The allegation of parties not having any conjugal relations since 2007 is denied, it is submitted that the parties were residing together until the filing of the petition in January 2013. It is contended that parties had not been living separately for over two years prior to the filing of the petition.

7. As per the respondent, parties had agreed that Respondent and the children would stay in Delhi, due to the security threats in Srinagar. It is submitted that the Respondent and children frequently travelled to Srinagar to visit the Appellant and his family and they took trips together abroad and within India.

8. The Family Court after considering the evidence led by the parties held that the allegations of cruelty were vague and unacceptable. It was held that the Appellant did not provide one single

circumstance to explain the alleged discomfort between the Respondent and his family members. None of the family members except the Appellant's sister deposed, who also did not disclose any instances of mental stress and cruelty caused by the Respondent to the Appellant. It was also held that the parties were based in Delhi till 2002 and mutually decided that the children should be educated in Delhi and the Respondent agreed to stay back with the children.

9. The court held that frequent travel of the petitioner between Delhi and Srinagar could not be held to be on account of marital discord, as it was a collective decision and hence could not be termed as an act of cruelty towards the Appellant. Furthermore, it was an admitted position that the parties took several vacations and also attended various family functions together up until January 2011, when the divorce petition was filed.

10. The Family Court held that Appellant had miserably failed to prove any act which could be termed as an act of cruelty, whether physical or mental, towards him.

11. On the issue of desertion, the Family Court has held that though parties had been living separately since 2009, they had been visiting each other, travelling together till 2011. Further, the parties were living separately under a mutual arrangement for the convenience and

safety of their children and no fault could be attributed to the Respondent, hence no divorce on grounds of desertion could be granted. Consequently, the family court dismissed the Divorce Petition filed by the Appellant.

12. Learned counsel for the Appellant submits that the Family Court has erred in holding that the allegations do not amount to cruelty. She submits that the Family Court has not held that the allegations are not proved but has erroneously held that they do not constitute cruelty.

13. Learned Counsel for the Appellant further submits that the threshold of proof required to prove grounds for divorce under the Special Marriage is much lower than the Hindu Marriage Act. It is submitted that the impugned judgement has not distinguished between the two acts and instead imposed the sensibilities and philosophies of the Hindu Marriage Act on the Special Marriage Act.

14. It is submitted that irretrievable breakdown of marriage has been considered along with the "fault theory" to bring down the threshold of proof required to establish fault to either party under the Special Marriage act, by virtue of marriage being contractual in nature. She relies upon the judgment in the case of *Sandhya Kumari v. Manish Kumar 234 (2016) DLT 381* to contend that irretrievable

breakdown of marriage blended with cruelty would entitle a Petitioner to a divorce

15. Learned Counsel for the Appellant further submits that Special Marriage Act, 1954 has a lower threshold of proof given the fact that marriage under the said Act is not a "sacrament" in the way it is under Hindu and Christian personal law. This, it is submitted that can be inferred from the fact that Special Marriage Act provided for divorce from its inception in 1954 while the Hindu Marriage Act, 1955 did not provide for it till 1976.

16. It is submitted that as marriage under the Hindu Marriage Act is a sacrament thus divorce is not an entitlement. In contrast marriage under the Special Marriage Act is purely contractual in nature. The Special Marriage Act as a statute does not envisage 'no exit' and it would be unjust for the Appellant to be denied a divorce.

17. Per Contra, Learned Counsel for the Respondent submitted that the plea that the threshold for cruelty is lower in Special Marriage Act than in the Hindu Marriage Act is unacceptable. He submits that both Acts refer to the “solemnization of marriage” and hence marriage under both is sacrament and not contractual. Section 27(1)(d) of Special Marriage Act and Section 13(1) (ia) of Hindu Marriage Act are *pari materia*. It is submitted that both statutes are identical in

language and hence the law laid down by the High Courts and Supreme Court of India while interpreting the respective provisions i.e. Section 27(1)(d) of the Special Marriage Act and Section 13(1)(ia) of the Hindu Marriage Act would equally apply to cases being tried under both the enactments.

18. To ascertain as to whether a different or lower threshold should be applied to a Petition seeking divorce on the ground of cruelty under the Special Marriage Act *vis a vis* Hindu Marriage Act, a comparative of the various provisions is required to be done.

19. A comparative of the relevant provision of the Hindu Marriage Act *vis a vis* the Special Marriage Act is as under:

HINDU MARRIAGE ACT	**SPECIAL MARRIAGE ACT**
5. Conditions for a Hindu marriage.—A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:— (i) neither party has a spouse living at the time of the marriage; (ii) at the time of the marriage, neither party— *(a)* is incapable of giving a	**4. Conditions relating to solemnization of special marriages**. — Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:—

valid consent to it in consequence of unsoundness of mind; or *(b)* though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or *(c)* has been subject to recurrent attacks of insanity; (*iii*) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage; (*iv*) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two; (*v*) the parties are not *sapindas* of each other, unless the custom or usage governing each of them permits of a marriage between the two;	(*a*) neither party has a spouse living; *b*) neither party— (*i*) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or (ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or (iii) has been subject to recurrent attacks of insanity; (c) the male has completed the age of twenty-one years and the female the age of eighteen years; (*d*) the parties are not within the degrees of prohibited relationship: Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and

	(*e*) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends]. *Explanation*.—In this section, "custom", in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family: Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied— (*i*) that such rule has been continuously and uniformly observed for a long time among those members; (*ii*) that such rule is certain and not unreasonable or opposed to public policy; and

	(*iii*) that such rule, if applicable only to a family, has not been discontinued by the family.
7. Ceremonies for a Hindu marriage.—(*1*) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto. (*2*) Where such rites and ceremonies include the *Saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.	**12. Place and form of solemnization**.—(*1*) The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed. (*2*) The marriage may be solemnized in any form which the parties may choose to adopt: Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties,—"I, (A), take the (B), to be my lawful wife (or husband)".
9. Restitution of conjugal right.— When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the	**22. Restitution of conjugal rights**.—When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the

aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly. *Explanation*.—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.	aggrieved party may apply by petition to the district court for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly. *Explanation*.—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of providing reasonable excuse shall be on the person who has withdrawn from the society.
10. Judicial separation.— (*1*) Either party to a marriage, whether solemnised before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (*1*) of section 13, and in the case of a wife also on any of the grounds specified in sub-section (*2*) thereof, as grounds on which a petition for divorce might have been presented. (*2*) Where a decree for judicial	**23. Judicial separation**.—(*1*) A petition for judicial separation may be presented to the district court either by the husband or the wife,— (*a*) on any of the grounds specified in sub-section (*1*) and sub-section (*1A*) of section 27 on which a petition for divorce might have been presented; or (*b*) on the ground of failure to comply with a decree for restitution of conjugal rights;

separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.	and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly. (*2*) Where the court grants a decree for judicial separation, it shall be no longer obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.
11. Void marriages.—Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (*i*), (*iv*) and (*v*) of section 5.	**24. Void marriages**.—(*1*) Any marriage solemnized under this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared] by a decree of nullity if— (*i*) any of the conditions specified in clauses (*a*), (*b*), (*c*) and (*d*) of section 4 has not been fulfilled; or (*ii*) the respondent was impotent

	at the time of the marriage and at the time of the institution of the suit. (*2*) Nothing contained in this section shall apply to any marriage deemed to be solemnized under this Act within the meaning of section 18, but the registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the conditions specified in clauses (*a*) to (*e*) of section 15: Provided that no such declaration shall be made in any case where an appeal has been preferred under section 17 and the decision of the district court has become final.
12. Voidable marriages.—(*1*) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:— (*a*) that the marriage has not been consummated owing to the impotence of the respondent; or	**25. Voidable marriages**.—Any marriage solemnized under this Act shall be voidable and may be annulled by a decree of nullity if,— (*i*) the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or (*ii*) the respondent was at the time

(*b*) that the marriage is in contravention of the condition specified in clause (*ii*) of section 5; or (*c*) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)], the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the respondent; or (*d*) that the respondent was at the time of the marriage pregnant by some person other than the petitioner. (*2*) Notwithstanding anything contained in sub-section (*1*), no petition for annulling a marriage— (*a*) on the ground specified in clause (*c*) of sub-section (*1*) shall be entertained if—	of the marriage pregnant by some person other than the petitioner; or (*iii*) the consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872 (9 of 1872): Provided that, in the case specified in clause (*ii*), the court shall not grant a decree unless it is satisfied,— (*a*) that the petitioner was at the time of the marriage ignorant of the facts alleged; (*b*) that proceedings were instituted within a year from the date of the marriage; and (*c*) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree: Provided further that in the case specified in clause (*iii*), the court shall not grant a decree if,— (*a*) proceedings have not been instituted within one year

(*i*) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or (*ii*) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered; (*b*) on the ground specified in clause (*d*) of sub-section (*1*) shall be entertained unless the court is satisfied— (i) that the petitioner was at the time of the marriage ignorant of the facts alleged; (*ii*) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised after such	after the coercion had ceased or, as the case may be, the fraud had been discovered; or (*b*) the petitioner has with his or her free consent lived with the other party to the marriage as husband and wife after the coercion had ceased or, as the case may be, the fraud had been discovered.

commencement within one year from the date of the marriage; and (*iii*) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the said ground.	
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 (*ia*) has, after the solemnization of the marriage, treated the petitioner with cruelty; or (*ib*) has deserted the petitioner for a continuous period of not less than two years immediately preceding the	**27. Divorce**.—(*1*) Subject to the provisions of this Act and to the rules made there under, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent— (*a*) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or (*b*) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or (*c*) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in

presentation of the petition; or	the Indian Penal Code (45 of 1860);
(*ii*) has ceased to be a Hindu by conversion to another religion; or	(*d*) has since the solemnization of the marriage treated the petitioner with cruelty; 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.	(*e*) 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.
Explanation.—In this clause,—	*Explanation*.—In this clause,—
(*a*) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;	(*a*) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;
(*b*) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub—normality of intelligence) which results in abnormally aggressive or seriously	(*b*) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally

irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]	aggressive or seriously irresponsible conduct on the part of the respondent, and whether or not it requires or is susceptible to medical treatment; or
(iv) * * * * *	(*f*) has been suffering from venereal disease in a communicable form; or
(*v*) has been suffering from venereal disease in a communicable form; or	(*g*) has been suffering from leprosy, the disease not having been contacted from the petitioner; or
(vi) has renounced the world by entering any religious order; or	(*h*) 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 the respondent if the respondent had been alive;
(*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;	
Explanation.—In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.	*Explanation*.—In this sub-section, the expression "desertion" means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly;
(*1A*) Either party to a marriage,	

whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground— (*i*) that there has been no resumption of cohabitation as between the parties to the marriage for a period of 9[one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or (*ii*) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of 9[one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.] (*2*) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,— (*i*) in the case of any marriage	(*1A*) A wife may also present a petition for divorce to the district court on the ground,— (*i*) that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality; (*ii*) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898) (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards. (*2*) Subject to the provisions of

solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner: Provided that in either case the other wife is alive at the time of the presentation of the petition; or (*ii*) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality; or (*iii*) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order,	this Act and to the rules made there under, either party to a marriage, whether solemnized before or after the commencement of the Special Marriage (Amendment) Act, 1970 (29 of 1970), may present a petition for divorce to the district court on the ground— (*i*) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or (*ii*) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

cohabitation between the parties has not been resumed for one year or upwards; (*iv*) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years. *Explanation.*—This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).]	
13A. Alternate relief in divorce proceedings.—In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in clauses (*ii*), (*vi*) and (*vii*) of sub-section (*1*) of section 13, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.	**27A. Alternative relief in divorce proceedings.—**In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except insofar as the petition is founded on the ground mentioned in clause (*h*) of sub-section (*1*) of section 27, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.
13B. Divorce by mutual	**28. Divorce by mutual**

consent.—(*1*) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved. (*2*) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (*1*) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with	**consent**.—(*1*) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved. (*2*) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (*1*) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act, and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

effect from the date of the decree.	
14. No petition for divorce to be presented within one year of marriage.—(*1*) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, unless at the date of the presentation of the petition one year has elapsed since the date of the marriage: Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented before one year has elapsed since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the	**29. Restriction on petitions for divorce during first one year after marriage**.—(*1*) No petition for divorce shall be presented to the district court unless at the date of the presentation of the petition one year has passed since the date of entering the certificate of marriage in the Marriage Certificate Book: Provided that the district court may, upon application being made to it, allow a petition to be presented before one year has passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the district court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the district court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of one year from the date of the marriage or may dismiss the petition, without

decree shall not have effect until after the expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after expiration of the said one year upon the same or substantially the same facts as those alleged in support of the petition so dismissed. (*2*) In disposing of any application under this section for leave to present a petition for divorce before the expiration of one year] from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said one year.	prejudice to any petition, which may be brought after the expiration of the said one year upon the same, or substantially the same, facts as those proved in support of the petition so dismissed. (*2*) In disposing of any application under this section for leave to present a petition for divorce before the expiration of one year from the date of the marriage, the district court shall have regard to the interests of any children of the marriage, and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said one year.
15. Divorced persons when may marry again.—When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has	**30. Remarriage of divorced persons**.—Where a marriage has been dissolved by a decree of divorce, and either there is no right of appeal against the decree or if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has

been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.	been presented but has been dismissed either party to the marriage may marry again.

20. It may be noticed that nearly all the provision relating to the conditions relating to solemnizing of marriage; ceremonies/form of solemnization of a marriage; restitution of conjugal rights; judicial separation; void marriages; voidable marriages; divorce, grounds for divorce; alternative relief in divorce proceedings; divorce by mutual consent; restriction in respect of filing of a petition for divorce within one year of marriage and remarriage of divorced person are identical.

21. Further the expression used in respect of marriage is "solemnisation". The expression solemnization implies a solemn act i.e. a formal act performed with an oath or pledge.

22. A comparative of the various provisions of the Special Marriage Act with the Hindu Marriage Act two act shows that the legislature has prescribed that even though the Hindu Marriage Act applies only to a class of persons and Special Marriage Act is not restricted to any particular class, the conditions relating to solemnizing of marriage; ceremonies/form of solemnization of a marriage; restitution of conjugal rights; judicial separation; void marriages; voidable marriages; divorce, grounds for divorce;

alternative relief in divorce proceedings; divorce by mutual consent; restriction in respect of filing of a petition for divorce within one year of marriage and remarriage of divorced person apply equally in an identical sphere.

23. In respect of grant of divorce on the ground of cruelty, the Hindu Marriage Act prescribes "*has, after the solemnization of the marriage, treated the petitioner with cruelty"* and the Special Marriage Act prescribes "*has since the solemnization of the marriage treated the petitioner with cruelty".* Both the acts use identical expression while providing for a ground for divorce on the ground of cruelty. Since both the Acts have similar provision in respect of nearly all the incidences of marriage and divorce and identical provision in respect of ground for divorce on the ground of cruelty, there is no basis to hold that lower threshold should apply while considering a petition for divorce on the ground of cruelty under the Special Marriage Act.

24. Reliance placed by learned counsel for the Appellant on the decision of *Sandhya Kumari v. Manish Kumar (supra)* to contend that irretrievable breakdown of marriage blended with cruelty would entitle a petitioner to divorce is misplaced.

25. In *Sandhya Kumari v. Manish Kumar (supra)* the bench held

that "*Though irretrievable breakdown of marriage is not a ground for divorce but in the judgments reported as 2006 (2) Mh.L.J. 307 Madhvi Ramesh Dudani v. Ramesh K. Dudani, 2007 (4) KHC 807 Shrikumar V. Unnithan v. Manju K. Nair, (1994) 1 SCC 337 V. Bhagat v. D. Bhagat and (2006) 4 SCC 558 Navin Kohli v. Neelu Kohli the concept of cruelty has been blended by the Courts with irretrievable breakdown of marriage. The ratio of law which emerged from said decisions is that where there is evidence that the husband and wife indulged in mutual bickering leading to remonstration and therefrom to the stage where they target each other mentally, insistence by one to retain the matrimonial bond would be a relevant factor to decide on the issue of cruelty, for the reason the obvious intention of said spouse would be to continue with the marriage not to enjoy the bliss thereof but to torment and traumatized each other.*"

26. It may be noted that irretrievable breakdown of marriage is not a ground for grant of divorce under either the Hindu Marriage Act or the Special marriage Act. All the cases referred to are where the Supreme Court of India has exercised powers under Article 142 of the Constitution of India.

27. With regard to the powers of the Supreme Court under Article 142 of the Constitution of India, the Constitution Bench of the

Supreme Court in *Shilpa Sailesh* v. *Varun Sreenivasan*, 2023 SCC OnLine SC 544 has held as under:

> *"24. Exercise of jurisdiction under Article 142(1) of the Constitution of India by this Court in such cases is clearly permissible to do 'complete justice' to a 'cause or matter'. We should accept that this Court can pass an order or decree which a family court, trial court or High Court can pass. As per Article 142(1) of the Constitution of India, a decree passed or an order made by this Court is executable throughout the territory of India. Power of this Court under Articles 136 and 142(1) of the Constitution of India will certainly embrace and enswathe this power to do 'complete justice', even when the main case/proceeding is pending before the family court, the trial court or another judicial forum. A question or issue of lack of subject-matter jurisdiction does not arise. Settlements in matrimonial matters invariably end multiple legal proceedings, including criminal proceedings in different courts and at diverse locations. Necessarily, in such cases, the parties have to move separate applications in multiple courts, including the jurisdictional High Court, for appropriate relief and closure, and disposal and/or dismissal of cases. This puts burden on the courts in the form of listing, paper work, compliance with formalities, verification etc. Parallelly, parties have to bear the cost, appear before several forums/courts and the final orders get delayed causing anxiety and apprehension. In this sense, when this Court exercises the power under Article 142(1) of the Constitution of India, it assists and aids the cause of justice.*

25. However, there is a difference between existence of a power, and exercise of that power in a given case. Existence of power is generally a matter of law, whereas exercise of power is a mixed question of law and facts. Even when the power to pass a decree of divorce by mutual consent exists and can be exercised by this Court under Article 142(1) of the Constitution of India, when and in which of the cases the power should be exercised to do 'complete justice' in a 'cause or matter' is an issue that has to be determined independent of existence of the power. This discretion has to be exercised on the basis of the factual matrix in the particular case, evaluated on objective criteria and factors, without ignoring the objective of the statutory provisions. In Amit Kumar *v.* Suman Beniwal *(2021 SCC OnLine SC 1270), this Court has held that reading of sub-sections (1) and (2) to Section 13-B of the Hindu Marriage Act envisages a total waiting period/gap of one and a half years from the date of separation for the grant of decree of divorce by mutual consent. Once the condition for waiting period/gap of one and a half year from the date of separation is fulfilled, it can be safely said that the parties had time to ponder, reflect and take a conscious decision on whether they should really put the marriage to end for all times to come. This period of separation prevents impulsive and heedless dissolution of marriage, allows tempers to cool down, anger to dissipate, and gives the spouses time to forgive and forget. At the same time, when there is complete separation over a long period and the parties have moved apart and have mutually agreed to separate, it would be incoherent to perpetuate the litigation by asking the parties to move the trial court. This Court in* Amit Kumar *(supra) has observed that, in addition to referring to the six*

factors/questions in Amardeep Singh *v.* Harveen Kaur *(2017) 8 SCC 746, this Court should ascertain whether the parties have freely, on their own accord, and without any coercion or pressure arrived at a genuine settlement which took care of the alimony, if any, maintenance and custody of children, etc.*

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41. Having said so, we wish to clearly state that grant of divorce on the ground of irretrievable breakdown of marriage by this Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both parties. It is obvious that this Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. That the marriage has irretrievably broken down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the

> *parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations. We would not like to codify the factors so as to curtail exercise of jurisdiction under Article 142(1) of the Constitution of India, which is situation specific. Some of the factors mentioned can be taken as illustrative, and worthy of consideration."*

28. In terms of the Judgment of the Constitution Bench of the Supreme Court in *Shilpa Sailesh* (supra), the power to grant divorce on the ground of irretrievable breakdown of marriage is exercised by the Supreme Court under Article 142 of the Constitution of India to do complete justice to both the parties. Such a power is not vested in the High Courts leave alone the Family Courts.

29. Further, the contention on behalf of the Appellant that Special Marriage Act has a lower threshold of proof, given the fact that marriage under the said Act is not a "sacrament" in the way it is under Hindu and Christian personal laws and this could be inferred from the fact that Special Marriage Act provided for divorce from its inception in 1954 while the Hindu Marriage Act, 1955 did not provide for divorce till 1976 also does not have any merit. Divorce was contemplated by the Hindu Marriage Act from 1955 itself, however

the ground of cruelty was added by the 1976 amendment. The fact that cruelty was added as a ground for divorce by the 1976 amendment, does not take away the concept of marriage being a sacrament.

30. Furthermore, post the 1976 amendment in the Hindu Marriage Act, both the Special Marriage Act and Hindu Marriage Act have identical provisions as noticed hereinabove. Consequently the expression *"treated the petitioner with cruelty"* used in both the Acts has to be given the same meaning.

31. The question that is now left for determination is as to whether the Appellant has been able to prove that he has been treated with cruelty by the respondent as is sufficient to constitute a ground for divorce.

32. The case set up by the Appellant before the Family Court was that parties had not enjoyed conjugal relations since 2007 and though from 2007 to 2009, they stayed under the same roof but only communicated through text messages. In his evidence Appellant has deposed that the marriage has broken down irretrievably between the parties and that they have not had a regular conjugal relationship for a number of years. Since 2009, Appellant has been living in Srinagar and serving as the Chief Minister of the State. Respondent has chosen

to live in Delhi with the children, in the government accommodation allotted to the Appellant.

33. Respondent on the other hand has deposed that parties stayed together till 2011 and even right before the filing of the petition, the Appellant came to Delhi and stayed at 7, Akbar Road with the Respondent and their children. She deposed that the parties had a good and healthy relationship right up until the Appellant approached the Mediation Centre of the Delhi High Court, in 2013. She also deposed that the Appellant abandoned her and the children in mid 2011. Respondent was cross examined on this aspect and she deposed that abandonment alleged in mid 2011 was more mental than physical. She further deposed that she spent considerable time in Jammu and Kashmir campaigning for her father-in-law and she also spent 6 consecutive months from May to October 2010 in Jammu and Kashmir for renovation of the Appellant's official residence in Jammu.

34. On the issue of Absence of Intimacy, the family Court has held as under:

> "*108 Absence of Intimacy*
> *The petitioner has deposed that absence of intimacy of standard period of time was another hallmark of breakdown of their marriage. At one point of time, it was so bad that it extended to five years. During a nasty fight*

he narrated this to the parents of the respondent. Thereafter, it never stretched to five years but gaps of six months to a year was common. This testimony of the petitioner is vague in so much as it does not specify the alleged period of absence of intimacy. Moreover, the respondent has categorically denied there being any absence of intimacy between her and the petitioner. Whether the parties shared their lives as husband and wife is a fact within their private domain, but the conduct towards each other is significant to father if they had no marital relationship.

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110. The petitioner having become the Chief Minister of J & K was necessarily required to shift to J & K. The children were studying in Delhi on account of which the respondent and the children remained in Delhi. Though the petitioner has asserted that he wanted the children and the respondent to shift with him to government accommodation in J& K, but significantly there is no denial that the official accommodation in Delhi at 7, Akbar Road continued to be in the name of the petitioner. At no point of time did he surrender the said accommodation nor is there any evidence that he intended to withdraw his children from Sanskriti School or to admit them in Srinagar.

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112. Though, petitioner has asserted that he would have been able to provide better security to children in J & K, but the explanation of respondent that continuity of studies and better prevailing law and order situation were the reasons for their continuing to stay in Delhi,

seems more plausible.

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114. The respondent and the children did continue to live in Delhi even after 2009 when the petitioner shifted to Srinagar on account of his official exigencies. The question is not of physical distance but whether there was complete forsaking of matrimonial relationship between the parties or that the respondent withdrew herself from her matrimonial obligations thereby causing cruelty to the petitioner.

115. The petitioner has deposed that though they resided together under the same roof from 2007 to 2009, but they were communicating only through text messages. In the matrimonial matters, the best witness to what transpires between husband and wife, are they both. It is the word of one against the other. In order to ascertain whether there was no interaction and relationship of husband and wife between them, their conduct during this period is most significant.

116. The petitioner in his cross-examination has admitted that between 2007-2009 he along with his wife and children had visited Maldives, Kullu & Manali. They even went for a European Cruise in the year 2008.

117. The petitioner qualified these trips by claiming that in the trip to Kullu and Manali, the parents of the respondent had also accompanied them. In the European Cruise, they were accompanied by six other family friends.

118. The family friends or the parents of the respondent

may have accompanied the petitioner for these trips, but it cannot be overlooked that his wife and children had been with him for these various vacations. A person does not go for family vacations with his wife if he is not on talking terms with his wife.

119. The petitioner has admitted that in December, 2008, his wife and children were with him in Jammu &. Kashmir. He explained that this was the easiest way for him to get his children to come to Kashmir by making their mother accompany them. In order to make these visits more pleasant and easier all around more often than not. the parents of respondent were also included in these trips or else the children on their own, would not be able to visit Jammu & Kashmir.

120. The family went for a vacation in U.K in March, 2009. It was sought to be explained that after a difficult election campaign, he wanted to spend some relaxing moments with his children and thereby, allowed the respondent to accompany them or else the sons would not have been permitted to spend vacation with him. One does not take a wife with whom a person has severed the relationship for relaxation. The only inference that can be drawn is that the relationship between petitioner and respondent were not strained as claimed by him.

121. Similarly, it is admitted by him that in April, 2009 he visited Dubai with his wife and mother-in-law. Here again a similar explanation as earlier, was given. He admittedly visited Samod in Rajasthan for holidays in May 2009.

122. The petitioner admittedly went to Italy for vacation with his wife alone in November, 2009. He sought to

explain the trip by claiming that it was a last holiday with his wife in the hope of attempting to sort out the problems in their marriage. He had looked forward to this vacation but was subjected to worst mental torture, scorn, and anger by his wife and 3/4th of his nine-day trip went with respondent not talking fighting and refusing to participate in any of the activities of the trip. She disagreed with him about how much money she would spend in the trip. He did not cut short the trip as he did not want the problems of their marriage to become apparent to their families. He was accused of not being a good provider and being stingy with money. She constantly taunted how she could have a much better life if she had chosen to marry earlier suiters, whom she had turned down. She repeatedly claimed that the trip was a big mistake, and she would never accompany him on any holiday again.

123. It is the testimony of petitioner himself that the trip was intended to sort out the existing problems. The petitioner has failed to explain the "problems" that allegedly existed between him and the respondent. Merely claiming that there were problems, cannot be of any assistance to the petitioner to prove cruelty by respondent.

124. This trip to Italy was followed by another similar trip of the petitioner with respondent to Singapore in December, 2009. The petitioner in his cross-examination again asserted that this trip was also because he wanted to spend some time with his sons and had to necessarily take the respondent along. He was not sure if parents of respondent had accompanied them. Again, there is no instance of there being any discord or unpleasant

incident during this trip. No such suggestion has been given to PW-2, Major General Ram Nath, father of respondent, in his cross-examination.

125. The New Year Eve of 2009-10 was admittedly spent by petitioner and respondent along with their children in Gulmarg, Kashmir. Again, the petitioner claimed that since their relationship was prone arguments, fights, and tension, he had invited the family friends as well. However, there is no elaboration of these "arguments, fights and tension". Except empty assertions, there is no corroboration of the petitioner's claim.

126. This clearly establishes the cordiality of relationship between the parties.

127. The petitioner turned 40 years in March,2010. He admittedly went to Udaipur along with the respondent from 07.03.2010 to 11.03.2010. He admitted that he went there to celebrate his 40'" birthday. He asserted that rather than being a memorable occasion, he had a fight with the respondent on the day of his birthday on the special dinner that was organized by him at Taj Lake Palace Hotel. The fight persisted throughout the evening. Because he had already paid at Oberoi Udai Vilas for the vacation, he did not cut short the trip, but requested friends whom he was aware of to spend rest of the time with them. He thus, admitted that he and the respondent were in Udaipur for 40th Birthday celebration of the petitioner, to make it a memorable occasion. Good memories are created with people whom you love and not with a wife with whom one is not on talking terms. The going together of petitioner with respondent to create memorable memories itself show that there existed no differences between them, which could be termed as

cruelty.

128. In October, 2010 the petitioner along with the family went to Shimla and stayed at Wildflower Hall. The petitioner has again explained, the respondent w that children be taken to Wild Flower Hall along with her parents, petitioner was also keen that the children should come and spend time with him in Kashmir especially because his elder son's birthday was on 12 October, A compromise was worked out and it was decided that they would spend four days in Shimla to celebrate son's birthday and then stay in Kashmir for a week and thereafter, go back to Delhi. They went to Shimla and returned to Srinagar on 14th October. Immediately on reaching Srinagar, they had an argument and she immediately wanted to leave for Delhi. On his asking, parents of respondent intervened, and she stayed back for a day or two.

129, The testimony of petitioner about having spent time together on a vacation in October, 2010 after a difficult summer again defeats his claim of not being on talking terms with respondent. One does not take vacation for relaxation and destressing with estranged wife. Also, they were having arguments according to the petitioner which definitely shows that they were interacting and not on "no-talking terms", as is asserted by him.

130, In December, 2010 till 4th January, 2011 he along with his family and other close relatives was in London, the petitioner again gave a long explanation that he again went through anguish and abuse, the starting point of which was that he did not stand in the long line outside the counter of designer shopping outlet in one of

London's shopping malls. The respondent felt that he was lazy, useless, and worthless because he stepped out of line to give her place to see what bags were available in the shop. He was told in no uncertain terms that he was a bad husband, a bad father and a poor provider and had continually failed in the responsibility, whether personal or professional Also, he was unable to find any restaurant for respondent as they were closed due to holiday season, which was attributed as one of his major failings. It is difficult to accept that all the restaurants would be closed in London during the holiday season. Thus, his consequent explanation of respondent being upset on this account, does not appeal to common sense.

131. Again, neither there are any details of fights nor any corroborative evidence of friends who had accompanied them. Significantly, if such fights and humiliations were frequent as claimed and caused mental anguish, they should have found mentioned in the petition and the affidavit of evidence of petitioner which is conspicuously silent on these aspects and are stated to be the first time by the petitioner in cross-examination. Moreover, none of these incidents have been put to respondent in her cross-examination.

132. PW-3 Sh. N.C Garware had also deposed about having accompanied the petitioner's family to London in December, 2010 for a vacation. He has deposed that while he was staying in an apartment with his family, petitioner was forced to stay in a hotel even though his parents had a house located just outside Central London at a distance of about one hour. The petitioner was visibly saddened as he was unable to spend time with his own family. He has deposed that the animosity between

the couple was evident, and the respondent was sarcastic with the petitioner in front of the children and treated him with contemptuous disregard. He advised the petitioner not to use abusive language in front of children which was detrimental to their interest. This testimony of PW3 in isolation cannot be termed as an act of especially when there is no mention of the specific incident testimony of the petitioner or the respondent.

133. The various trips with respondent and family and then vacation alone with respondent would not happen if petitioner was not on talking terms with the respondent, as was asserted by him. His claim that she termed him stingy and had differences with him about money to be spent, clearly defy that he was not in any kind of communication with his wife. Also, he himself has deposed that trip alone with respondent was an attempt to save his failing marriage, which again reflects that they were having matrimonial relationship. Moreover, one does not go for vacations with a person with whom the relationship has already become dead. The very fact that petitioner and respondent went alone to Udaipur to celebrate 40th birthday of petitioner further reinforces that they were having cordial relationship. No person would go to celebrate a special event of his life like a 40th birthday with his wife with whom his relationship has come to an end.

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136. Again, his own admissions show that the respondent had been accompanying him not only for vacations but also for family occasions. Also, his giving into the respondent's wish of not staying with mother in order to avoid her hostility, again reflects that he shared

the concerns of respondent, his wife. It is also revealed from his own admissions that even in-laws were not aware of their being any discord between the petitioner and the respondent. His assertions that the parents in law were being taken on various occasions earlier only to defuse the hostility between them gets demolished from the very fact that as per himself, the in-laws were not even aware of this imaginary hostility between the petitioner and the respondent.

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138. Other incidents which are admitted by the petitioner are that he became a spouse member of Gymkhana Club in 2010 as the respondent who was a green card holder on account of her father being a member, was offered full membership. It is also admitted by him thai the respondent had done the renovation work of his two residences in Jammu and Srinagar. Though he claimed thai she was a paid contractor and had not done the work as a loving wife, but this again shows that respondent had full involvement in the life of the petitioner or else she would not have made an effort to be a part of renovation of their official residences in Jammu and Srinagar.

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140, The entire gamut of evidence, as discussed above, does not reflect that there was total non-communication between the petitioner and the respondent. In fact, all their visits, trips, and participation of the respondent in the life of petitioner clearly shows that she was throughout a part of the life of the petitioner. No act of respondent has been brought forth which could reflect

any withdrawal from her matrimonial obligation or being non-supportive of the husband's political career. The petitioner has miserably failed to prove any act which could be termed as an act of cruelty, whether physical or mental, towards the petitioner

141. It was argued that Respondent herself had admitted differences between them since 2011, but it is significant to note that the differences may have started to creep in but per se, they do not amount to cruelty. It was for the petitioner to show that it was such conduct of respondent that made it impossible for him to continue to live in harmony with her.

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145. The petitioner has not been able to prove any conduct of respondent which could be termed as cruelty.

146. To conclude, the petitioner has admitted that till about March April 2011 he had been going with his wife and children to various places as has already been discussed. A person who was allegedly talking to his wife on text since 2007 and not talking at all since 2009 would not be going on such frequent trips. Rather his own admissions in the cross-examination defeat his assertions that he was not on talking terms. The frequent vacations with the respondent and the children and many a times with the friends and parents of respondent, clearly reflect that there was complete cordiality and matrimonial relationship between the parties. Had there been the kind of hostility and discord as is asserted by the petitioner, there would necessarily have been moments of differences during all these vacations to which either the parents or the friends would have been a witness. There

> *is not a single incident of there being any unpleasantness on any of these vacations that has been deposed by the petitioner.*
>
> *(underlining supplied)*

35. The Family Court after appreciating the evidence led on behalf of the parties has come to the conclusion that Appellant/petitioner had not been able to prove any conduct of the Respondent which could be termed as cruelty.

36. Though the entire focus of the submission of learned counsel for the Appellant was on lowering the threshold than on the factual matrix of the case, we have examined the evidence led by the parties in the light of the allegations made by the Appellant and are of the view that the family court has rightly appreciated the evidence led by the parties and come to the conclusion that the Appellant has not been able to prove that respondent has treated the Appellant with cruelty so as to constitute a ground for divorce under the Special Marriage Act.

37. Another ground raised by the Appellant in the Divorce Petition was that Respondent refused to move to Kashmir in 2002, when he moved there in order to prepare himself for the then ensuing elections. This resulted in Appellant having to fly to Delhi on the weekends to meet his children. In response to the said allegation Respondent had deposed that it was the decision of the Appellant and not the

Respondent, due to security reasons and more importantly because the Jammu and Kashmir government operated from Srinagar for six months and from Jammu for six months, which would continuously displace the children**.**

38. The family Court in the impugned judgment has held as under:

> *"100. The respondent in her cross-examination has explained that the children were admitted In Sanskriti School at the age of 5 years and 4 years respectively. This shows that their education since beginning was in Sanskriti School. In this context, it is significant to note that his grandmother, then his father and thereafter he had been allotted government accommodation in Delhi and they had been residing in Delhi since much before the marriage of petitioner. Furthermore, after marriage in the year 1994, petitioner and the respondent had stayed in the accommodation allotted to grandmother at Safdarjung Lane till 1999. Thereafter, the petitioner and respondent shifted to separate accommodation at Pandara Road, New Delhi, as he became a Minister in NDA Government in October 1999 till about December, 2002. The petitioner and the respondent were in Delhi till 2002 on account of the exigencies of his own work and not on account of the insistence or preference of respondent to be In Delhi. It is natural for the children to have been admitted in a school In Delhi, as petitioner and respondent were residing in Delhi. The claim of petitioner that it was respondent's adamancy in getting children admitted in Delhi school is thus, not tenable.*
>
> *101. The petitioner has claimed that after having lost election in 2002 he wanted to shift to Srinagar along with*

the respondent and the children, but the respondent did not agree as she preferred to stay in Delhi which impacted his work as he had to travel between Delhi and Srinagar. The respondent on the other hand, has explained in her cross-examination that in the year 2003 petitioner as well as she understood the gravity of the situation prevailing in J & K. Her husband had been attacked twice while he was there along with the respondent and the children was there in Srinagar. Moreover, the State of J & K is unique in as much as there are two capitals: one at Jammu and other at Srinagar. The State Government stays in each capital for six months. But this does not happen with the schools. So, they would have had to stay separately for six months. Therefore, they both took a conscious decision of putting the children in a school in Delhi and thus, selected Sanskriti School at Chanakyapuri.

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103. From the testimony of the petitioner and respondent, it has been clearly established that the petitioner because of his political career (being a Minister in Central Government till 2002) was based in Delhi. Thereafter, he lost the election, but because of the prevail situation in J & K and also because of the two capitals creating difficulty in providing a stable place to children, they concertedly decided to get the children educated in Delhi and the respondent agreed to stay back in Delhi along with the children.

104. The petitioner may have had to frequently travel to Srinagar on account of his political compulsions, but such travel cannot by any stretch of interpretation, be termed to be on account of the matrimonial discord

> *between the parties. This was a collective decision taken by both the parties in their own interest as well as in the interest of the children. The parties continued to have interactions as a family and frequently travelled together for vacations and the petitioner as per his own testimony regularly visited the respondent and the children in Delhi. This arrangement of respondent and children residing in Delhi while petitioner commuting to Srinagar on account of his work, cannot be termed as an act of mental cruelty towards the petitioner."*
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> *(underling supplied)*

39. The Family Court has held and rightly so that Appellant and respondent were in Delhi till 2002 on account of the exigencies of Appellant's own work and not on account of the insistence or preference of respondent to be In Delhi. Further that it was natural for the children to have been admitted in a school In Delhi, as Appellant and respondent were residing in Delhi. The claim of Appellant that it was respondent's adamancy in getting children admitted in Delhi school was thus held to be not tenable. Respondent in her testimony had deposed that Appellant had been attacked twice while he was in Jammu and Kashmir along with the respondent and the children. Further keeping the children's education in mind they both took a conscious decision of putting the children in a school in Delhi. The Family Court has held that Appellant may have had to frequently travel to Srinagar on account of his political compulsions, but such travel could not be termed to be on account of the matrimonial discord

between the parties. Parties continued to have interactions as a family and frequently travelled together for vacations and the Appellant as per his own testimony regularly visited the respondent and the children in Delhi. This arrangement of respondent and children residing in Delhi while Appellant commuting to Srinagar on account of his work, cannot be termed as an act of mental cruelty towards the Appellant.

40. Another allegation raised by the Appellant was that Respondent was never comfortable with the family of the Appellant and he was forced to distance himself from his family in order to keep peace in his marriage. He was forced to have no contact with his sisters because of the Respondent. The Respondent on the other hand contended that Appellant never had good relations with his sister and hence they never gave any respect to the Respondent. She stated that she never stopped Appellant from meeting anyone he wanted. She also denied all allegations of discord with the family of the Appellant.

41. The Family Court has held as under:

> *"70. From the testimony of the respondent coupled with the admissions of PW2 Sara Pilot in her cross-examination, it is abundantly clear that the respondent after marriage resided together with the petitioner in the Safdarjung Lane house, which was allotted to the grandmother of the petitioner, as a joint family. It is only when the petitioner was allotted his own independent*

accommodation in 1999 that he shifted out. The reason for shifting out of joint family is the allotment of separate accommodation to petitioner in 1999 when he became a Minister with NDA Government. The reason for separation is not shown to be the strain between the family members of the petitioner and the respondent. The assertions of the petitioner in regard to alleged strain is rather vague and non-explanatory.

71. The petitioner has deposed in his affidavit that respondent did not have a comfortable relationship with his family because of which he was forced to distance himself from his family to keep marriage. He has tried to substantiate this assertion, which is otherwise bereft of any detail, by asserting that they had stopped visiting England till they could afford to stay in a hotel. The respondent refused to stay in the deponent's mother's house in England. Though the petitioner is claiming distance between his mother and the respondent, but PW2 Sara Pilot his sister has given incidents when the petitioner's mother and sister Minna had visited the respondent at their residence at 7, Akbar Road. There is no specific incident given by the petitioner to explain how and when he was prevented from meeting or interacting with his own family members. There are various incidents (which would be discussed later) to show that the respondent had been a part of the family and they had been interacting with them on various occasions. The testimony of the petitioner is completely vague and un-acceptable.

72. The petitioner has not given a single circumstance to explain the alleged difference between the respondent and the family members. However, this has been

explained by his sister Sara Pilot who appeared as PW-2. It is deposed by her that after concluding her college in U.K, she moved to India in 2001. She was 22 years old, but respondent refused to allow her to stay in the house of her brother at 7, Akbar Road by making her feel unwelcome by her cold, aloof and uncaring behavior. She never asked or offered her to stay with them. She was thus, compelled to stay in Kashmir House. Her father Dr. Abdullah was not happy with this arrangement as she was a single young girl who was compelled to stay in a room in State Guest House. Her father requested her brother to allow her to stay with him, but he was apprehensive of incurring the respondent's displeasure. She, therefore, stayed in a State Guest House in Kotia Lane and thereafter, moved to Kashmir House till January, 2004.

73. In this regard, it is significant to refer to her cross-examination. It is her own testimony that she completed her Master's programme in U.K in 2003. It has been explained by her that during the period 2001. 2004. she was visiting India periodically as she interned with United Nations in Delhi and at the same time was doing her Master's programme in U.K. It has been further admitted by her that the J&K House was at 20, Canning Lane. It is further deposed by her that 11,3 Murti Lane, address of which was given by her in list of witnesses, had been allotted to her father i.e., Dr. Farooq Abdulla.

74. The respondent in her cross-examination when specifically asked, admitted that Sara Pilot after return from U.K, did not stay with her at 7, Akbar Road, but she stayed with her father though she did not remember the address of the said house. A suggestion was given to her

that Sara Pilot stayed in Kashmir House in a room in State Guest House, it was explained by the respondent that 5, Prithvi Raj Road is called Kashmir House, where only the Chief Minister and Governor can stay and Sara stayed there as a member of the family of her father, who was the Chief Minister. She explained when asked about KotIa Lane House, that it is not a State Guest House but a government accommodation that was allotted to Dr. Farooq Abdullah or his mother. She further explained that Sara Pilot did not stay there throughout till she got married (in 2004) as her father (Dr. Farooq Abdulla) became the Chief Minister and was given an accommodation at 5, Prithvi Raj Road, where she shifted. It is admitted by her that she did not ask Sara Pilot to stay with her at 7, Akbar Road.

75. From the admissions of PW2 Sara Pilot it is evident that she was intermittently staying in Delhi while interning with United between 2001 to 2004 as she was pursuing her Master's programme in U.K simultaneously which she completed in 2003. It is also evident from her testimony that there was alternative accommodation available in Delhi in the name of her father. Therefore, it is well understandable for her to have stayed in the accommodation in the name of her father, which cannot be considered to be any less safe than the house of the petitioner. It was suggested to respondent in cross-examination that Dr. Farooq Abdullah, her father-in-law wanted Sara to reside in her house. The respondent stated that she was not aware of any such inclination of her father-in-law. The best person to depose about this aspect was Dr. Farooq Abdullah, but he has not been examined as a witness.

76. It is significant to note that the time period about which PW2 Sara Pilot is talking is 2001 to January, 2004 when the petitioner was also with the respondent. He has not been explicit in his testimony that it was the respondent who prevented his sister from staying with them during this period. Even though the respondent admittedly did not offer Sara to stay with them at their residence, but then no evidence has been led by the petitioner to show that he wanted his sister Sara to stay with them or that he was keen to have his sister stay with him or that respondent resisted it which led to any stress and strain in their matrimonial relationship. The petitioner's testimony in this regard is absolutely silent.

77. PW-2 Sara Pilot has further deposed that in 2002, her mother and elder sister Hinna were in India. They were upset that she was living on her own and had no contact with anyone in brother's houses and even food was not being sent by them. A close friend of her Uncle Bali was regularly sending food to her. PW2 Sara has deposed that her sister Hinna had told the respondent that the family was upset as Sara was living on her own and no concern had been shown by her. On this, respondent had exhorted that she was not her responsibility and if the parents are so bothered, they should take care of her. Her sister Hinna had also expressed the concern to respondent about sending the tiffin to Sara in the Guest House, on which she said that it was not her responsibility and that her father may keep a cook for her. Again, it may be noted that the testimony of the petitioner is silent in this regard and even respondent has not been confronted with this evidence.

78. PW-2 Sara Pilot has further deposed that in 2002

when her brother along with the sons, was in Kashmir, she had visited them and had tried to play with and hold Zahir who was one year old at that time. However, the maid refused to hand over the child and stated that the respondent had instructed her not to give child to her. This caused her extreme humiliation. She raised the issue with her brother, who told her to let the matter slide and assured that she could play with Zahir.

79. PW-2 Sara Pilot had claimed that Zahir was one year old in 2002 but has admitted in her cross-examination that Zahir was born in 1999 and therefore, was not one year old in 2002 when she claimed to have visited Kashmir. It was thus, suggested to her that no such incident happened as Zahir was not one year old in 2002. Such isolated non-proven trifle incident wherein the sister of the petitioner was not handed over the child to play with, cannot be taken as an act of cruelty of the respondent towards the petitioner.

***** ***** *****

81. It is significant to note that as per PW2 Sara Pilot, the petitioner was also present in the said lunch. However, this incident has not been cited by the petitioner in his testimony. At best, it can be inferred from the testimony of PW2 that she and respondent did not share a very cordial relationship, but this indifference cannot amount to an act of cruelty of respondent towards petitioner as the testimony of the petitioner is completely silent in this regard. Though, the petitioner had claimed that strained relationship between the respondent and his family members became a cause of mental stress and cruelty to him, but except a bald assertion, none of the incidents as narrated by PW2 have

been stated by the petitioner.

82. PW-2 Sara Pilot has further deposed that her mother and sisters were due to return to U.K in 2002. The respondent and the petitioner camo to Kashmir House to say goodbye to them. Unfortunately, she and her sister were not present as they had to collect last minute things for taking back to England. This seemed to u respondent who was very cold towards them. Her sister Hinna tried to overcome the awkwardness with some small talk. They said goodbye and went out to their car. She remarked to her mother "See, there was not even a goodbye to her". Her mother shouted to her brother "Omar, you forgot to say bye to Sara". On this, respondent followed the petitioner shouting at her mother that she always took her own daughters' side and that she always found fault with her. She shocked them all as they all always treated the respondent well. Petitioner took the mother inside and later, the mother told that petitioner had begged her not to say anything to the respondent as things were at breaking point between them.

83. This incident itself as narrated by PW-2 shows that it is the petitioner who had not said goodbye to her which had upset the mother. The role of the respondent is nowhere to be seen except the assertion that she subsequently confronted the mother for always blaming her. Rather, from her own narration, it seems that the petitioner was the one who had strained relationship with Sara.

84. As already noted above, this incident has also not been deposed by the petitioner in his testimony.

85. PW2 Sara has further deposed that her mother and sister Safia and Minna have told her that on numerous occasions when they visited the respondent at her residence at Akbar Road, they were told by the staff to go and see the respondent in her bedroom as she always remained on the telephone and waived them inside. She never stood up when her mother came in or give her respect of a senior. They were made to feel like unwelcome intruders in the house. Eventually, they decreased their visits to their house over a period of time.

86. This attitude of the respondent is reported to be towards Safia, Hinna and their mother, but none of these persons have stepped into the witness box. The testimony of PW2 in this regard is only a hearsay. Moreover, from her testimony it can be inferred that mother and sisters had been frequently visiting the house of the respondent at 7, Akbar Road and they were always invited inside. This in fact, shows that respondent did not have any inimical attitude towards the family members of the petitioner and that they were free to visit their house at 7, Akbar Road.

87. PW-2 Sara Pilot had narrated an incident of August, 2011 when on the occasion of Eid-ul-Fitr, her father and sister Hinna had visited Akbar Roadhouse to wish the sons of the petitioner, but respondent did not come out to see them. The father and the sister met the boys in the sitting room and left, thereafter. It is further deposed by her that recently her parents had brought some gifts from England for the two sons of the petitioner, but they were not allowed inside the main door They entered through kitchen door and handed over the gifts to the servant.

88. These are the incidents to which the father and the sisters of the petitioner were an eyewitness, but none of them have stepped into the witness box. Also, there is no corroboration to these incidents in the testimony of the petitioner.

89. Gala Dinner in 2010

PW2 Sara Pilot has further deposed that in and around April 2010 her brother i.e., the petitioner had helped to organize a Gala Dinner for the NGO Rahat Charitable Foundation, which is run by the respondent. Various famous personalities were invited but the respondent refused to invite her and other sisters. She was told by her friend Natasha, who was helping to organize the dinner, that the respondent did not want her to be there. Her father and brother were upset. The respondent never cared for their feeling. Eventually, the function was attended by her parents and brother. She received an invitation on the last day but even her name and address were written erroneously. The invitation was extended only on the insistence of her brother and father. Her sister in Kashmir, did not receive the invitation.

90. The respondent was also confronted about this Gala Charity Dinner in April 2010 organized on behalf of NGO Rahat Charitable Foundation. She explained that she and the petitioner along with other members of the foundation, had organized the dinner. Tables were sold for charity, and she was not aware of the complete guest list. She and the petitioner had invited the members of the petitioner's family, who attended the dinner as well. She was evasive when asked if Sara Pilot (PW2) received the invitation a night before, by stating that she did not remember. She stated that she was not aware if

the delayed invitation was on account of Dr. Farooq Abdullah insistence that she be invited. She stated that Dr. Abdulla may have spoken to the petitioner. She admitted that the petitioner was the Chief Minister at that time and was not sure if the petitioner had come from Srinagar to attend the dinner. She, however, denied that it was she who had the event or that petitioner could not be involved because duties.

91. The petitioner has not deposed about this dinner in his examination in chief. However, this hosting of dinner on 24.04.2010 on behalf of Rahat Charitable Foundation was put to the petitioner in his cross-examination, wherein he explained that he as well as his parents were very keen that his sister should also be invited to this dinner, but because of the unreasonable and violent hatred that the respondent had for his sisters, they were singled out and not invited to this event. His request was categorically refused, thereby causing him and his parents' great avoidable mental anguish. He personally made lot of efforts to make the dinner a success but received no gratitude. Denial of invitation to his sisters made this otherwise pleasant evening, an extremely unpleasant one because of the guilt of not being able to invite his sisters.

92. This explanation of the petitioner is totally contrary to that of PW2 Sara Pilot. She has admitted that invitation had been given though it was received belatedly only on previous night. Moreover, the respondent has explained, and it also emerges from the testimony of the petitioner that he was actively involved in organizing this dinner and there was nothing which prevented him to invite any person or his sisters in this

function. Significantly, he has not deposed in this regard in his affidavit of evidence (examination in chief) and has claimed this to be a mental anguish only in his cross-examination.

93. From the cross-examination of the petitioner/ respondent along with the testimony of PW-2. Sara Pilot it is shown that indeed a gala dinner on behalf of NGO Rabat Charitable Foundation organized by the petitioner and the respondent. It also emerges the petitioner was also involved in the organization of said dinner. What is significant to note is that if the petitioner had any concern in the matter, he should have been the first person to ensure that timely invitation was given to his entire family. The petitioner himself has not deposed in his testimony nor is there any explanation forthcoming as to why the petitioner did not extend the invite or insist on the presence of Sara Pilot in this function.

94. In this regard, it is also significant to refer to the cross examination of respondent who had stated that Sara Pilot had got married to Sachin Pilot and that none of the family members had attended her marriage. This fact cannot be overlooked considering that petitioner himself has not deposed in his testimony that Sara pilot was intentionally invited at last minute by the respondent or that he wanted to invite his sister but was prevented by the respondent. The petitioner has nowhere asserted that he was obstructed and prevented by the respondent in interacting with his family in this dinner in April, 2010. Even if it is accepted that PW2 Sara Pilot was invited only on the insistence of her father and she did not attend the dinner as she felt that the respondent did not want her to attend the dinner, but it is not an incident which

became a bone of contention between the petitioner or respondent or that it caused any stress. The petitioner has also not claimed that this was an incident which caused him mental cruelty.

95. PW-2 Sara Pilot has further deposed that in April, 2012 she along with her friends had gone to Restaurant Diva in Greater Kailash for dinner. The respondent was present there along with her mother and the sons. On noticing them, she sent and offered to wish them, respondent was extremely cold and abused her in front of the children and said, "Gel lost you bitch, they don't want to see you". She left the table and was completely devastated. Thereafter, she started avoiding any public or social interaction with the respondent and this greatly upset her brother when she narrated him about this incident.

96. This incident was put to respondent in her cross-examination, but she stated that she did not remember if she had met Sara Pilot in the Restaurant and denied that she had abused PW2 when she approached her to extend pleasantries.

97. Significantly, again the testimony of the petitioner is completely silent about this incident. He has nowhere deposed that the conduct of the respondent in publicly humiliating his sister, has caused him agony nor has he deposed that the relationship of the respondent with his family became a bone of contention between them. Another aspect which emerges is that this is an incident of 2012, while according to the petitioner, he was not on talking terms with respondent sinch 2007 have completely separated since 2009. The contradictions are inherent in the testimony of PW2 Sara and the assertions

of the petitioner which caste a doubt on the claims of the petitioner."

(underlining supplied)

42. The family Court has held that the allegation that Appellant was forced by the Respondent to distance himself from his family has not been substantiated. The Family Court has held that no specific incident was narrated by the Appellant to explain how and when he was prevented from meeting or interacting with his own family members on the other hand the Family Court has found that there were various incidents to show that the respondent had been a part of the family and had been interacting with them on various occasions. The testimony of the Appellant was found to be completely vague and un-acceptable.

43. Further material witnesses to depose about certain averments were not examined by the Appellant. Appellant was found to be silent about certain incidents about which his sister had deposed, though he also should have specific knowledge about them. The Family Court further held that from the testimony, it could be inferred that mother and sisters of the Appellant had been frequently visiting the house of the respondent and they were always invited inside, which showed that respondent did not have any inimical attitude towards the family members of the Appellant and that they were free to visit their house.

44. Further, With regard to the allegation of the Appellant that his sister had not been invited to the Gala Charity Dinner in April 2010 organized on behalf of NGO Rahat Charitable Foundation, the Family Court has referred to the testimony of the Appellant and noted that he had not deposed about this dinner in his examination in chief however, in his cross examination, he explained that he as well as his parents were very keen that his sister should also be invited to this dinner, but because of the unreasonable and violent hatred that the respondent had for his sisters, they were singled out and not invited to this event. His request was categorically refused, thereby causing him and his parents' great avoidable mental anguish. He personally made lot of efforts to make the dinner a success but received no gratitude. Denial of invitation to his sisters made this otherwise pleasant evening, an extremely unpleasant one because of the guilt of not being able to invite his sisters. The Family Court has held that the explanation of the Appellant was totally contrary to that of PW2 Sara Pilot. She has admitted that invitation had been given though it was received belatedly only on previous night. The Family Court has held that from the testimony of the Appellant it emerged that he was actively involved in organizing this dinner and there was nothing which prevented him to invite any person or his sisters to the said function. Further, the Family Court has held that Appellant has also not claimed that this was an incident which caused him mental

cruelty.

45. The Appellant's allegation that Respondent did not support the Appellant in his Political career has also not been found to be substantiated. The Family Court has held that Appellant in his cross-examination had admitted that respondent had joined him various occasions from 2009 till 2011. Appellant had tried to explain that as wife of a Chief Minister she would have necessarily been expected to perform numerous political duties including hosting of dinners for visiting dignatories, Prime Minister, President and other VVIPs hosting visitors on festivals participating in public events. The Family Court relied upon various admission made by the Appellant in his cross examination to hold that respondent had nowhere failed in her responsibilities as wife of the petitioner.

46. The Family Court has further held that Appellant had admitted to taking vacations with the Respondent and their sons. He admitted to taking holidays to Dubai in April 2009, along with the Respondent, their children, and Respondent's parents. He also admits that they went on holiday to Samod, Rajasthan on 30.05.2009, to Italy in November, 2009, to Singapore in December 2009, to Udaipur in March 2010, to Shimla in October 2010 and to London in December 2010. Respondent on the other had deposed that in 2011 they went to Italy and in March 2012, they went to London.

47. With regard to the allegation of the Appellant that the Respondent was using the children as pawns to accomplish her own ulterior means, appellant has relied upon alleged text messages.

48. The Family Court has held as under:

> "*154. Tutoring of sons*
> *The petitioner has asserted cruelty by claiming that her sons were being tutored against him and he was not able to interact freely with his children. As already discussed above, the petitioner and respondent had been frequently going for trips in India as well as abroad and except barely on one or two occasions, the children had always accompanied them. Not only this they have been frequent visiting the petitioner in J & K from time to time and also during the vacations. There is nothing to show that either respondent prevented the petitioner from visiting them in Delhi or they were visiting the petitioner J&K or tutored the sons in any manner against the petitioner.*
>
> *155. The petitioner has referred to the SMS communication exchange between his son and himself during the pendency of the petition to assert that the said communication was a clear indicator of the tutoring of the son done by the respondent. Even though an objection about the admissibility of such communication has been taken by the respondent as the same has not been proved either by producing the original mobile phone or a certificate under Section 65B of Evidence Act, but aside from this technical objection, the conversation per se does not reflect any tutoring. The gist of the conversation is that the son sought information from the petitioner about selling his Apple TV in order to raise*

money to fight the court case. He Questioned his father (petitioner) as to why he had filed a divorce case against the mother, if he had love and care for them. The son had further written that he had read the paper sent through the lawyer and thai the petitioner has nothing to give her (the respondent) but wanted half of her hard-earned money and property. He questioned his father as to why he did not speak to them before he walked out and approached the Court. He also questioned him for harassing the mother by filing the court case.

156. The entire conversation merely reflects the trauma faced by a child who in his teenage, was confronted with the situation where the father has filed a divorce petition against the mother. The reason for doing so by the father was not comprehendible to the young mind of his son. He sought answers to various question as to why he walked out of them; this by no stretch of interpretation can be termed as tutoring of a child against the father.

157. It was asserted by the petitioner that respondent had brought the children to the Court despite there being no court order, only to tutor the children against him. It has been explained by the respondent that it is she who has been wronged and her sons who were teenagers, had come with her for her support. Merely because the children came to the Court at the time when the respondent was to depose in the Court, cannot be termed as an act of tutoring.

158. There is no act of tutoring of the children by the respondent that has been proved by the petitioner. In fact, the petitioner has not been able to show any act of respondent in relation to the children which could have caused trauma, mental harassment, and cruelty to the

> *petitioner. There is no evidence of the petitioner having ever been denied the access to his own sons. No act of cruelty in this respect has been established on the part of the respondent."*
>
> *(underlining supplied)*

49. The Family Court has thus held that the allegation of tutoring of children has not been established. Appellant had access to his children and had been meeting them and spending time with them. Even this allegation has not been established by the Appellant.

50. Learned counsel for the Appellant referred to a letter dated 27.06.2016 allegedly written by the Respondent to the Prime Minister of India as also an interview allegedly given to ABP News to contend that the same also amount to cruelty.

51. It may be noticed that alleged letter is dated 27.06.2016 and the argument were concluded before the Family Court on 22.08.2016. Said letter does not appear to have been produced before the family court. The interview appears to have been given after the judgment was pronounced by the Family Court dismissing the Petition for grant of divorce.

52. Copy of the letter and the video clip have been filed in these proceedings merely with an index. Neither of the two were placed before the Family Court at the time of the pendency of the Divorce

Petition. No application has been filed under Order 41 rule 27 of the Code of Civil Procedure

53. Order 41 rule 27 reads as under:

> ***"27. Production of additional evidence in Appellate Court.—****(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if —*
>
> *(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or*
>
> *(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or*
>
> *(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,*
>
> *the Appellate Court may allow such evidence or document to be produced, or witness to be examined.*
>
> *(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."*

54. Order 41 rule 27 CPC disentitles a party to produce additional

evidence whether oral or documentary that was not produced before the concerned trial court except in certain circumstances.

55. In the present case, Appellant has merely filed the said documents on record without seeking any leave to produce additional evidence. Respondent has not been given any opportunity to explain the documents or the circumstances under which the alleged letter was written and the interview given to the news channel. Consequently, appellant is not entitled to rely upon the said documents in support of his appeal.

56. In the letter dated 27.06.2016, the Respondent is alleged to be complaining to the Prime Minister about him deserting her, filing for divorce and her being harassed in a number of ways including arrest warrants being issued from his constituency. In the interview the Respondent is alleged to be complaining about the Appellant not paying any maintenance; having been evicted from her house; education of children and her filing a claim before a court of law.

57. Even if one were to examine the documents and accept them at their face value, in our view the same still do not meet the threshold of cruelty as required for grant of divorce under the Special Marriage Act.

58. In view of the above, we find no infirmity in the view taken by

the Family Court that the allegations of cruelty were vague and unacceptable and that Appellant failed to prove any act which could be termed as an act of cruelty, whether physical or mental, towards him.

59. Consequently, we find no merit in the appeal. The appeal is accordingly dismissed.

SANJEEV SACHDEVA, J

VIKAS MAHAJAN, J

DECEMBER 12, 2023
HJ