DARSHAN GUPTA

v.

RADHIKA GUPTA

(Civil Appeal Nos. 6332-6333 of 2009)

JULY 1, 2013

[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

Hindu Marriage Act, 1955 - ss.13(1)(ia) and (iii) - Plea under, of appellant-husband for dissolution of marriage - Held: Not tenable, since appellant-husband failed to prove the ingredients of either clause (ia) or clause (iii) of s.13(1) - The husband failed to establish, that he was subjected to cruelty at the hands of the wife - On the issue of alleged aggressive and abnormal behavior of the wife, no material evidence before the Court - Such alleged behavior could have easily been established through attendants of respondent-wife, but such witnesses were withheld, despite being easily available to appellant-husband - PW4, the expert witness produced by appellant-husband admitted that while examining respondent-wife, he did not observe any signs of aggressiveness in her - interaction of PW4 with respondent-wife in the court-hall when PW4 appeared to depose in the matter demonstrated that the behavior of respondent-wife was far from erratic - Also, the appellant was not able to prove, that his wife was suffering from any incurable unsoundness of mind and/or mental disorder - Respondent-wife merely suffered from cognitive deficiency which was acquired by her during her second pregnancy - Besides, she was found to have substantially improved from her cognitive deficiency, during the course of her treatment - Appellant-husband failed to establish, that the mental unsoundness of mind or mental disorder of respondent-wife was of such degree, that he could not be expected to live with her - Further, appellant husband cannot be permitted to use his own fault to his advantage -

A *He did not heed the advise of the gynecologist, after abortion of the respondent's first pregnancy - The Gynecologist had advised the couple against planning any further conception, for a period of at least two years - Despite the advice, the appellant impregnated his wife, just after eight months of the* B *said abortion - In regard to plea of appellant for dissolution of marriage on the ground, that matrimonial ties between the parties had irretrievably broken down, it is questionable as to whether such relief is available - Even otherwise, on facts, decree of divorce cannot be granted on such ground since* C *the breakdown was only from the side of the husband and the respondent did not consent to the severance of matrimonial ties right from the beginning - Further plea of appellant for dissolution of marriage by invoking jurisdiction u/Art.142 of the Constitution also not tenable as, on facts, the same cannot* D *be viewed as doing justice to respondent-wife - Constitution of India, 1950 - Art. 142.*

Hindu Marriage Act, 1955 - s.13(1) - Divorce under - Grounds - Nature of - Held: The grounds are based on the 'fault' of the party against whom dissolution of marriage is E *sought - It is only on the ground of an opponent's fault, that a party may approach a Court for seeking annulment of his/her matrimonial alliance - The party seeking divorce under the "matrimonial offence theory" / the "fault theory" must be innocent - A party suffering "guilt" or "fault" disentitles himself/* F *herself from consideration - Matrimonial jurisprudence - 'Matrimonial offence theory' - 'Fault theory'.*

The appellant-husband filed petition before the Family Court seeking dissolution of marriage on two G **grounds. First and foremost, he claimed to have been subjected to cruelty on account of the intemperate behaviour of respondent-wife, and in this regard, relied on clause (ia) of Section 13(1) of the Hindu Marriage Act, 1955. The second ground on which the appellant-husband sought dissolution of marriage was, that the** H

respondent-wife was of incurable unsound mind, and suffered from such a mental disorder, that the appellant could not be reasonably expected to live with her. In regard to the second ground, the appellant-husband relied on clause (iii) of Section 13(1) of the Hindu Marriage Act, 1955. As against the aforesaid, the respondent-wife filed petition, before the same Court, seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. Both the cases were clubbed together.

The Family Court dismissed the petition filed by appellant-husband on the ground that he had not been able to prove the ingredients of either clause (ia) or clause (iii) of Section 13(1) of the Hindu Marriage Act, 1955. On the other hand, the petition filed by respondent-wife was allowed holding that she was entitled to the relief of restitution of conjugal rights. The appellant-husband was accordingly directed to receive her back into his house within three months, and to give her moral and emotional support. On his failure to do so, he was directed to continue to pay the interim maintenance amount fixed by the Family Court, till he finally accepted her back into his house. The appellant filed appeals before the High Court which were dismissed, and therefore the present appeals.

Dismissing the appeals, the Court

HELD: 1.1. The respondent-wife admittedly suffered brain damage after her cesarean operation in September, 2000, during her second pregnancy. She had remained unconscious for some time even after having delivered a baby on 20.9.2000. It appears, that at the time of regaining consciousness, she was totally disoriented, having lost her memory. The extent to which she had lost her memory was most definitely substantial, as it is clear, that she could not even recognize persons of close

A affinity. Not only that, even her speech was substantially impaired. [Para 28] [967-E-G, H]

1.2. To deal with the medical condition of respondent-wife, the appellant-husband seems to have initially extended full financial support, by seeking consultation of specialists in fields wherein respondent-wife needed assistance. He also ensured, that such treatment was provided to her at premium hospitals. [Para 29] [968-A-B]

C 1.3. It, however, seems, that the appellant-husband was skeptical about the outcome of her recovery. His assessment of her medical condition, in the background of the inputs from the doctors attending on her, probably created the impression, that she would henceforth be a D liability on him. Keeping in mind the hopeless condition of respondent-wife, the appellant-husband could not have expected any kind of positive relationship with respondent-wife. In 2000, when the unfortunate incident occurred, he was merely 25 years old. One would expect, E that all his dreams of a happy married life, came to be shattered after seeing the medical condition of his wife, specially in the background of the assessment made by the experts being consulted. It is in the aforesaid background, that it is easier to understand why he had F refrained from extending emotional or moral support to respondent-wife. But the inescapable truth is, that factually the appellant-husband did not extend emotional or moral support to his wife, after her medical episode. The distress of the appellant, and the distance that he G started to keep from his wife, emerge from the statement of RW1. RW1 placed on the record of the Family Court three documents (Exhibits R1 to R3) pertaining to the treatment of respondent-wife during 2002. The attending doctor of respondent-wife considered it appropriate to expressly record in one of these reports, that during

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treatment of respondent-wife, he had requested her to bring her husband along with her. He also noted, that the husband had never accompanied her, despite his aforesaid indication to respondent-wife. The consequence of non-participation of appellant-husband in the course of treatment of respondent-wife, is also recorded in the report. The report notices, that her improvement would have been a lot more significant and faster, if her husband had been with her and had cared for her in her journey to recovery. The reasons which may have weighed in the young husband's mind may be any, but the harsh reality is, that appellant-husband did not extend due care and support to his wife, nor did he participate in her journey to recovery. [Para 30] [968-C-D; E-G; 969-A-F] A B C

1.4. Shorn of the participation and support of appellant-husband to his wife, it is still material to determine the extent of recovery of respondent-wife. It would be just and appropriate to refer to and rely upon, the three reports placed on the record of the Family Court by RW1. The said reports were prepared in June, July and October 2002. The reports reveal, that respondent-wife had undergone intensive cognitive re-training using brain function therapy, and she was provided with graded re-training in alphabet and number recognition and delayed recall, recognition and recall of words and figures, different levels of working memory, etc. In the first neuro-psychological assessment of respondent-wife at NIMHANS in June, 2002, as also, in the second assessment made in July, 2002, considerable improvement was found in the medical condition of respondent-wife. Respondent-wife was subjected to a third neuro-psychological assessment in October, 2002. Again marked improvement was found in her conceptual organization of numbers and ability for arithmetic operations. The third assessment expressly records, that D E F G H

A respondent-wife was capable of all normal emotional experiences and expressions. Her eager and earnest desire about her future reunion with her husband, is also indicated in the report. She has been assessed as fully capable of shouldering the responsibilities of a happy B marital life. RW1 categorically testified, that respondent-wife was not a case of mental disorder. He clarified, that her case was of cognitive deficiency, on account of brain damage. According to RW1, respondent-wife had recovered her working memory by more than 80%. He C also explained, that cognitive deficiency is recoverable, but the recovery is dependent on the degree of damage to the brain, as also, the emotional support the patient gets from the family members, at the relevant time. This is the testimony of the same doctor, who had been D requiring respondent-wife to bring appellant-husband along with her, during the course of her consultations. During the course of his cross-examination, RW1 denied the suggestion, that respondent-wife was not in a position to discharge her normal day to day functions of life. [Para 31] [969-G; 970-A-D, F-H; 971-A-C]

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1.5. The Family Court had directed respondent-wife to appear before a medical board comprised of eminent specialists in psychiatry and clinical psychology. In the report (Exhibit C1) submitted by the medical board to the F Family Court, conclusions were recorded on the basis of the medical history of respondent-wife, as also, the observations and examinations of the respondent-wife. The medical board concluded, that respondent-wife did not manifest any signs of major mental disorder, and that, G she exhibited normal adequate emotional responses. It was also opined, that she would further benefit from neuro-psychological rehabilitation measures, which are available at NIMHANS. CW2, one of the members of the medical board, was also examined by the Family Court, as a court witness. During the course of his deposition, H

CW2 expressed the opinion that respondent-wife could be described as a person of moderate intelligence. He also expressed, that by undergoing therapy training, there was a further likelihood of improving her cognitive deficiencies. He also clarified, that the deficiencies suffered by respondent-wife, would not come in her way to discharge her matrimonial obligations. [Para 32] [971-D-E, F-H; 972-A-B] A B

1.6. Based on the material evidence, it is not possible to record, that respondent-wife suffers from any incurable unsoundness of mind. It is also not possible to hold, that she suffers from such mental disorder, that it cannot be reasonably expected of her husband to live with her. The evidence produced before the Family Court makes it clear that respondent-wife merely suffers from mild to moderate cognitive deficiencies. She is categorized by medical experts as an individual of moderate intelligence. Material on the record of the case reveals, that she would further benefit from neuro-psychological rehabilitation measures, which are available at NIMHANS. Even though the said deficiencies could influence her day to day functioning, but expert opinion is unanimous that the same would not come in her way to discharge her matrimonial obligations. It cannot also be overlooked, that experts have clearly expressed that respondent-wife exhibits normal and adequate emotional responses. She has right from the beginning, fervently expressed the desire to restore her relationship with her husband, and to live a normal life, in a matrimonial relationship with him. In the aforesaid view of the matter, it is not possible to conclude, that the mental condition of respondent-wife is such as to accept the appeal preferred by appellant-husband under Section 13(1)(iii) of the Hindu Marriage Act, 1955. [Para 33] [972-C-G] C D E F G

2.1. Insofar as the alleged abnormal, erratic and aggressive behaviour of respondent-wife is concerned, H

A the courts below were fully justified in recording, that the said behaviour of respondent-wife could have easily been established through the testimony of the attendants who looked after respondent-wife, as also, the other staff, yet the said witnesses were not produced by the B appellant, despite their availability. The appellant-husband had produced PW4 to support his cause, however, PW4 during his deposition asserted that he did not observe any signs of aggressiveness in the respondent-wife. Since respondent-wife was under the C care and treatment of PW4, he would have obviously known of her erratic behaviour, if the allegations of the husband were correct. The respondent-wife had also produced RW1 on her behalf. He too would have been aware of such behaviour. The appellant-husband, D however, chose not to examine RW1, on the said subject. It would be pertinent to mention, that in the order of the Family Court it is duly noted, that when PW4 appeared to depose in the matter, respondent-wife was sitting in the court-hall observing court proceedings. During his E interaction with respondent-wife, PW4 had enquired about her welfare, and she had responded by stating "I am fine sir, thank you". The very court which respondent-wife had repeatedly visited, recorded the above instance to demonstrate that her behavior was far from erratic, as suggested by the husband. The position would be no F different, even if one considers these facts in conjunction with her medical condition. There was no material on the record of the case, to substantiate the alleged aggressive, erratic or abnormal behaviour of respondent-wife. In the aforesaid view of the matter, it is not possible to accept G the appeal preferred by the appellant even under Section 13(1)(ia) of the Hindu Marriage Act, 1955. [Para 34] [972-H; 973-E-H; 974-A-E]

3.1. However, it is necessary to examine the instant H controversy from another point of view. A perusal of the

grounds on which divorce can be sought under Section 13(1) of the Hindu Marriage Act, 1955, would reveal, that the same are grounds based on the 'fault' of the party against whom dissolution of marriage is sought. In matrimonial jurisprudence, such provisions are founded on the 'matrimonial offence theory' or the 'fault theory'. Under this jurisprudential principle, it is only on the ground of an opponent's fault, that a party may approach a Court for seeking annulment of his/her matrimonial alliance. The party seeking divorce under the "matrimonial offence theory" / the "fault theory" must be innocent. A party suffering "guilt" or "fault" disentitles himself/herself from consideration. [Para 35] [974-E, G-H; 975-A-C] A B C

3.2. In the instant case, all the grounds/facts on which divorce was sought, emerge from the medical condition of respondent-wife, after her cesarean operation in September, 2000, during her second pregnancy. After respondent-wife's first conception was aborted in June, 1999, the attending gynecologist at Apollo Hospital, had cautioned the couple against any further conception for at least two years. The couple had been advised, that pregnancy of respondent-wife during this period could lead to serious medical complications. The husband did not heed to the advice tendered by the attending gynecologist. There is no serious dispute, that to satisfy his desires, he impregnated his wife within a period of eight months, i.e., well within the risk period. Therefore, she suffered the predicted consequences. The medical condition of respondent-wife, on which the appellant bases his claim for divorce, is of his own doing. Even though at that juncture, appellant-husband was merely 25 years of age, and it may well be difficult to blame him, yet there is no escape from the fact, that the fault rests on his shoulders. In the above view of the matter, it is not possible to conclude, that appellant- D E F G H

husband did not suffer from any "guilt" or "fault" in the matter. He cannot be permitted to use his own fault to his advantage. The party seeking divorce has to be innocent of blame. For the instant reason also, the prayers made by the appellant must fail. [Paras 36, 37] [975-G-H; 976-D-E, G-H; 977-A-C]

4. The appellant also sought dissolution of marriage on the ground, that the matrimonial ties between the parties had irretrievably broken down, specially when the parties have lived apart for more than 12 years and there was no likelihood of the parties ever living together as husband and wife. However, at the present juncture, it is questionable as to whether the relief sought by the appellant, on the ground of irretrievable breakdown of marriage is available to him. Even otherwise, in the facts and circumstances of this case, one cannot grant a decree of divorce, on the ground of irretrievable breakdown of marriage, for the simple reason that the breakdown is only from the side of the husband. The wife has consistently maintained, that she was intensely concerned with her future relationship with her husband, and that, her greatest and paramount desire was to rejoin her husband, and to live with him normally in a matrimonial relationship, once again. Since in the present case, the respondent does not consent to the severance of matrimonial ties, it may not be possible to accede to the instant prayer, made by the appellant. [Paras 38, 39] [977-D-E, G-H; 978-A; 979-F-H]

Vishnu Dutt Sharma vs. Manju Sharma, (2009) 6 SCC 379 and *Gurbax Singh vs. Harminder Kaur* (2010) 14 SCC 301: 2010 (12) SCR 275 - referred to.

5. Since the plea of irretrievable breakdown of marriage was not accepted by this Court, the appellant then implored this Court to invoke jurisdiction under Article 142 of the Constitution of India, and to annul the marriage between the parties, as a matter of doing

complete justice between the parties. In the context of doing justice it was suggested, that the appellant would be ready and willing to pay the respondent, whatever was considered appropriate by this Court. In order to determine the issue, the matter may be examined, by reversing the roles of the parties - as if, the wife had approached the Family Court seeking divorce, on the ground that her husband had suffered brain damage leading to cognitive deficiencies. Yet, despite the said deficiencies, his working memory had returned to "near normal" after treatment. And his mental condition was such, that it would not have any effect on his matrimonial obligations. And the wife's family is agreeable to pay an amount to be determined by this Court (just as the appellant-husband has offered), so as to enable their daughter to break away, and find a more suitable match. In such situation, if this Court had, in exercise of its jurisdiction under Article 142 of the Constitution, granted compensation to the husband, and had dissolved his marriage on the pretext of doing complete justice between the parties, would the same be acceptable to the husband? There is no doubt that, on a reversal of roles, the husband, without any fault of his own, would have never accepted as just, the dissolution of his matrimonial ties, even if the couple had been separated for a duration, as is the case in hand. Specially, if the husband had, right from the beginning, fervently expressed the desire to restore his matrimonial relationship with his wife, and to live a normal life with her. The issue in hand should be adjudged by the above standards, when the same prayer is made by the husband. To constitute justice, the picture should appear to be the same, irrespective of the angle from which it is viewed. If the same sequence of facts cannot be viewed as doing justice to the husband, they have to be likewise viewed for the wife as well. It is, therefore, not possible to accept even the last plea advanced on behalf of the appellant. [Paras 40, 41 and 42] [980-A-B, E-H; 981-A-F]

A B C D E F G H

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Case Law Reference:

(2009) 6 SCC 379	**referred to**	**Para 39**
2010 (12) SCR 275	**referred to**	**Para 39**

B CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6332-6333 of 2009.

From the Judgment and Order dated 06.07.2009 of the High Court of Judicature Andhra Pradesh at Hyderabad in Family Court Appeal No. 36 and 37 of 2006.

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Vijay Hansaria, Prerna Kumari, Amit Anand Tiwari, Manoj, Gargi Srivastava for the Appellant.

Mukul Gupta, Sushant Kumar, Ahwesh Madhukar, Narender Singh Bisht, Rishabh, A. Venayagam Balan for the D Respondent.

The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J. 1. The marriage between E the appellant-husband, Darshan Gupta and the respondent-wife, Radhika Gupta, was solemnized on 9.5.1997 at the Holiday Inn Hotel in Hyderabad, as per Hindu rights and customs. This was not the first matrimonial alliance between the two families. The husband's elder brother was already married to the wife's sister. Both parties admittedly belong to F well-to-do families. At the time of marriage between the parties, Darshan Gupta, the husband was 22 years of age, and Radhika Gupta was 19. Now the husband is 35, and the wife 32. The marriage between the parties was duly consummated, and their relationship blossomed into one full of love and affection.

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2. The cordiality between the parties continued for a period of two years, till the wife conceived for the first time in February 1999. The aforestated conception was aborted when Radhika Gupta was in the fourth month of her pregnancy, as H she had commenced to suffer from hypertension resulting into

fits, extreme morning sickness and general weakness. The decision to abort the pregnancy in June, 1999, was based on medical advice.

3. The wife Radhika Gupta conceived for the second time in February 2000. During the instant pregnancy, she had similar symptoms, as she had suffered on the earlier occasion. For the aforesaid reason, and on medical advice, when the pregnancy was in its eighth month, a caesarian operation was performed in September, 2000. At the time of birth of the child, the wife, Radhika Gupta, was unconscious. Even after the child was delivered, she remained unconscious. The child born to Radhika Gupta survived for only eight days.

4. Since Radhika Gupta had developed serious medical complications, she was treated at the best hospitals at Hyderabad, amongst others at the Apollo Hospital, as an indoor patient. Doctors from across the country were consulted. They had attended upon her, at the behest of her husband Darshan Gupta. To ensure that there was no deficiency in her medical upkeep, she was shifted to the Leelavathi Hospital at Mumbai. At Mumbai, further tests were conducted and surgeries were performed. She also sought consultations from the National Institute of Medical Health and Neuroscience, Bangalore (NIMHANS).

5. During the treatment of Radhika Gupta, neurologists and gynecologists looking after her believed, that she had suffered brain damage. On that account, she is stated to have lost her memory, so much so, that she could not even recognize persons of close affinity. Her speech was also stated to have been substantially impaired. It was averred, that the condition of the wife was such, that she could not even discharge her personal obligations. She had to be assisted by an attendant. According to the contention of Darshan Gupta, the condition of Radhika Gupta was no better than a child of five years. He also alleged, that Radhika Gupta's condition was such, that she could not be left alone in the room, nor could she be permitted to use

A the bathroom by herself. Gynecologists, who examined Radhika Gupta had opined, that she was not fit for discharging her matrimonial obligations. They also felt, that she could not bear a child. Neurologists believed, that it was impossible for the husband to live with Radhika Gupta. On the subject of their B marital relationship, the husband contends, that his wife did not allow him to touch her physically, even to please her. It is the husband's assertion, that at times Radhika Gupta would wake up in the middle of the night, and thereafter, would not allow him to sleep. Darshan Gupta even accused his wife, for shouting C and screaming without any reason.

6. For the upkeep, maintenance and sustenance of his wife, the appellant Darshan Gupta, is stated to have created a trust with a corpus of Rs.10,00,000/-. For his wife's residence, the appellant Darshan Gupta persuaded his father to execute D a lease deed of a flat in a posh locality, at a nominal rent, in favour of the trust. Besides the aforesaid, the appellant Darshan Gupta has been paying his wife Radhika Gupta a sum of Rs.25,000/- per month towards maintenance, during the pendency of the proceedings.

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7. In response, the case set up by Radhika Gupta has been, that after her first conception was aborted in June, 1999, the attending gynecologist at Apollo Hospital, had cautioned the couple against any further conception for at least two years. The F couple had been advised, that pregnancy of Radhika Gupta during this period could lead to serious medical complications. Despite having been forewarned by the gynecologist, Radhika Gupta alleges, that her husband had proceeded with unsafe cohabitation, resulting in a second pregnancy within a short G period of eight months (after the termination of the first pregnancy), i.e., well within the unsafe period. According to Radhika Gupta, true to the advice of the attending gynecologist, the second pregnancy resulted in the same symptoms as she had suffered during her first pregnancy. It was her assertion, that she had again started to suffer from hypertension resulting H

in fits, extreme morning sickness and general weakness. Despite the precarious condition of the wife, she was persuaded by her husband, Darshan Gupta, to carry on the pregnancy till the eighth month. The wife acknowledges the caesarian operation conducted on 20.9.2000, as also the fact, that the child born to her surviving for only eight days. In this behalf her assertion is, that her husband was to be blamed for the same, as he did not heed to the medical advice of the gynecologist. According to Radhika Gupta, the fall out of the second pregnancy, specially the effect thereof to her health, was the real cause of the turn around of the matrimonial relationship, between the parties. For that, Radhika Gupta blames her husband.

8. Despite the factual position noticed hereinabove, Radhika Gupta – the wife, claims to be hale and hearty. Before the Family Court, she had expressed, that she was ready and willing for any medical evaluation, at the Court's behest. According to Radhika Gupta, after the death of the new born, her husband did not extend, the care that she deserved from him. This had happened after the termination of the first pregnancy also. At that juncture, her parents had taken her to neurologists, psychologists and occupational therapists of national repute. After the caesarian surgery, Radhika Gupta had remained unconscious. She used to suffer series of fits. It is therefore, that she had to be shifted to the Apollo Hospital. After treatment, she had regained her consciousness, and had become more oriented. It is the wife's assertion, that yet again after the episode of the second pregnancy, the husband did not extend any emotional or moral support to her. Rather than taking care of her, she was shifted to her parents' house in May 2002. It is the wife's contention, that her parents again took good care of her. They had again sought advice from specialists of different medical fields, as before. The undisputed factual position between the parties is, that ever since she was shifted to her parents house in May 2002, Radhika Gupta has remained at her parents' house, except for a few days (from

A 29.9.2011 to 3.10.2011), that also, in compliance with the desire and directions of this Court.

9. It has been, and it still is, the wife's case, that she is intensely concerned about her future relationship with her B husband, and that, her greatest and paramount desire is to rejoin her husband, and to live with him normally in a matrimonial relationship, once again. According to the respondent-wife, all efforts made by her have failed, only on account of the rigid attitude of her husband.

C 10. On the above facts, OP No.926 of 2002 was filed by the appellant-husband before the Family Court seeking dissolution of marriage under clauses (ia) and (iii) of Section 13(1) of the Hindu Marriage Act, 1955. As against the aforesaid, OP No.629 of 2003 was filed by Radhika Gupta, D before the same Court, seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. Both the cases were clubbed together. Evidence was recorded in OP No.926 of 2002, and the same was treated as evidence for the determination of OP 629 of 2003 as well.

E 11. Darshan Gupta examined four witnesses in all. He examined himself as PW1. He examined his maternal aunt Nirmala Devi as PW2. Darpan Gupta, the twin elder brother of the appellant-Darshan Gupta was examined as PW3. Dr. M. Veera Raghava Reddy, a practicing neurologist was examined F as PW4. The testimony of the husband Darshan Gupta who appeared before the Family Court as PW1, was in consonance with the factual position indicated in the pleadings, as also, in the factual narration recorded hereinabove. PW2 and PW3 being close family relations supported the statement of Darshan G Gupta-PW1, in all material particulars. While deposing before the Family Court, Dr. M. Veera Raghava Reddy-PW4 stated, that he had referred the respondent-wife Radhika Gupta to Dr. Nagaraja for a second opinion. The said second opinion was sought by the appellant-husband Darshan Gupta, and his H relations. Even though Dr. M. Veera Raghava Reddy-PW4,

somewhat towed the line of the appellant-husband Darshan Gupta during the course of his examination-in-chief, he acknowledged during the course of his cross-examination, that when he had visited Radhika Gupta at her residence, her physical condition was normal. He also accepted, that he had not prescribed any medicine to the respondent-wife, for the effect of eclampsia on the brain, as there was no medicine for it. He admitted, that he did not advise or refer Radhika Gupta to any psychiatrist or clinical physiologist, for evaluating her physical and mental functions, nor did he prescribe her any treatment to improve the said functions. He however opined, from his experience, that even if treatment had been taken by Radhika Gupta from psychiatrists/clinical physiologists, her improvement would have been limited to 4-5%. He also acknowledged, that he had never given any opinion to the appellant-husband, that Radhika Gupta was suffering from loss of cognitive deficiency, or that she was not fit for conjugal life. It would be pertinent to mention, that it stands noticed in the order of the Family Court, that when Dr. M. Veera Raghava Reddy-PW4, appeared before the Family Court to depose in the matter, Radhika Gupta was sitting in the court-hall observing court proceedings. During their interaction Dr. M. Veera Raghava Reddy-PW4, had enquired about her welfare. She had responded by stating, "I am fine sir, thank you.".

12. It would be pertinent to mention, that Radhika Gupta chose not to examine herself as a witness, in either of the two cases before the Family Court. She only examined Dr. C.R. Mukundan-RW1, in her defence. During the course of his deposition, Dr. C.R. Mukundan-RW1 had produced three documents Exhibits R1 to R3. As per his deposition, when he had examined Radhika Gupta, he was working as Professor of clinical psychiatry in the neuro-psychology unit, at NIMHANS, in Bangalore. Consequent upon the respondent-wife's evaluation by him, he had issued reports Exhibits R1 and R2. As per the said reports, Radhika Gupta had undergone intensive cognitive re-training using brain function therapy, and

A that, she was provided with graded re-training in alphabet and number recognition and delayed recall, recognition and recall of words and figures, different levels of working memory, etc. It was duly noted in Exhibit R2, that at the first neuro-psychological assessment of Radhika Gupta at NIMHANS in June 2002, as
B also, in the second assessment made in July 2002, there was considerable improvement in her medical condition. It is also recorded in Exhibit R2, that as per the follow up report, she was currently showing significant improvement in all cognitive areas, and that, her word finding difficulty was reduced by 60-70%. It
C also stands duly noted, that she could not spontaneously name household articles, and food materials, or recall the names of persons and objects seen in movies or read in books. The report (Exhibit-R2) however indicates, that when she had difficulty to spontaneously name an article or person, she would
D succeed to do so with a little effort. The report (Exhibit R2) also notices, that her working memory had improved so much, that the same could be described as "near normal", because she was able to execute and complete, working memory tasks. Thereafter, Radhika Gupta was subjected to a third neuro-
E psychological assessment in October, 2002. Again marked improvement was found in her conceptual organization of numbers, and ability for arithmetic operations. On this occasion it was found, that her writing skills still required further improvement. The said third assessment expressly notices, that Radhika Gupta was capable of all normal emotional
F experiences and expressions, and that, she was intimately desirous of restoring her future relationship with her husband. She was found to be fully capable of a happy marital life. Interestingly, the aforesaid report underlines the fact, that her improvement would have been a lot more significant and faster,
G if her husband had been with her, and had cared for her in her journey to recovery. It was however, pointed out, that Radhika Gupta still lacked in self-confidence. Yet, she was found to be highly motivated for further improvement, and her logical thinking and expressive abilities were described as excellent. Exhibit
H R3 produced by Dr. C.R. Mukundan-RW1, was on the same

lines as the earlier two exhibits. Dr. C.R. Mukundan-RW1, deposed, that Radhika Gupta was not a case of mental disorder. Her case was of severe cognitive deficiencies, on account of brain damage. She had suffered, the aforesaid brain damage on account of eclampia during the course of her second pregnancy. According to Dr. C.R. Mukundan-RW1, in some areas of deficiency, she was found to have fully recovered. In some areas of cognitive deficiencies her improvement was about 60-70%. According to Dr. C.R. Mukundan-RW1, Radhika Gupta had recovered her working memory by more than 80%. It was further pointed out, that cognitive deficiency is recoverable, but is dependant on the degree of damage to the brain, as also, the emotional support the patient gets from family members at the relevant time. In his examination-in-chief, Dr. C.R. Mukundan-RW1 deposed, that during her treatment he had requested Radhika Gupta to bring her husband along with her. But her husband had never accompanied her. It was sought to be explained, that the presence of Darshan Gupta, would have given emotional support to her. This position remained uncontested during his cross-examination. On the issue of cognitive deficiencies, it was sought to be clarified, that even though the same would affect the quality of life of Radhika Gupta, yet the same would have no effect on her matrimonial obligations. During the course of his cross-examination, Dr. C.R. Mukundan-RW1, denied the suggestion, that Radhika Gupta was not in a position to discharge her normal day to day functions of life, like bolting a door after entering the bathroom, or opening a door after bolting it. He acknowledged, that he himself had given the reports at Exhibits R2 and R3. At this juncture, it would be necessary to notice, that after consulting Dr. C.R. Mukundan-RW1, the appellant-husband Darshan Gupta desired a second opinion, for which he obtained a letter from Dr. M. Veera Raghava Reddy-PW4, addressed to Dr. Nagaraja. Thereafter, the appellant-husband Drashan Gupta visited Dr. Nagaraja for a second opinion, but while seeking the same, he did not admittedly take the respondent-wife Radhika Gupta for

A B C D E F G H

A examination at the hands of Dr. Nagaraja.

13. Dr. M Gauri Devi, Superintendent, Institute of Mental Health, Erragadda, Hyderabad, was examined as Court Witness 1(CW1). Dr. M. Gauri Devi-CW1 constituted a medical board, at the asking of the Family Court, for examining and evaluating the medical condition of Radhika Gupta. The aforesaid medical board comprised of Dr. Ch. Venkata Suresh, Assistant Professor of Psychiatry of Institute of Mental Health, Hyderabad, Dr. K. Ashok Reddy, Associate Professor of Psychiatry of Institute of Mental Health and Dr. S. Bhaskara Naidu, Professor of Clinical Psychology of Institute of Mental Health Hyderabad. The medical board having examined Radhika Gupta, submitted its report (Exhibit C1) to the Family Court. A perusal of the medical report indicates, that the medical board had recorded its conclusions on the basis of the medical history of Radhika Gupta, as also, the observations and examination of the respondent-wife. The medical board expressed the opinion, that the Radhika Gupta was suffering from cognitive deficiencies, in the form of difficulty in comprehension, attention, concentration, orientation, perceptual ability, memory retrieval, word finding difficulty and organization ability. The said effects, according to the medical board, could influence her day to day functioning. The defects were, however, found to be on account of brain damage involving predominately the parietal-temporal region of the brain. It was concluded, that Radhika Gupta did not manifest any signs of major mental disorder, and that, she exhibits normal adequate emotional responses. It was opined, that she would further benefit from neuro-psychological rehabilitation measures, which are available at NIMHANS.

14. Dr. Bhaskar Naidu, one of the members of the medical board, deposed before the Court as CW2. He was cross-examined first by the learned counsel representing the respondent-wife Radhika Gupta, and thereafter, by the learned counsel representing the appellant-husband, Darshan Gupta.

On being cross-examined at the behest of the respondent-wife, he stated that he was of the opinion that Radhika Gupta was suffering from some deficiency of intelligence. He further stated, that the average intelligence quotient of a human is between 92 to 110 points. He opined that Radhika Gupta possessed the intelligent quotient between 50 to 55 points. It was sought to be explained, that a person having between 70 to 90 points is called a slow learner or border line person, and a person having between 50 to 70 points is described as one of moderate intelligence. In the aforesaid view of the matter, he accepted that Radhika Gupta could be described as an individual of "moderate intelligence". He also opined, that by undergoing therapy training, there is a likelihood of Radhika Gupta to further improve her cognitive deficiency. When Dr. Bhaskar Naidu-CW2 was cross-examined by the learned counsel representing the appellant-husband Darshan Gupta, he asserted that Radhika Gupta was suffering from mild to moderate cognitive deficiency. He also expressed, that the aforesaid deficiency would not come in her way in discharging her matrimonial obligations.

15. Based on the evidence led by the rival parties, and also, through the court witnesses, the Family Court arrived at the conclusion, that the husband had failed to establish, that he was subjected to cruelty at the hands of Radhika Gupta. On the issue of aggressive and abnormal behavior of the wife, the Family Court felt, that there was no evidence before the Court, except the deposition of interested witnesses, namely, the appellant-husband himself, his maternal aunt Nirmala Devi and his elder twin brother Darpan Gupta. The Court was of the view, that such behavior, if it was actually there, could have easily been established through nurses and attendants of Radhika Gupta. But these, or such like witnesses were withheld, even though they could have been easily available to the appellant-husband. It was also concluded, that Darshan Gupta had not been able to prove, that his wife was suffering from any incurable unsoundness of mind and/or mental disorder. Insofar

A as the solitary expert witness produced by the appellant-husband Darshan Gupta is concerned, Dr. M. Veera Raghawa Reddy-PW4, had admitted that while examining Radhika Gupta, he did not observe any signs of aggressiveness in the respondent-wife. On the contrary, he affirmed, that she was
B having a smiling face, and also, observed a calm and cool conduct.

16. The Family Court, on the basis of oral and documentary evidence produced before it, arrived at the conclusion that Radhika Gupta did not suffer from any mental
C disorder or unsoundness of mind. She merely suffered from cognitive deficiency. The aforesaid cognitive deficiency was acquired during her second pregnancy. She was found to have substantially improved from her cognitive deficiency, during the course of her treatment. The Family Court also expressed the
D opinion, that Radhika Gupta could have improved even further, had there been moral and emotional support to her by her husband, Darshan Gupta. In fact, the trial Court felt, that the appellant-husband Darshan Gupta had never given the respondent, moral or emotional support, during the time of her
E distress. Despite the request of her treating doctor, he never accompanied her during the course of her consultations with doctors. The Family Court expressed the view, that the appellant husband Darshan Gupta himself, was responsible for the state of affairs of his wife-Radhika Gupta, inasmuch as, he
F did not heed the advise of the gynecologist, after the abortion of her first pregnancy in June 1999. The consulting Gynecologist had advised the couple against planning any further conception, for a period of at least two years. Despite the aforesaid advice, Darshan Gupta impregnated his wife
G Radhika Gupta, just after eight months of the said abortion. His desires had overridden, the health advisory of the gynecologist. The Family Court also concluded, that the appellant-husband had failed to establish, that the mental unsoundness of mind or mental disorder of the respondent-wife was of such degree,
H that he could not be expected to live with her.

17. Having regard to the aforesaid conclusions, the Family Court dismissed OP No.926 of 2002 filed by the appellant-husband Darshan Gupta on the ground that he had not been able to prove the ingredients of either clause (ia) or clause (iii) of Section 13(1) of the Hindu Marriage Act, 1955. On the other hand, OP No.629 of 2003 was allowed holding that the respondent-wife was entitled to the relief of restitution of conjugal rights. Her husband Darshan Gupta was accordingly directed to receive her back into his house within three months, and to give her moral and emotional support. On his failure to do so, he was directed to continue to pay the interim maintenance amount fixed by the Family Court, till he finally accepts her back into his house. At this juncture, and in the context under reference, it would be sufficient to record, that the parties have not been able to reside together till date.

18. Dissatisfied with the common order dated 2.2.2006 passed by the Family Court, Hyderabad, the appellant husband filed FCA No.36 of 2006 to assail the order passed in OP No.629 of 2003. Similarly, he filed FCA No.37 of 2006 to impugn the order passed in OP No.926 of 2002. The High Court disposed of FCA No.36 of 2006 and FCA No.37 of 2006 by a common order dated 6.7.2009. By the aforesaid common order, the High Court dismissed both the appeals preferred by the appellant-husband, by accepting and re-endorsing each finding of fact, recorded by the Family Court, Hyderabad.

19. The common order passed in FCA No.36 of 2006 and FCA No.37 of 2006 by the High Court on 6.7.2009 was assailed by the appellant-husband Darshan Gupta by filing Petitions for Special Leave to Appeal being SLP (C) Nos.22571-22572 of 2009. On 14.9.2009, this Court granted leave, in the above mentioned petitions.

20. On 27.7.2011, this Court directed both parties with their family members to appear before the Hon'ble Judges hearing the matter, in chamber. Accordingly, on 23.8.2011, the parties appeared, and were heard in chambers. While

A adjourning the matter to 19.9.2011, the Hon'ble Judges who had heard the parties in chamber recorded, that the parties were not in a position to arrive at an amicable settlement. Despite the above, on the next date of hearing, i.e., on 19.9.2011, learned counsel representing the rival parties B informed this Court, that the appellant, as well as, the respondent had expressed their mutual willingness to live together in a separate flat, initially for a period of at least six months. This Court, being desirous of an amicable settlement, permitted the appellant and the respondent to live together. C While granting the said liberty, the bench hearing the matter, recorded its earnest hope, that there would be no interference by other family members. The parties were required to inform this Court, of the outcome of their effort.

21. It is submitted by learned counsel representing the rival D parties, that Radhika Gupta joined her husband Darshan Gupta in a separate flat at Hyderabad, on 29.9.2011. Darshan Gupta and Radhika Gupta, however, remained together only for a few days. During the said period, the parties could not persuade themselves to maintain a relationship of cordiality, nor was E there any physical relationship between them. Radhika Gupta left the company of the appellant-husband Darshan Gupta on 3.10.2011. On the said date itself, Radhika Gupta addressed a letter to the Registry of this Court. The said letter read thus :

F "The Hon'ble Supreme Court, by the order dated 19.09.2011 directed us to live happily for a period of six months. In pursuance to the directions of the Hon'ble Supreme Court, my husband taken me into his matrimonial company on 29.09.2011 and kept me separately at his row G (sic) house situated at Jubilee Hills.

However, I am reporting from that day i.e. 29.09.2011 my husband is not behaving properly with me. Instead of showing love and affection, he is abusing me with filthy language without any reason. He is calling me "PAGAL"

H

as and when he is addressing me. He is further saying that I have no sense and intelligence. Further he repeating me to leave him by taking money. He is further saying that even though his appeal before Supreme Court is dismissed he is not going to live with me. My in-laws also compelling me to agree for divorce by accepting money. My husband threatening me to agree for Divorce. The torture of my husband is beyond my tolerance. Hence under the above compelling circumstances I am leaving to my mothers' place."

It is apperant from the above, that the efforts of the parties to convince one another, of settling the matter amicably, did not yield to any fruitful results.

22. It is thus, that the matters came to be relisted for hearing. Learned counsel representing the rival parties expressed their desire, that the appeals be heard and disposed of on merits. It is therefore, that we have resolved to adjudicate upon the matters. We may only record, that it is routine to settle issues of law, but it is formidably cumbersome, and distressingly painful to decide issues of relationship. All the same, having heard learned counsel for the rival parties, we shall record our conclusions, on the issues canvassed.

23. The appellant-husband has sought dissolution of marriage on two grounds. First and foremost, he claims to have been subjected to cruelty on account of the intemperate behaviour of his wife. For the instant prayer, he relies on clause (ia) of Section 13(1) of the Hindu Marriage Act, 1955. The second ground on which the appellant-husband seeks dissolution of marriage is, that his wife is of incurable unsound mind, and suffers from such a mental disorder, that the appellant cannot be reasonably expected to live with her. For the instant second prayer, the appellant-husband relies on clause (iii) of Section 13(1) of the Hindu Marriage Act, 1955. The two provisions on the basis whereof the husband seeks annulment of marriage are being extracted hereunder for facility

A of reference:-

"13. Divorce

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

1[(ia) has, after the solemnisation of the marriage, treated
C 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
D with the respondent.

Explanation —In this clause-

(a) the expression "mental disorder" means mental
E 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
F not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment"

G

24. Insofar as the allegation of cruelty levelled against the wife is concerned, the same did not constitute a serious challenge at the hands of the appellant on the basis of the facts pleaded and proved during the course of hearing. Being
H conscious of the fact, that the Family Court, as well as, the High

Court were unanimously of the view, that the appellant had failed to discharge the onerous responsibility of substantiating even a single fact to demonstrate any erratic behaviour of Radhika Gupta, which would constitute and establish cruelty at the hands of the wife towards the husband, recourse was advisedly taken to cumulatively project the factual position for both the grounds, on the basis whereof annulment of marriage was sought, i.e., on account of intemperate behavior, as well as, on account of the alleged mental condition of the wife. This is how we understood the submissions advanced at the hands of the learned counsel for the appellant-husband. And therefore, that is the manner in which the same will be considered. We shall, therefore, first briefly record the factual basis constituting the foundation of the challenge.

25. On the attitude of Radhika Gupta, the respondent-wife, towards the appellant-husband, specially after September, 2000, it was submitted that she was totally disoriented, after she regained consciousness. She could not distinguish right from wrong. She was no better than a child of five years. She would wake up in the middle of the night and would start shouting without any reason. She would not allow the appellant-husband Darshan Gupta to sleep, after she had woken up. Even otherwise, her shouting and screaming could occur at any time of the day (or night) without any cause. She was unpredictable. Neurologist had opined, that it was impossible for Darshan Gupta, the appellant-husband, to live with his wife Radhika Gupta. On the subject of her mental condition, it was sought to be asserted, that after the tragedy wherein Radhika Gupta, lost her new born only eight days after the child's birth; the appellant-husband, as also his family members, left no stone unturned for the restoration of her health. For that, she was taken to the best hospitals, which specialized in the very disorder, she suffered from. Specialists in all the relevant fields including neurologists, gynecologists, psychologists, occupational therapists, and the like, were duly consulted. When advised, second opinions of experts were also sought. Yet the condition

A of Radhika Gupta, did not improve to an extent, as would render her competent, even to take care of herself. In this behalf, it was submitted, that it was not safe to leave the respondent-wife alone in her bedroom. Likewise, she could not be permitted to use the bathroom by herself. Accordingly, an attendant was
B engaged to help Radhika Gupta, even for her personal day to day activities. Insofar as the mental condition of the respondent-wife is concerned, based on the testimony of Dr. M. Veera Raghava Reddy-PW4, it was submitted that there was no likelihood of any improvement in her mental framework,
C inasmuch as, her improvement (as per the testimony of PW4) would be limited to 4-5%. It was submitted, that she was forgetful, and had lost her memory. She could not name household articles or food materials. She could also not recall the names of persons and incidents, she was otherwise well-
D versed with. Her working memory was sub-normal, and therefore, she could not be expected to execute day to day tasks, or to perform ordinary obligations, towards her husband and the other family members. Her mental deficiency, according to the learned counsel representing the appellant-husband, was
E on account of brain damage suffered by her, at the time of the caesarian operation performed upon her, in September, 2000. The said brain damage, according to the learned counsel, was irreparable. It was pointed out, that the behaviour of Radhika Gupta, thereafter was proof in itself, for the aforesaid assertion.
F On account of the aforesaid brain damage, even her speech was stated to have been substantially impaired. On the subject of their marital relationship, it was contended, that the same was just out of the question. In this behalf it was sought to be pointed out, that Radhika Gupta would not allow the appellant to touch her physically, even to please her. The enjoyment of
G marital life was, therefore, unimaginable. According to the opinion tendered by Dr. M. Veera Raghava Reddy-PW4, on account of the cognitive deficiency suffered by Radhika Gupta, she was not fit for conjugal life. With great emphasis, learned counsel representing the appellant-husband pointed out, that
H Radhika Gupta was no longer fit to bear a child. This position,

according to the learned counsel, was acknowledged unanimously by specialists treating her. It was, therefore sought to be suggested, that the mental disorientation of Radhika Gupta was of an order and extent, that the appellant-husband could not reasonably be expected to live with her. Living with her would result in subjecting himself to cruelty.

26. The response of the learned counsel, to the factual averments canvassed at the hands of the learned counsel for the appellant-husband, constituted a two-pronged attack. First and foremost it was sought to be averred, that it was Darshan Gupta, the appellant-husband, who was pointedly responsible for the medical condition of the respondent-wife. It was therefore submitted, that he ought to squarely accept his fault for the same. Accordingly it was contended, that it was not open to him to press a claim for dissolution of marriage under Section 13(1) of the Hindu Marriage Act, 1955, by making accusations, for which he himself was blameworthy. In this behalf it was submitted, that after the first conception of Radhika Gupta was aborted in June, 1999, the attending gynecologist at Apollo Hospital, had cautioned the couple against any further conception, for at least two years. The couple had been made aware of the fact, that any pregnancy during this period would lead to serious medical complications. Despite having been conscious of the disastrous consequences of Radhika Gupta's conception, Darshan Gupta had proceeded with unsafe cohabitation, resulting in her pregnancy within a short period of eight months i.e., well within the risk period. It was submitted, that the advice of the attending gynecologist, had proved to be correct, inasmuch as, Radhika Gupta suffered hypertension resulting in fits, extreme morning sickness and general weakness. It was pointed out, that the situation could still have been saved, but for the extreme desire of the husband Darshan Gupta, to have a child. It is, therefore, that the second pregnancy was not terminated. Radhika Gupta, therefore, suffered torturous health conditions, during the eight months of her second pregnancy. The forbidden pregnancy eventually resulted

A in brain damage, leading to the consequences on the basis whereof Darshan Gupta presently seeks dissolution of marriage. In this behalf it was also sought to be vehemently contended, that the appellant-husband was not truly interested in the recovery of Radhika Gupta, inasmuch as, he never B extended any emotional support to her, despite the trauma that she had gone through after she lost her baby in September, 2000. It was submitted, that according to the experts who had examined her, her improvement would have been a lot more significant and faster, if her husband had been with her, and C had cared for her, in her journey to recovery. Even though her attending doctor is stated to have repeatedly asked Radhika Gupta to bring her husband alongwith her, Darshan Gupta had never accompanied her during the course of her consultations with Dr. C.R. Mukundan-RW1. It was, therefore submitted, that D the appellant cannot be granted relief, for a wrong for which he himself was responsible.

27. Learned counsel representing Radhika Gupta even contested the factual premise, on which the appellant-husband had based his claim for dissolution of marriage. Insofar as the E factual position is concerned, Radhika Gupt contended, that she was hale and hearty. Even though she acknowledged, that she was mentally disoriented immediately after she had undergone the cesarean operation in September, 2000, it was averred, that she had regained her consciousness and had become F normal. Relying on the reports prepared by experts during the course of her treatment as far back as in June, July and October, 2002, it was submitted that she had shown significant improvement in all cognitive areas. Even her working memory had improved, so much so, that experts had evaluated the same G as normal. It was pointed out, that Radhika Gupta was fully capable of enjoying a happy marital life, and that, there was no evidence on the record of the case to establish, that her mental condition would have any effect on her matrimonial obligations. On her abilities to discharge her matrimonial obligations, it was H submitted that Radhika Gupta was assessed as possessing

normal and adequate emotional responses. During the entire traumatic period, in the course whereof the parties had separated from one another, she had persistently expressed that she was intensely concerned with her future relationship with her husband, and that, her greatest and paramount desire was to rejoin her husband, and to live with him normally in a matrimonial relationship once again. Based on expert opinion tendered by the medical board constituted by the Family Court, the statement of Dr. C.R. Mukundan-RW1, as also, the testimony of Dr. Bhaskara Naidu-CW2, it was submitted, that there could be no doubt, that the respondent-wife was possessed of all necessary ingredients, mental as well as, physical, for effectively discharging her matrimonial obligations. On the above averments it was submitted, that the Family Court, as well as, the High Court had justly adjudicated the controversy, by expressing the same opinion concurrently.

28. We have given our thoughtful consideration to the rival submissions advanced at the hands of the learned counsel for the parties. First and foremost, we must record, that the respondent-wife Radhika Gupta admittedly suffered brain damage after her cesarean operation in September, 2000. It is not a matter of dispute, that she had remained unconscious for some time even after having delivered a baby on 20.9.2000. It appears, that at the time of regaining consciousness, she was totally disoriented, having lost her memory. The extent to which she had lost her memory is not discernible from the evidence available on the record of the case. It was most definitely substantial, as it is clear, that she could not even recognize persons of close affinity. She could not name household articles and food materials. She could not remember the names of persons known to her. She could also not recall the objects and incidents seen by her. She was unable to execute and complete, working memory tasks. Even her conceptual organization of numbers, and ability for arithmetic operations, was limited. Not only that, even her speech was substantially impaired.

A 29. To deal with her medical condition, her husband Darshan Gupta seems to have initially extended full financial support, by seeking consultation of specialists in fields wherein Radhika Gupta needed assistance. He also ensured, that such treatment was provided to her at premium hospitals. Material B on record demonstrates, that she was admitted at the Apollo Hospital, Hyderabad, and thereafter, at the Leelavathi Hospital, Mumbai. Her treatment at NIMHANS, Bangalore, also emerges from the record of the case. There can, therefore, be no doubt about the initial commitment of Darshan Gupta towards the C welfare of his wife Radhika Gupta.

30. It, however, seems, that the appellant-husband was skeptical about the outcome of her recovery. His assessment of her medical condition, in the background of the inputs from the doctors attending on her, probably created the impression, D that she would henceforth be a liability on him. Dr. M. Veera Raghava Reddy-PW4 may have been responsible for the said impression. Even during the course of his testimony before the Family Court, Dr. M. Veera Raghava Reddy-PW4 had opined, that from his experience he could state, that even if the E respondent Radhika Gupta was treated by psychiatrists or clinical physiologists, her improvement would be limited to 4-5%. Keeping in mind the hopeless condition of Radhika Gupta, the appellant-husband could not have expected any kind of positive relationship with Radhika Gupta. It was natural for him F to infer, that his wife would henceforth be a useless burden. It is not reasonable to blame him for his impressions. In 2000, when the unfortunate incident occurred, he was merely 25 years old. One would expect, that all his dreams of a happy married life, came to be shattered after seeing the medical condition G of his wife, specially in the background of the assessment made by the experts being consulted. The aforesaid impression in his mind, clearly demonstrates the reason of his responses towards Radhika Gupta, in the aftermath of her medical tragedy. He was absolutely sure, that she would never H be able to lead a normal life, and that, there was no question

of her being able to perform her matrimonial obligations. It is in the aforesaid background, that it is easier to understand why he had refrained from extending emotional or moral support to Radhika Gupta. But the inescapable truth is, that factually Darshan Gupta did not extend emotional or moral support to his wife, after her medical episode. The distress of Darshan Gupta, and the distance that he started to keep from his wife, emerge from the statement of Dr. C.R. Mukundan-RW1. Dr. C.R. Mukundan-RW1 placed on the record of the Family Court three documents (Exhibits R1 to R3). The aforesaid documents pertain to the treatment of Radhia Gupta during 2002. In our view, those are the safest documents to be relied upon, for truly assessing the medical conditions of Radhika Gupta. These reports cannot be said to have been created, at the asking of one or the other. They were honest impressions expressed about the state of mental health of Radhika Gupta. The attending doctor of Radhika Gupta considered it appropriate to expressly record in one of these reports, that during her treatment, he had requested Radhika Gupta to bring her husband along with her. He also noted, that the husband had never accompanied her, despite his aforesaid indication to Radhika Gupta. The consequence of non-participation of Darshan Gupta in the course of treatment of Radhika Gupta, is also recorded in the report. The report notices, that her improvement would have been a lot more significant and faster, if her husband had been with her and had cared for her in her journey to recovery. The reasons which may have weighed in the young husband's mind may be any, but the harsh reality is, that Darshan Gupta did not extend due care and support to his wife, nor did he participate in her journey to recovery.

31. Shorn of the participation and support of Darshan Gupta to his wife Radhika Gupta, it is still material to determine the extent of her recovery. An assessment of the mental condition of Radhika Gupta, would render it possible for us to determine whether or not in terms of Section 13(1)(iii) of the Hindu Marriage Act, 1955, her mental disorder is of such a kind,

A and to such an extent, that Darshan Gupta cannot reasonably be expected to live with her. Insofar as the instant aspect of the matter is concerned, it would be just and appropriate to refer to and rely upon, the three reports prepared at the relevant time. The aforesaid reports were placed on the record of the B Family Court by Dr. C.R. Mukundan-RW1. The said reports were prepared in June, July and October 2002. The reports reveal, that Radhika Gupta had undergone intensive cognitive re-training using brain function therapy, and she was provided with graded re-training in alphabet and number recognition and C delayed recall, recognition and recall of words and figures, different levels of working memory, etc. In the first neuro-psychological assessment of Radhika Gupta at NIMHANS in June, 2002, as also, in the second assessment made in July, 2002, considerable improvement was found in the medical condition of Radhika Gupta. She was found to have shown D significant progress in all cognitive areas, and that, her word finding difficulty was reduced by 60-70%. Even though the report records, that she could not spontaneously name household articles and food materials, or recall the names of persons and objects seen in movies or read in books, yet was E noticed, that she could do so with some effort. The report also records, that her working memory had improved to an extent, that the same could be described as "near normal". In her aforesaid assessment, she was found to be able to execute and complete, working memory tasks. Radhika Gupta was F subjected to a third neuro-psychological assessment in October, 2002. Again marked improvement was found in her conceptual organization of numbers and ability for arithmetic operations. The instant third assessment expressly records, that Radhika Gupta was capable of all normal emotional G experiences and expressions. Her eager and earnest desire about her future reunion with her husband, is also indicated in the report. She has been assessed as fully capable of shouldering the responsibilities of a happy marital life. Dr. C.R. Mukundan-RW1 categorically testified, that Radhika Gupta was H not a case of mental disorder. He clarified, that her case was

of cognitive deficiency, on account of brain damage. According to RW1, Radhika Gupta had recovered her working memory by more than 80%. He also explained, that cognitive deficiency is recoverable, but the recovery is dependent on the degree of damage to the brain, as also, the emotional support the patient gets from the family members, at the relevant time. It would be pertinent to mention, that this is the testimony of the same doctor, who had been requiring Radhika Gupta to bring Darshan Gupta along with her, during the course of her consultations. During the course of his cross-examination, Dr. C.R. Mukunan-RW1 denied the suggestion, that Radhika Gupta was not in a position to discharge her normal day to day functions of life.

32. Besides the testimony of Dr. C.R. Mukundan-RW1, it would be relevant to mention, that the Family Court had directed Radhika Gupta to appear before a medical board. It would be appropriate to refer to the findings and conclusions recorded in the report submitted by the said medical board, which comprised of eminent specialists in psychiatry and clinical psychology. In the aforesaid report (Exhibit C1) submitted to the Family Court, conclusions were recorded on the basis of the medical history of Radhika Gupta, as also, the observations and examinations of the respondent-wife. The medical board expressed the opinion, that Radhika Gupta was suffering from cognitive deficiencies in the form of difficulty in comprehension, attention, concentration, orientation, perceptual ability, memory retrieval, word finding difficulty and organization ability. The said effects, according to the Board, could influence her day to day functioning. It was however concluded, that Radhika Gupta did not manifest any signs of major mental disorder, and that, she exhibited normal adequate emotional responses. It was also opined, that she would further benefit from neuro-psychological rehabilitation measures, which are available at NIMHANS. Dr. Bhaskar Naidu, one of the members of the medical board, was also examined by the Family Court, as a court witness. During the course of his deposition, Dr. Bhaskara Naidu-CW2,

A expressed the opinion that Radhika Gupta could be described as a person of moderate intelligence. He also expressed, that by undergoing therapy training, there was a further likelihood of improving her cognitive deficiencies. He also clarified, that the deficiencies suffered by Radhika Gupta, would not come B in her way to discharge her matrimonial obligations.

33. The aforesaid material, in our considered view, would be sufficient in recording our conclusions, in respect of the mental health of Radhika Gupta. Based on the evidence discussed hereinabove, it is not possible for us to record, that C Radhika Gupta suffers from any incurable unsoundness of mind. It is also not possible for us to hold, that she suffers from such mental disorder, that it cannot be reasonably expected of her husband to live with her. The evidence produced before the Family Court leaves no room for us but to conclude, that D Radhika Gupta merely suffers from mild to moderate cognitive deficiencies. She is categorized by medical experts as an individual of moderate intelligence. Material on the record of the case reveals, that she would further benefit from neuro-psychological rehabilitation measures, which are available at E NIMHANS. Even though the said deficiencies could influence her day to day functioning, but expert opinion is unanimous that the same would not come in her way to discharge her matrimonial obligations. It cannot also be overlooked, that experts have clearly expressed that Radhika Gupta exhibits F normal and adequate emotional responses. She has right from the beginning, fervently expressed the desire to restore her relationship with her husband, and to live a normal life, in a matrimonial relationship with him. In the aforesaid view of the matter, it is not possible for us to conclude, that the mental G condition of Radhika Gupta is such as would persuade us to accept the appeal preferred by Darshan Gupta under Section 13(1)(iii) of the Hindu Marriage Act, 1955.

34. It would also be relevant for us to refer to the alleged erratic behaviour of Radhika Gupta. In this behalf, it would be H

pertinent to mention, that it was pointedly asserted at the behest of the appellant-husband, that Radhika Gupta would wake up in the middle of the night, and thereafter, would not allow him to sleep. It was also contended, that Radhika Gupta would shout and scream without any provocation or cause, at any time of the day (or night). Other similar allegations were also levelled by Darshan Gupta against his wife. The Family Court, while dealing with the said allegations, had rejected the same on the ground, that there was no evidence before the Court, except the deposition of interested witnesses, namely, the appellant-husband himself, his maternal aunt Nirmala Devi and his elder twin brother Drapan Gupta. Since the husband did not produce independent witnesses available to him before the Family Court, it was concluded that the husband had failed to establish, that Radhika Gupta's behaviour was aggressive, erratic or abnormal; or that he was subject to cruelty on account of such behaviour. We are of the considered view, that the Family Court, as also, the High Court were fully justified in drawing their conclusions, insofar as the alleged abnormal, erratic and aggressive behaviour of Radhika Gupta is concerned. The courts below were fully justified in recording, that the said behaviour of Radhika Gupta could have easily been established through the testimony of the attendants who looked after Radhika Gupta, as also, the other staff, yet the said witnesses were not produced by the appellant, despite their availability. Interestingly, however, the appellant-husband himself had produced Dr. M. Veera Raghava Reddy-PW4, to support his cause. Dr. M. Veera Raghava Reddy-PW4 appearing for the appellant-husband, during his deposition asserted that he did not observe any signs of aggressiveness in the respondent-wife. Since Radhika Gupta was under the care and treatment of Dr. M. Veera Raghava Reddy-PW4, he would have obviously known of her erratic behaviour, if the allegations of the husband were correct. The respondent-wife had also produced Dr. C.R. Mukundan-RW1 on her behalf. He too would have been aware of such behaviour. The appellant Darshan Gupta, however, chose not to examine Dr. C.R. Mukundan-RW1, on the said

A B C D E F G H

A subject. In fact, there is material on the record of the case to draw a finding, converse to the submission advanced. In this behalf, it would be pertinent to mention, that in the order of the Family Court it is duly noted, that when Dr. M. Veera Raghawa Reddy-PW4, appeared to depose in the matter, Radhika
B Gupta was sitting in the court-hall observing court proceedings. During his interaction with Radhika Gupta, PW4 had enquired about her welfare, and she had responded by stating "I am fine sir, thank you". The very court which Radhika Gupta had repeatedly visited, recorded the above instance to demonstrate
C that her behavior was far from erratic, as suggested by the husband. The position, in our view, would be no different, even if we consider these facts in conjunction with her medical condition. We are, therefore, satisfied in accepting the conclusion drawn concurrently by the courts below, that there
D was no material on the record of the case, to substantiate the alleged aggressive, erratic or abnormal behaviour of Radhika Gupta. In the aforesaid view of the matter, it is not possible to accept the appeal preferred by the appellant even under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

E 35. Despite our aforesaid conclusions, it is necessary to examine the instant controversy from another point of view. As noticed hereinabove, it was the vehement contention of the learned counsel for the respondent-wife, based on the pleadings filed by Radhika Gupta, as also, the evidence
F produced by her, that it was the husband Darshan Gupta alone, who was blameworthy of the medical condition of the respondent. It was submitted, that Darshan Gupta desires to encash on his own fault, by seeking dissolution of marriage, for a consequence, of which he himself was blameworthy. The
G instant submission, though not canvassed in that manner, can be based on a legal premise. A perusal of the grounds on which divorce can be sought under Section 13(1) of the Hindu Marriage Act, 1955, would reveal, that the same are grounds based on the 'fault' of the party against whom dissolution of
H marriage is sought. In matrimonial jurisprudence, such

provisions are founded on the 'matrimonial offence theory' or the 'fault theory'. Under this jurisprudential principle, it is only on the ground of an opponent's fault, that a party may approach a Court for seeking annulment of his/her matrimonial alliance. In other words, if either of the parties is guilty of committing a matrimonial offence, the aggrieved party alone is entitled to divorce. The party seeking divorce under the "matrimonial offence theory" / the "fault theory" must be innocent. A party suffering "guilt" or "fault" disentitles himself/herself from consideration. Illustratively, desertion for a specified continuous period, is one of the grounds for annulment of marriage. But the aforesaid ground for annulment is available only, if the desertion is on account of the fault of the opposite party, and not fault of the party which has approached the Court. Therefore, if a husband's act of cruelty, compels a wife to leave her matrimonial home, whereupon, she remains away from the husband for the stipulated duration, it would not be open to a husband to seek dissolution of marriage, on the ground of desertion. The reason being, that it is the husband himself who was at fault, and not the wife. This is exactly what the respondent has contended. Her claim is, that in actuality the appellant is making out a claim for a decree of divorce, on the basis of allegations for which he himself is singularly responsible. On the said allegations, it is Darshan Gupta, who deserves to be castigated. Therefore, he cannot be allowed to raise an accusing finger at the respondent on the basis of the said allegations, or to seek dissolution of marriage, thereon.

36. There is no dispute between the rival parties, that after Radhika Gupta's first conception was aborted in June, 1999, the attending gynecologist at Apollo Hospital, had cautioned the couple against any further conception for at least two years. The couple had been advised, that pregnancy of Radhika Gupta during this period could lead to serious medical complications. Radhika Gupta alleges, that her husband had proceeded with unsafe cohabitation, leading to her second pregnancy, within a short period of eight months (after the abortion in June, 1999),

A i.e. well within the risk period. Clearly contrary to the medical advisory. The truth of the second conception, cannot be disputed, in view of the overwhelming supporting evidence on the record of the case. The conception could have only occurred because of, unprotected sexual indulgence by Darshan Gupta.
B The medical condition of Radhika Gupta, was for one and only one reason, namely, the second conception of Radhika Gupta, during the unsafe period. Clearly, the blame thereof, rests squarely on the shoulders of Darshan Gupta. The instant conclusion is difficult to assimilate. Yet, there can be no doubt
C about the truthfulness thereof. It is in this view of the matter, that the submissions advanced at the hands of the learned counsel for Darshan Gupta, have been vehemently opposed. The unambiguous contention of the learned counsel for the respondent is, that the grounds/facts on which divorce is sought
D by the appellant, are not at all available to him under the "fault theory" on which Section 13(1) of the Hindu Marriage Act, 1955, is founded.

37. We are persuaded to accept the submission noticed in the foregoing paragraph. There can be no doubt, that all the
E grounds/facts on which divorce has been sought, emerge from the medical condition of Radhika Gupta, after her cesarean operation in September, 2000. The symptoms during her first pregnancy were such, that the couple was advised not to conceive for a period of two years. The husband did not heed
F to the advice tendered by the attending gynecologist. We are, therefore, inclined to fully endorse the view expressed by the Family Court, that the appellant-husband Darshan Gupta himself, was responsible for the state of affairs of his wife-Radhika Gupta, inasmuch as he did not heed the advice of
G gynecologist after the abortion of her first pregnancy in June 1999. There is no serious dispute, that to satisfy his desires, he impregnated his wife within a period of eight months, i.e., well within the risk period. Therefore, she suffered the predicted consequences. The medical condition of Radhika Gupta, on
H which the appellant basis his claim for divorce, is of his own

doing. Even though at that juncture, Darshan Gupta was merely 25 years of age, and it may well be difficult to blame him, yet there is no escape from the fact, that the fault rests on his shoulders. In the above view of the matter, it is not possible for us to conclude, that Darshan Gupta did not suffer from any "guilt" or "fault" in the matter. It is, accordingly, not possible for us to accept, that he can be permitted to use his own fault to his advantage. His prayer for divorce on the facts alleged, is just not acceptable. The party seeking divorce has to be innocent of blame. We are satisfied, that the grounds/facts on which a claim for divorce can be maintained under Section 13(1) of the Hindu Marriage Act, 1955, are clearly not available to the appellant Darshan Gupta in the facts and circumstances of this case. For the instant reason also, the prayers made by the appellant must fail.

38. Towards the same end, learned counsel for the appellant advanced yet another submission. Learned counsel representing the appellant, sought dissolution of marriage on the ground, that the matrimonial ties between the parties had irretrievably broken down. It was, therefore, the contention of the learned counsel for the appellant, that this Court would be justified in annulling the marriage between the parties, specially when the parties have lived apart for more than 12 years. Inviting this Court's attention to the intervention at the instance of this Court, in compliance whereof the parties had made a last ditch effort to live together, and had actually taken up residence in an independent flat in Hyderabad on 29.9.2011, it was pointed out, that they could not persuade themselves into a relationship of cordiality. It was, therefore, sought to be suggested, that there was no likelihood of the parties ever living together as husband and wife. It was accordingly submitted, that this Court should consider the annulment of the matrimonial ties between the parties, on the ground of irretrievable breakdown of marriage.

39. At the present juncture, it is questionable as to whether

A the relief sought by the learned counsel for the appellant, on the ground of irretrievable breakdown of marriage is available to him. The reason for us to say so, is based on a judgment rendered by this Court in *Vishnu Dutt Sharma vs. Manju Sharma*, (2009) 6 SCC 379, wherein this Court has held as
B under:-

> "10. On a bare reading of Section 13 of the Act, reproduced above, it is crystal clear that no such ground of irretrievable breakdown of the marriage is provided by the legislature for granting a decree
C of divorce. This Court cannot add such a ground to Section 13 of the Act as that would be amending the Act, which is a function of the legislature.
>
> 11. Learned Counsel for the appellant has stated that
D this Court in some cases has dissolved a marriage on the ground of irretrievable breakdown. In our opinion, those cases have not taken into consideration the legal position which we have mentioned above, and hence they are not
E precedents. A mere direction of the Court without considering the legal position is not a precedent.
>
> 12. 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
F effect that irretrievable breakdown of the marriage is also a ground for divorce. In our opinion, this can only be done by the legislature and not by the Court. It is for the Parliament to enact or amend the law and not for the Courts. Hence, we do not find force
G in the submission of the learned Counsel for the appellant.
>
> 13. Had both parties been willing we could, of course, have granted a divorce by mutual consent as
H contemplated by Section 13-B of the Act, but in this

case the respondent is not willing to agree to a divorce." A

In this behalf, it would also be relevant to refer to another judgment rendered by this Court in *Gurbax Singh vs. Harminder Kaur*, (2010) 14 SCC 301. Paragraph 20 of the cited judgment is relevant to the issue, and is accordingly being extracted hereunder:- B

"Finally, a feeble argument was made that both the appellant and respondent were living separately from 2002 and it would be impossible for their reunion, hence this Court exercising its jurisdiction under Article 142 of the Constitution, their marriage may be dissolved in the interest of both parties. Though, on a rare occasion, this Court has granted the extraordinary relief dehors to the grounds mentioned in Section 13 in view of the fact that the issue has been referred to a larger Bench about permissibility of such course at present, we are not inclined to accede to the request of the appellant. If there is any change of law or additional ground included in Section 13 by the act of Parliament, the appellant is free to avail the same at the appropriate time." C D E

Even otherwise, in the facts and circumstances of this case (which are being highlighted while dealing with the appellant's next contention), we cannot persuade ourselves to grant a decree of divorce, on the ground of irretrievable breakdown of marriage, for the simple reason that the breakdown is only from the side of the husband. The wife - Radhika Gupta has consistently maintained, that she was intensely concerned with her future relationship with her husband, and that, her greatest and paramount desire was to rejoin her husband, and to live with him normally in a matrimonial relationship, once again. Since in the present case, the respondent does not consent to the severance of matrimonial ties, it may not be possible for us to accede to the instant prayer, made at the hands of the learned counsel for the appellant. F G H

A 40. Since we were not agreeable with the contention advanced by the learned counsel for the appellant, on the plea of irretrievable breakdown of marriage, learned counsel sought the same relief, for the same reasons, by imploring us to invoke our jurisdiction under Article 142 of the Constitution of India, and B to annul the marriage between the parties, as a matter of doing complete justice between the parties. Doing justice between the parties is clearly a constitutional obligation. This Court has been bestowed with the discretion "... to make such order as is necessary for doing complete justice in any cause or matter C pending before it...". The concept of justice, however, varies depending on the interest of the party. On most occasions, it is advisable to adjudicate matters in consonance with law. Whenever it is possible to do so, on the touchstone of the courts conscience, the determination rendered would simultaneously result in doing justice between the parties. All the same, since D we have been called upon to annul the marriage between Darshan Gupta and his wife Radhika Gupta in order to do complete justice to the parties, we have ventured to thoughtfully examine the matter from instant perspective as well.

E 41. In the context of doing justice it was suggested, that the appellant would be ready and willing to pay the respondent, whatever was considered appropriate by this Court. We are informed, that the appellant is financially well-to-do. We shall, therefore, keep in our mind the appellant's offer while examining F the instant issue. We would, in our endeavour to determine the issue in hand, examine the matter, by reversing the roles of the parties. We will examine the matter as if, the wife had approached the Family Court seeking divorce, on the ground that her husband had suffered brain damage leading to G cognitive deficiencies. Yet, despite the said deficiencies, his working memory had returned to "near normal" after treatment. And his mental condition was such, that it would not have any effect on his matrimonial obligations. And the wife's family is agreeable to pay an amount to be determined by this Court (just H as the husband-Darshan Gupta, has offered), so as to enable

their daughter to break away, and find a more suitable match. Should she have been granted freedom from her matrimonial ties, in the given facts, in order to do complete justice to the parties? We would ask ourselves, whether the husband would have accepted such a plea, in the facts denoted above? In such situation, if this Court had, in exercise of its jurisdiction under Article 142 of the Constitution of India, granted compensation to the husband, and had dissolved his marriage on the pretext of doing complete justice between the parties, would the same be acceptable to the husband? We have no doubt in our mind, that on a reversal of roles, the husband, without any fault of his own, would have never accepted as just, the dissolution of his matrimonial ties, even if the couple had been separated for a duration, as is the case in hand. Specially, if the husband had, right from the beginning, fervently expressed the desire to restore his matrimonial relationship with his wife, and to live a normal life with her.

42. We are of the view, that the issue in hand should be adjudged by the above standards, when the same prayer is made by the husband. To constitute justice, the picture should appear to be the same, irrespective of the angle from which it is viewed. If the same sequence of facts cannot be viewed as doing justice to the husband, they have to be likewise viewed for the wife as well. It is, therefore, not possible for us to accept eventhe last plea advanced at the hands of the learned counsel for the appellant.

43. For the reasons recorded hereinabove, we find no merit in these appeals, and the same are accordingly dismissed.

B.B.B. Appeals dismissed.