

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

FAMILY COURT APPEAL NO.75 OF 2018

with

FAMILY COURT APPEAL NO.76 OF 2018

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Pundlik Martandrao Yevatkar,

...PETITIONER

VERSUS

Sau. Ujwala @ Shubhangi Pundlik Yevatkar,

...RESPONDENT

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...RESPONDENT

Shri R.G. Kavimandan, Advocate for the appellant.
Shri D.S. Khushlani, Advocate for the respondent.

**CORAM : A.S. CHANDURKAR AND
URMILA JOSHI-PHALKE, JJ.**
DATED : OCTOBER 04, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard learned counsel for the parties.

2. Alleging cruelty and desertion against the wife, the appellant/husband approached to this Court by filing an appeal against the judgment and decree of restitution of conjugal rights in A-Petition No.15/2018 (Old Hindu Marriage Petition No.81/2013) and dismissal of A-Petition. No.4/2018 (Old Hindu Marriage Petition No.52/2013) filed for dissolution of marriage.

3. The facts of the case giving rise to the dispute are as follows:

A] The marriage of the appellant/husband and the respondent/wife was solemnized on 08/08/2001 as per Hindu rites and religion at mouje Anjangaon-Surji, Taluka Anjangaon-Surji, District Amravati. After marriage, the respondent/wife resumed cohabitation at the house of the appellant/husband at Buldana. The appellant/husband was serving as an Assistant Teacher at M.E.S. High School, Mehkar at the relevant time and was shuttling between Mehkar and Buldana. The respondent/wife is also qualified and completed her post-graduation and was desiring to do a teacher's job.

B] After marriage, for a period of four months they resided together at Buldana. As per the contention of the appellant/husband that as per desire of the respondent/wife he was searching a suitable job of Teacher for her. However, she was harassing him for searching Teacher's job and was also threatening that she would not beget a child, till she secures a job. In the meantime, the respondent/wife delivered a male child on 14/06/2002 at her maternal place. After spending of three months at maternal house after delivery she resumed cohabitation at the house of the appellant/husband. As per the contention of the appellant/husband, after birth of the child again she started harassing him on the count that she wants to start her tuition classes at Mehkar.

Therefore, on 01/10/2002 he shifted to Mehkar along with the respondent/wife and son Tejas. Though he shifted to Mehkar, the respondent/wife had not started tuition classes by assigning reason that her son is infant and she has to look after him. The appellant/husband and the respondent/wife due to summer vacation shifted to Buldana and stayed there for two months. In the month of July, 2003 as the father of the respondent/wife was not well, she went at her parents' house and returned back on 16/07/2003. They again shifted to Mehkar on 20/07/2003 and stayed there till May, 2004. Due to summer vacation in May, 2004 the appellant/husband and the respondent/wife came at Buldana. At the relevant time, the respondent/wife was four weeks pregnant, but she was not ready to carry her pregnancy and insisted for terminating the pregnancy. The appellant/husband was not ready for the same and tried to convince her but the respondent/wife was not in a position to listen anything. Therefore, the appellant/husband had informed her mother on 01/05/2004. As per the communication with the mother of the respondent/wife, she told him to send the respondent/wife at her parental house and assured him that they will take care of everything and he should not worry. It is alleged by the appellant/husband that before proceeding towards parental house the respondent/wife quarreled with him, collected all her belongings and went at her maternal house along with son. After reaching at her

maternal house, the respondent/wife had not contacted him and whenever the appellant/husband had tried to contact, she had not responded. The appellant/husband called her on 07/06/2004 and requested to come at Buldana by or before 14/06/2004 as there was birthday of son Tejas but the respondent/wife did not turned up nor communicated with the appellant/husband. The respondent/wife on 10/07/2004 by telephonic communication called him at her maternal place to fetch her back. Accordingly, he visited her maternal house but the respondent/wife asked him to obtain the permission of her father. On communication with the father, the father of the respondent/wife refused to send her along with him, therefore, the appellant/husband constrained to return back alone. As per the contention of the appellant/husband thereafter by telephonic communication as well as by issuing some letters, he requested the respondent/wife to resume cohabitation. After receipt of the letter also the respondent/wife did not turn up to resume cohabitation. The appellant/husband had visited her maternal house on 07/05/2006 but her father did not allow her to join his company by resuming cohabitation and threatened him. Again he had visited at her parental house on 09/10/2012 along with his friends Ashok Pundalikrao Tidke and Shriram Ghongade to fetch her back but she did not turn up and not shown her willingness to resume cohabitation. In the meantime, the respondent/wife secured employment

as an Assistant Teacher in Ashram Shala at Bahiram and son Tejas was also admitted in the School at Anjangaon Surji.

4. It is the contention of the appellant/husband that as the respondent/wife had not returned back and treated him with cruelty and deserted him without sufficient reason, therefore, he constrained to file Hindu Marriage Petition No.52/2013 in the Court of Civil Judge, Senior Division, Buldana which was subsequently transferred to the Family Court, Buldana as A-Petition No.04/2018. It is the contention of the appellant/husband that the respondent/wife treated him with cruelty and without sufficient reason withdrawn herself from the company of the appellant/husband, therefore, he filed a petition for dissolution of marriage on the ground of cruelty and desertion.

5. In response to the notice, the respondent/wife appeared and opposed the appeal. She denied all averments and allegations. As per her contention, after marriage she resumed cohabitation with the appellant/husband at Buldana but she was not treated well by the appellant/husband as well as her in-laws and sisters of the appellant/husband. She alleged that after her delivery neither the petitioner nor his family members turned up to see her and newly born child. As per her contention, since 2004 the differences started between her and the appellant/husband due to which she was constrained to stay

at her parental house. The appellant/husband had not made any provision for her and her son's livelihood. Therefore, she secured employment in Ashram Shala at village Bahiram in order to maintain her and her son. She further alleged that the appellant/husband and his sisters were suspecting her character and, therefore, she constrained to leave matrimonial house. She denied that the appellant/husband had taken several efforts to fetch her back for cohabitation. Her contention is that as she was constrained to leave the matrimonial house she preferred the petition for restitution of conjugal rights in the Court of Civil Judge, Senior Division, Achalpur which was subsequently transferred to the Family Court, Buldana bearing No.15/2018. The appellant/husband also appeared in the said Hindu Marriage Petition and resisted the petition by filing written statement. The learned Family Court recorded the evidence in both the petitions and after hearing both the sides pleased to dismiss the petition filed by the appellant/husband for dissolution of marriage. The petition for dissolution of marriage was dismissed by assigning reason that cruelty and desertion on the part of the respondent/wife not proved and allowed the petition of the respondent/wife of a restitution of conjugal rights. Being aggrieved and dissatisfied with the common judgment passed by the Family Court, Buldana in both the petitions, present appeals are preferred by the appellant/husband on various grounds.

6. Heard Shri R.G. Kavimandan, learned Counsel for the appellant. He submitted that without sufficient reason, the respondent/wife had withdrawn herself from the company of the appellant/husband and not resumed cohabitation. He invited our attention towards the evidence of the appellant/husband and his witnesses as well as the evidence of the respondent/wife and her witnesses. He submitted that since inception of marriage, the respondent/wife was harassing the appellant/husband by saying that she desires to do the job and he should search the job for her. The appellant/husband had attempted to search the job but he could not. Thereafter the respondent/wife expressed her desire to start tuition classes for which the appellant/husband had consented. As per the desire of the respondent/wife he shifted to Mehkar but there was no change in the behaviour of the respondent/wife. She was also not willing to give birth to the child. Against her wish she gave birth to the male child on 14/06/2002. After the delivery she came to her matrimonial house and was insisting the appellant/husband that she wanted to start the tuition classes. As per her desire he shifted to Mehkar by leaving his parents at Buldana. After shifting at Mehkar also the respondent/wife continued harassing him and finally in the May, 2004 she left the matrimonial house. When she left the matrimonial

house she was pregnant of four weeks. She terminated said pregnancy against the consent of the appellant/husband and subjected the appellant/husband with cruelty. She deserted him by withdrawing herself from his company and, therefore, the appellant/husband filed petition for dissolution of marriage. He further submitted that the evidence on record shows that several continuous efforts are taken by him to fetch her back but his all efforts resulted futile. He submitted that learned trial Court had not considered the evidence and erroneously dismissed his petition for dissolution of marriage and granted the petition of the respondent/wife for restitution. In fact, learned trial Court had not considered that the respondent/wife is not willing to join cohabitation and subjected to the appellant/husband with cruelty and desertion.

7. In support of his contention learned Counsel for the appellant relied upon *'M' Vs. 'R' 2014 (1) Bom.C.R. 556* wherein it is held that the expression 'cruelty' have been used in relation to human conduct or human behaviour. 'Cruelty' thus is a course or conduct of one, which adversely affects the other. It may be mental or physical, intentional or unintentional. It is a question of fact and degree. The appellant wife even not made an attempt to substantiate the allegations. Accordingly, the decree of divorce is upheld.

8. He further relied upon *Jagdish Singh Vs. Madhuri Devi 2008 DGLS (SC) 618* wherein it is held that considering the evidence of the parties it was the wife who had left matrimonial home without just or reasonable cause. The High Court was not right in setting aside finding of facts recorded by the Family Court. He further relied upon *'X' Vs. 'Y' 2019 DGLS(Bom.) 276, Shailendra Madhukar Bhalerao Vs. Suruchi Shailendra Bhalerao 2018 DGLS(Bom.) 1819, Shrikant Kishor Puri Vs. Shradha @ Padma w/o Shrikant Puri 2018 DGLS(Bom.) 505, Uttara Praveen Thool Vs. Praveen Bhanudas Thool 2014 (1) Bom.C.R. 495* wherein it is held that no specific evidence is brought on record by the respondent/wife compelling the appellant/husband to reside separately along with her from his other family members in absence of such positive evidence withdrawing herself from cohabitation amounts to mental cruelty.

9. On the other hand, Shri D.S. Khushlani, learned Counsel for the respondent submitted that though the appellant/husband alleged that the respondent/wife terminated her pregnancy but no evidence is adduced to that effect. He submitted that admittedly the respondent/wife had delivered a male child. When she delivered a male child is sufficient to show that she had already accepted the motherhood

but the second pregnancy was terminated in her sickness. She had narrated about the same. He further submitted that entire evidence on record nowhere shows that the appellant/husband had made phone calls and visited her house to fetch her back except his visit dated 09/10/2012 i.e. before filing of the petition. There is no evidence to show that since 2004 to 2012 he either made efforts to take back the respondent/wife and her son or made any provision for their livelihood. The evidence adduced on record admittedly shows that he visited the maternal house of the respondent/wife on 09/10/2012. But he had not visited to fetch her back. He further submitted that the evidence of the respondent/wife shows that the appellant/husband and his sisters suspected her character. When any woman's character is suspected there is obviously a reason for her not to stay along with such person who suspects her character. It is not the case that she left the house to fulfill her wishes. Admittedly, at the time of leaving the house she was not having any job but she left the house due to the ill treatment at the house of the appellant/husband and, therefore, her father refused to send her back. She had shown her willingness to join cohabitation but due to the allegations regarding her chastity she had not resumed cohabitation. Thus, the appellant/husband had not made out the case for dissolution of marriage. Hence, both the appeals deserve to be dismissed.

10. After hearing both the sides following points arise for our consideration and we answer the same accordingly :

i) Whether the petition for dissolution of marriage is liable to be allowed on the ground of cruelty as pleaded in the petition?

ii) Whether the appellant/husband proves that the respondent/wife intentionally abandoned him without a reasonable cause?

iii) Whether the judgment and decree of the restitution of conjugal rights passed by the trial Court and dismissal of the divorce petition calls for any interference?

11. Point Nos.(i) to (iii) - It is always said that the marriages are settled in heaven. The parties to marriage tying knot are supposed to bring about the union of souls. It creates a new relationship of love and affection, concern between the husband and wife. According to Hindu Vedic it is 'Sanskar'. The two human being pledged themselves. Despite the pledge and promises sometimes said relationship becomes complex.

12. Present case is also one more example of the same. There is no dispute about matrimonial relationship between the appellant/husband and the respondent/wife. The appellant who is the

husband has filed petition for seeking dissolution of marriage on two grounds i.e. cruelty and desertion under Section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955. The petition for dissolution of marriage is preferred mainly on the allegation that the respondent/wife had treated him with cruelty after marriage. As per the allegation of the appellant/husband, the respondent/wife who had completed her post-graduation in English expressed her desire to do the job. He accordingly searched for the job for her at Mehkar but he could not succeed. On her insistence he shifted to Mehkar where the respondent/wife was harassing him on account of job for her. In the meantime, she delivered a male child. After the birth of child the respondent/wife expressed her desire to start the tuition classes and to fulfill her desire he shifted to Mehkar but the respondent/wife had not started tuition classes by assigning reason that her son is infant and she has to look after him. It is further alleged by the appellant/husband that without any sufficient reason on 02/05/2004 the respondent/wife left the matrimonial house and never returned back though he had made continuous efforts. He further contended that he was a victim of cruelty at the hands of the respondent/wife.

13. To substantiate the contention, the appellant/husband adduced his evidence by examining himself as well as P.W.-2 – Ashok

Pundalikrao Tidke vide Exhibits 25 and 44. The appellant/husband had reiterated the contention as per the petition in his examination-in-chief. Besides his oral evidence he relied upon two letters addressed by him to the respondent/wife. It is alleged by the appellant/husband that without his consent the respondent/wife terminated the pregnancy. The act of the respondent/wife leaving the matrimonial house without any reason and terminating the pregnancy without his consent amount to cruelty. During his cross-examination the appellant/husband had admitted that the respondent/wife was residing in her maternal house since 2004. He had not send any legal notice. He had also not filed petition for restitution of conjugal rights whereas the respondent/wife had filed the petition for restitution of conjugal rights. He specifically admitted that he had not taken efforts for the custody of the child. He further admitted that he never communicated by telephonic call or by the letter with the respondent/wife.

14. It is vehemently submitted by the learned Counsel for the appellant/husband that the evidence of the appellant/husband shows that he made several efforts to fetch the respondent/wife back but the respondent/wife declined to resume cohabitation. It is testified by the appellant/husband that after the respondent/wife left the matrimonial house in May, 2004 he called the respondent/wife on 07/06/2004 but no

evidence is adduced by him to substantiate his contention. On the contrary, he specifically admitted that he never communicated with her by telephonic call. The appellant/husband had also cross-examined the witness Subhash Rambhau Papalkar who is the uncle of the respondent/wife and it came on record that the appellant/husband with his friends went at the maternal house of the respondent/wife in the year 2012. Thus, there is absolutely no evidence to show that the appellant/husband had visited the house of the respondent/wife prior to 2012. Even during the cross-examination of the respondent/wife, the appellant/husband had not put the case that he contacted her by telephonic call in June, 2004 or in 2006. There is no cross-examination of the respondent/wife suggesting her that he had visited her house prior to 2012 to fetch her back. The respondent/wife had also adduced the evidence by examining herself vide Exh.70, her sister Ashwini Bhushan Umbarkar vide Exh.109 and Ashok Shamrao Kadu (sister's husband) vide Exh.104. The evidence of all these three witnesses show that the appellant/husband visited the maternal house of the respondent/wife on 09/10/2012 and not prior to that. The respondent/wife had denied that he had visited to bring her back. Thus, neither the evidence of the appellant/husband nor the cross-examination of the respondent/wife and her witnesses supports the contention of the appellant/husband that prior to 2012 he visited the house of the respondent/wife to bring her

back. The appellant/husband himself admitted that he had not contacted the respondent/wife by telephonic call. This admission itself is sufficient to show that the appellant/husband had not taken any efforts to bring the respondent/wife back for cohabitation.

15. Admittedly, neither the appellant/husband nor the respondent/wife alleged that there was abuses or assault on them by each other. The evidence shows that the marriage took place on 08/08/2001 and son Tejas born on 14/06/2002. The appellant/husband had not quoted any single incident to show that since the marriage till the birth of the child there was some quarrel between them on account of desire of the respondent/wife regarding doing the job. Only allegation of the appellant/husband was that the respondent/wife was harassing him by expressing that she wants to do the job. As per pleading, the respondent/wife quarreled with him on 02/05/2004. Prior to that there is no allegation that there was quarrel between them on account of the same. Another allegation made by the appellant/husband that she terminated the pregnancy against his consent. Admittedly, no evidence is adduced by him to show that it was the wife who had terminated the pregnancy but as per the contention of the respondent/wife the pregnancy was terminated due to sickness. The respondent/wife had also not adduced any evidence in support of her

contention. It is pertinent to note that the respondent/wife had already accepted the motherhood by taking responsibility of the child. It is also evident from the evidence of the appellant/husband that the respondent/wife had not started the tuition classes as her child was infant and she had to take care about the same. In the background of above circumstances, admittedly inference could not be drawn that the respondent/wife was not ready to accept the responsibility of the child. Even the contention of the appellant/husband is accepted as it is, it is well settled that the right of a woman to have reproductive choice is an insegregable part of her personal liberty as envisaged under Article 21 of the Constitution of India. Admittedly, she cannot be forced to give birth to a child. Coming back to the present case, when the appellant/husband alleges, she terminated pregnancy as she did not want child, burden is on him to prove the same. In the present case, neither the appellant/husband had adduced the evidence that the respondent/wife terminated pregnancy nor the respondent/wife proved a pregnancy was terminated due to sickness.

16. Now, on the basis of above said evidence it is to be ascertained whether the contention of the appellant/husband that the respondent/wife was insisting him to search job for her and harassing for the same, terminated pregnancy without his consent amounts to cruelty.

Cruelty has not been defined under the Hindu Law. Admittedly, there is no allegation of violence against each other. In relation to matrimonial matters it is contemplated that a conduct of such type which endangers the living of the other amounts to cruelty. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. Cruelty however, has to be distinguished from the ordinary wear and tear of the family life. The question whether the act complained of was a cruel act is to be determined from the whole facts and the matrimonial relations between the parties. In *Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511* the Hon'ble Apex Court given certain illustrative examples wherefrom inference of mental cruelty can be drawn. The Hon'ble Apex Court reproduced some of the illustrations:-

“(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

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(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental

cruelty.

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(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

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(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.”

17. After adverting to material on record it was not proved that the respondent/wife was insisting to the appellant/husband to search the job for her. It is evident from the evidence of the appellant/husband that he had no objection if the respondent/wife engaged in doing job. His evidence that the respondent/wife was harassing him is vague one. He nowhere narrated the manner in which he was harassed. On the contrary, evidence shows that the respondent/wife had not accepted to conduct private tuition classes considering her child is of a tender age. Regarding the another allegation that she terminated pregnancy which is also not proved. The allegations of cruelty cannot be considered on trivial issues. The allegation should have the origin with reference to

time, place and manner of cruelty. General allegations of cruelty do not constitute cruelty in the eyes of law so as to grant decree of dissolution of marriage on that premise. It is observed by the Hon'ble Apex Court in *A. Jayachandra Vs. Aneel Kaur 2005 (5) ALL MR 313 (S.C.)* that mere annoyance or irritation may not constitute cruelty, rather it is a spontaneous change in human behavior which restricts the other side to live with the spouse under the fear of endangering life or bodily injuries. Though, the word 'cruelty' has not been defined strictly, but it has to be gathered from attending circumstances of each case. The allegations should be specific with regard to time, place and manner of committing such cruelty. The cruelty should be such in which it is not reasonably expected to live together. It is observed by the Hon'ble Apex Court in *Gurbux Singh Vs. Harminder Kaur AIR 2011 SC 114* that the aggrieved party has to make a specific case that the conduct of which exception is taken amounts to cruelty. It is true that even a single act of violence which is of grievous and inexcusable nature satisfies the test of cruelty. The marital life should be access as a whole and few isolated instances over a certain period will not amounts to cruelty.

18. Here in the present case, expressing desire by wife who is well qualified that she wants to do the job does not amount to cruelty. The appellant/husband has to make out a specific case that the conduct

of wife was such a nature that it was difficult for him to lead the life along with her. Admittedly, in the present case, the nature of behaviour by which the appellant/husband faced the cruelty is not described by him. The matrimonial life of the appellant/husband and the respondent/wife is of four years. The appellant/husband and the respondent/wife had not made any allegations of violence or abuses. The appellant/husband had not adduced the evidence regarding the time and manner in which he was harassed. The allegations made by him falls under routine wear and tear in the nature. A Hindu marriage solemnized under the Act can only be dissolved on any of the grounds specified therein.

19. The appellant/husband had also raised ground that without sufficient reasons the respondent/wife had withdrawn herself from his company and left the matrimonial house. She had deserted him. The appellant/husband had alleged that on 02/05/2004, the respondent/wife quarreled with him by saying that she is desiring to do the job and she wants to terminate the pregnancy. After several attempts the respondent/wife had not returned back. The appellant/husband had adduced his evidence to support his contention. He testified that in the month of June i.e. on 07/06/2004 he contacted the respondent/wife by telephonic call and asked her to return at matrimonial house. Thereafter

she called him on 10/07/2004 and asked him to come at her maternal house to fetch her back. Accordingly he went there. The sum and substance of his evidence is that after his attempts the respondent/wife and her father both denied to join the company of the appellant/husband by the respondent/wife for cohabitation. He specifically admitted during cross-examination that he never contacted either by telephonic call or letter to the respondent/wife. He relied on the letter which was addressed to the respondent/wife by him dated 05/12/2004. Admittedly, said letter was not received by the respondent/wife and it returned back to the appellant/husband as not claimed. Though he testified that he sent second letter dated 28/06/2005 but there is no evidence that said letter is received by the respondent/wife. The respondent/wife denied that she received any such letter. Admittedly, the appellant/husband had not issued any legal notice to the respondent/wife asking her to return for cohabitation. Though the appellant/husband had adduced the evidence of Ashok Pundalikrao Tidke which shows that he visited the maternal house of the respondent/wife along with the appellant/husband on 09/10/2012. Thus, there is no evidence that prior to 09/10/2012, the appellant/husband had visited the house of the respondent/wife to bring her back. The respondent/wife as well as her witnesses also admitted that the visit of the appellant/husband at the parents house of the

respondent/wife on 09/10/2012. Though the respondent/wife admitted his visit but she denied that the appellant/husband came to fetch her back. Thus, the evidence is sufficient to show that from 2004 to 2012 the appellant/husband had not taken any efforts to bring the respondent/wife back for cohabitation. As already observed earlier he had also not adduced the evidence that the respondent/wife had terminated her pregnancy. On the other hand, the respondent/wife had come with the case that the appellant/husband as well as his sisters suspecting her character, therefore, she constrained to leave matrimonial house. Admittedly, no other reason came forward that the respondent/wife had left the house for other reason. The appellant/husband had suggested the reason that as she wants to do the job and, therefore, she left the house. It is evident that she expressed her desire to do the job after the marriage to her husband. She had completed her post-graduation. The expression of her desire could not be said to be abnormal as every qualified person wants to use the knowledge acquired by him or her. There is no evidence that for acquiring the said job her behaviour was rude and arrogant towards her husband. General allegation is made by the appellant/husband that she had harassed him. As per the allegation of the appellant/husband immediately after the marriage she started harassing him but the evidence shows that thereafter she stayed along with the

appellant/husband for four years. From the said wedlock a child was begotten. The evidence of the appellant/husband shows that the respondent/wife not only stayed along with him at Mehkar but at matrimonial house at Buldhana along with other family members. The time and manner in which the appellant/husband harassed was nowhere stated. In the light of above circumstances, the reason mentioned by the respondent/wife to live separately appears more probable. She assigned the reason that not only the appellant/husband but his sisters used to suspect her character which constrained her to leave the matrimonial house. This evidence is to be accepted in the background that the respondent/wife stayed along with the appellant/husband for four years and never complained previously. The suspicion about her character by the appellant/husband constrained her to leave the matrimonial house. She had filed petition for restitution after the appellant/husband had filed petition for dissolution of marriage. She had not issued any notice to the appellant/husband. She filed petition for restitution of conjugal rights mentioning the reason that she constrained to leave the matrimonial house as her character was suspected. It is obvious that whenever a character was suspected, it is difficult for a woman to stay in a matrimonial house. This contention appears to be probable as no other reason came forward which made the respondent/wife to leave the matrimonial house after cohabitation of four years.

20. 'Desertion' means the intentional, permanent forsaking and abandonment of one spouse by the other without the other's consent and without reasonable cause. Desertion means withdrawing from the matrimonial obligations. To constitute desertion two essential conditions must be established : (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). For holding desertion as proved the inference may be drawn from sudden circumstances. It is held in *Darshan Gupta Vs. Radhika Gupta (2013) 9 SCC 1* that merely because husband and wife are staying separately, an inference regarding desertion on the wife's part cannot be drawn. The law laid down in the case of *Lachman Utamchand Kirpalani Vs. Meena alias Mota 1964 SCR (4) 331* which has been consistently followed in several decisions of the Hon'ble Apex Court. The law laid down in the above decision is that desertion means the intentional permanent forsaking and abandonment of one spouse by the other without the consent of the other and without reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of the deserting spouse to bring cohabitation to permanent end. In other words, there should be *animus deserendi* on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to deserting spouse to leave matrimonial house.

21. Here in the present case, admittedly no evidence is adduced to prove the cruelty and desertion at the hands of the respondent/wife. There is no evidence to show that the respondent/wife was desiring to end the relationship permanently. If the contention of the appellant/husband is accepted that she left the matrimonial house to fulfill her desire to do the job, admittedly, she was not doing any job when she left the matrimonial house. After three years of leaving the matrimonial house she got the job in one Ashram Shala. Therefore, the contention of the appellant/husband that she left the matrimonial house to fulfill her desire is not sustainable. The contention of the respondent/wife appears more probable that she was constrained to leave the matrimonial house as her character was suspected.

22. Learned Counsel for the appellant/husband relied on the catena of the decision. After going through the facts of the cited case on which he relied upon are not identical with the present case. The first case on which he relied upon 'M' Vs. 'R' (*supra*) the fact shows that there was no cross-examination of husband as to the charges of cruelty which is not the case in the present case. Further the evidence shows that the language used in the letters with filthy and vile and it is held that any person against whom such allegations are made is bound to undergo

mental pain. Thus, the facts are not identical with the present case. He also relied upon 'X Vs. Y' (*supra*) the facts of the said case are also not identical with the present case. Thus, the case laws on which the learned Counsel for the appellant has relied upon are not helpful to him on the ground that facts are not identical.

23. After giving thoughtful consideration to the controversy we are of the view that the appellant/husband failed to prove the ground of cruelty to obtain a decree of dissolution of marriage. The manner in which the appellant/husband faced cruelty is not proved. Mere annoyance or irritation or normal wear or tear differences does not constitute cruelty. The cruelty should be such in which it is not reasonably accepted to live together. The appellant/husband has not proved the desertion by the respondent/wife. Merely because the respondent/wife staying separately an inference of desertion cannot be drawn. The marriage between the parties cannot be dissolved on the averments made by one of the parties that the marriage between them has broken down. The irretrievable breakdown of the marriage is not a ground by itself to dissolve it. As regards the allegation made by the appellant/husband are not believable. As observed earlier except the ground enumerated under Section 13 of Hindu Marriage Act, 1955 the marriage solemnized under the Act cannot be dissolved on any other ground.

24. In the light of the above discussion we are unable to accept the contention of the appellant/husband, hence no ground is made out to interfere with the findings of the Family Court. Accordingly, point nos.(i) to (iii) answered in negative. We accept the conclusion derived by the trial Court. Therefore, both appeals fail and are dismissed. There will be no order as to costs.

25. At the request of the learned Counsel for the appellant, the effect of the judgment is stayed for a period of eight weeks.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

**Divya*