NON REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1957 OF 2006

Neelam Kumar … Appellant

Versus

Dayarani … Respondent

J U D G M E N T

AFTAB ALAM, J.

1. This appeal, by the husband, is filed against the judgment and order dated September 14, 2005 passed by the Madhya Pradesh High Court (at Jabalpur) in F.A.O. 462 of 2003. By the judgment coming under appeal, the High Court set aside the judgment dated August 23, 2003 passed by the 1st Additional District Judge, Balaghat in HMA Case No.26A/02, allowing the appellant's petition and granting him the decree of divorce under section 13(1)(ia) of the Hindu Marriage Act, 1955.

2. The marriage between the parties took place on December 7, 1986 and they lived together first at Ankleshwar and later at Vadodara. There is no child from the wedlock.

3. According to the appellant, barely after 8 or 9 months of the marriage, the wife (respondent in this appeal) became quite aggressive and insulting, and started treating him and his family members in a cruel manner. He tried to make adjustments in the hope that she would correct herself but finally, when it became impossible to carry along with her, he filed the petition for dissolution of marriage under section 13(1)(ia) of the Act, on grounds of cruelty. In the application filed by the appellant, it was stated that his wife objected to his giving any financial assistance to his family and especially for the marriage of his sister and she always quarreled with him over the matter. It was alleged that at the time of his sister's marriage she raised an alarm that her ornaments were missing and cast suspicion on the groom's mother. Later on, the alarm turned out to be false, causing huge embarrassment to him and his family. Such incidents and the respondent's behaviour and conduct towards the appellant made him the laughing stock in the town. He changed residence, but that too did not help to salvage his position. The respondent used to leave for office early and returned very late. When the appellant remonstrated over her timings she became very angry and even threatened to implicate him in a dowry case. In those circumstances, the appellant had even contemplated committing suicide but was held back by friends and relatives. The appellant also gave certain instances as evidence of her cruelty to him. In 1989, despite his advice to her not to go for attending his brother's marriage since she was pregnant, she

undertook the travel and participated in the marriage. As a result, she suffered a miscarriage there and, ironically, held the appellant and his family responsible for it. In 1994, the appellant sustained some injuries in an accident and had to undergo medical treatment. At that time she was living in a different town where she was posted in connection with her service. Despite intimation given to her she did not come to look after him and to give him moral support because she did not want to take leave from the work. Again she did not come to serve his mother and to support her when she was admitted to a hospital for her eye surgery.

4. The respondent denied all the allegations made against her by the appellant. She stated that she did not act cruelly or even disrespectfully towards the appellant or her family members. Her case was that she was in service from before her marriage and her marriage with the appellant was on the clear understanding that she would not be forced to leave the service. But a short while after their marriage, the appellant changed his mind and demanded that she should give up working. She was not agreeable to this and this seemed to hurt his pride. Further, their marriage failed to produce any child. This became another source for his estrangement from her and he eventually filed the divorce petition wanting to get rid of her.

5. Before the trial court the appellant examined himself, his sister Rashmi and two of his neighbours from Vadodara, as witnesses, in support of his case. The respondent did not get herself examined nor did she produce

any witness. On the basis of the ex parte evidence adduced before it, the trial court allowed the appellant's application and granted him the decree of divorce under section 13(1)(ia) of the Act.

6. Against the judgment and decree passed by the trial court, the respondent filed an appeal in the High Court under section 28 of the Act.

7. Before the High Court, the appellant strongly defended the judgment of the trial court and pointed out that the respondent had not even led any evidence in support of her case. The High Court, however, took the view, and we think quite rightly, that even though the respondent did not produce any evidence, no decree of divorce could be granted unless the appellant was able to prove on the basis of the pleadings and the evidences produced by him that his case was covered by section 13(1)(ia) of the Hindu Marriage Act. On a consideration of the materials on record, the High Court found and held that no case of cruelty could be made out against the respondent and hence, the appellant was not entitled to the decree of dissolution of marriage on that ground.

8. The High Court found that the judgment of the trial court was mainly based on three allegations cited by the appellant as instances of the respondent's cruelty. First, she put the blame on the appellant and his family members for the miscarriage suffered by her when she went to attend the marriage of the appellant's brother, against his advice. The High Court pointed out that the miscarriage would have caused the greatest distress and

pain to the respondent and instead of sympathizing with her, the appellant chose the incident to cite as an instance of her cruelty. This showed not the cruelty of the respondent but the complete insensitivity of the appellant himself. The High Court also observed that a marriage in the family is an occasion for rejoicing in India in which the all family members are supposed to participate. If the respondent had failed to go to attend the marriage of her husband's brother, then also she would have been liable to be blamed.

9. The High Court then took up the other allegation that the respondent did not come to attend and take care of the appellant when he was undergoing medical treatment in a hospital for the injuries caused in an accident. The High Court found that this allegation was not part of the appellant's pleadings and the matter was introduced in course of evidence. The court observed that not being stated in the pleadings, the allegation could not be taken into consideration. Even otherwise, apart from the oral statement made before the trial court, there was no material to support the allegation. The appellant did not examine any doctor or produce the medical records in connection with his treatment. In any event, one single instance, in isolation, was hardly sufficient for the dissolution of marriage on the ground that the respondent treated the appellant with cruelty. The court also rejected the third allegation by the appellant that the respondent did not come to attend and serve his mother when she was admitted in a hospital for eye surgery. The Court did not believe the case as neither the mother nor the

attending doctor was examined nor was any documentary evidence produced showing the mother's surgery.

10. Having thus dealt with all the allegations made by the appellant and having considered the materials on record in some detail, the High Court found that the appellant had not been able to bring his case under section 13(1)(ia) of the Hindu Marriage Act. It, accordingly, allowed the respondent's appeal and set aside the judgment and decree passed by the trial court.

11. On hearing counsel for the parties and on going through the judgments of the trial court and the High Court, we are in agreement with the view taken by the High Court and we are satisfied that its findings do not warrant an interference by this Court in appeal.

12. Counsel for the appellant then submitted that the appellant's marriage with the respondent had completely broken down with no hope of revival and compelling them to live together would be very hard and unjust. He made a plea for dissolution of marriage on the ground of its irretrievable breakdown. In support of the submission, learned counsel relied on the judgment of this Court in *Satish Sitole vs. Smt. Ganga*, (2008) 7 SCC 734 wherein it was held in the last paragraph as follows:

> "….. that since the marriage between the parties is dead for all practical purposes and there is no chance of it being retrieved, the continuance of such marriage would itself amount to cruelty, and, accordingly, in exercise of our powers under

> Article 142 of the Constitution we direct that the marriage of the appellant and the respondent shall stand dissolved…"

13. We are not impressed by this submission at all. There is nothing to indicate that the respondent has contributed in anyway to the alleged breakdown of the marriage. If a party to a marriage, by his own conduct brings the relationship to a point of irretrievable breakdown, he/she cannot be allowed to seek divorce on the ground of breakdown of the marriage. That would simply mean giving someone the benefits of his/her own misdeeds. Moreover, in a later decision of this Court in *Vishnu Dutt Sharma vs. Manju Sharma* (2009) 6 SCC 379, it has been held that irretrievable breakdown of marriage is not a ground for divorce as it is not contemplated under section 13 and granting divorce on this ground alone would amount to adding a clause therein by a judicial verdict which would amount to legislation by Court. In the concluding paragraph of this judgment, the Court observed:

> "If we grant divorce on the ground of irretrievable breakdown, then we shall by judicial verdict be adding a clause to Section 13 of the Act to the effect that irretrievable breakdown of the marriage is also a ground for divorce. In our opinion, this can only be done by the legislature and not by the Court. It is for the Parliament to enact or amend the law and not for the Courts."

14. On a consideration of the submissions made on behalf of the parties and the materials on record, we find no merit in this appeal. It is, accordingly, dismissed but with no order as to costs.

…….J.
(B. SUDERSHAN REDDY)

…….J.
(AFTAB ALAM)

New Delhi,
July 6, 2010.