CASE NO.:
Appeal (civil) 1687 of 2006

PETITIONER:
Vinita Saxena

RESPONDENT:
Pankaj Pandit

DATE OF JUDGMENT: 21/03/2006

BENCH:
Ruma Pal & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P.(C) No.26418 of 2004)

Dr. AR. Lakshmanan, J.

Leave granted.
The above appeal was filed by the appellant, wife of the respondent herein, against the judgment and final order dated 10.9.2004 passed by the High Court of Delhi in F.A.O. No. 235 of 2002 whereby the Civil Writ Petition filed by the appellant was dismissed.

The short facts are as follows:
The marriage between the appellant-Vinita Saxena and the respondent-Pankaj Pandit was soleminzed on 7.2.1993 as per Hindu rites and customs. No child was born out of wedlock. The marriage, according to the appellant, lasted for five months and was never consummated on account of the fact that the respondent was incapable of performing his matrimonial obligations. According to the appellant, from the first day of the marriage, the respondent's mother treated the appellant with utmost cruelty both mental and physical and that the reason for cruelty was the respondent's mental disorder. The respondent's case is a case of Paranoid Schizophrenia and the appellant discovered only after the marriage that the respondent was under constant treatment and observations of different doctors even prior to the marriage for the said ailment. Though the appellant knew the respondent prior to her marriage, in fact, it is only after the marriage, the appellant realised and discovered the mental disorder of the respondent. The appellant was never told by the respondent nor his parents that he was suffering from such serious mental disorder and that he was under the treatment and used to take strong medicines before the marriage. According to Dr. C.R. Samanta, who was a consultant psychiatrist at Aashlok Hospital, the respondent was a case of Schizophrenia and depression. On 4.7.1993, the appellant tried to discuss regarding the problems she was facing with the respondent and her mother-in-law, who objected strongly and accused the appellant of defaming the respondent. At her instance, the appellant was beaten mercilessly by the respondent, which made him nervous to the extent that he consumed "Baygon Spray" to commit suicide. The appellant and her brother immediately took the respondent to the hospital in order to save the respondent's life. Again, Dr. C.R. Samantha prescribed certain medicines i.e. (1) Triperidol (2) Pacitane (3) Prodep to the respondent. The respondent was hospitalised for four days at Aashlok Hospital, Safdarjung Enclave and was discharged after giving proper treatment on 7.7.1993. According to the appellant, Triperidol is given in case of acute and chronic psychoses anxiety disorders, mania, Schizophrenia as per the medical advise. The situation further became worse on 8.7.1993 and 9.7.1993. Again on the instigation of the respondent's mother, the respondent slapped and abused the appellant mercilessly and she was not even allowed to have food that day and the next day morning i.e. on 9.7.1993. On 9.7.1993, the appellant was pushed and kicked out of the matrimonial home by her mother-in-law and the respondent and thereafter, the appellant was not permitted to return again.

The appellant filed H.M.A. Petition on 30.6.1994 against the respondent for dissolution of marriage under Section 13(1)(1-a) and (iii) of the Hindu Marriage Act,1955 hereinafter referred to as "the Act" on the grounds of mental and physical cruelty and insanity before the Court of District Judge at Delhi.

The trial Court vide its order dated 15.5.1993, relying on the facts and averments made by the parties as well as taking the medical documents placed on record observed that a letter of request should be written to the Medical Superintendent, L.N.J.P. Hospital to constitute a panel of doctors to examine the respondent and to report about his mental state. However, this order was subsequently set aside by the High Court in a Revision Petition filed by the respondent. After the marriage had broken down the appellant pursued further studies and completed M.S. (Structural Engineering) from IIT Delhi and in 1996, left for her Ph.D. programme to U.S.A. Father of the appellant, J.S. Saxena, deposed as PW-II and the appellant as PW-I and Dr. D.S. Arora, Medical Superintendent, Aashlok Hospital and Dr Kuldeep Kumar of Safdarjung Hospital recorded their statement as PW-III and PW-IV respectively supporting the case of the appellant.

The respondent, however, got only his statement recorded and before his cross-examination could be concluded, deliberately did not appear in the witness box to complete his deposition. The trial Court, vide order dated 19.3.2001, dismissed the petition filed by the appellant under Section 13(1)(1-a) and (iii) of the Act for the grant of decree of divorce. Being aggrieved by the said order, the appellant filed an appeal before the High Court. The High Court vide order dated 10.9.2004 dismissed the appeal filed by the appellant holding that the respondent is not suffering from Schizophrenia and that there is insufficient material on record to establish the cause of cruelty and further held that the incidents of cruelty is not so grave which come within the scope of concept of cruelty. The High Court also held that the testimonies of the doctors examined by the appellant to prove that the respondent was suffering from Schizophrenia cannot be looked into for the reason that the respondent was not under the treatment of the above doctors. Aggrieved by the said order, the appellant filed this appeal by way of special leave petition before this Court.

The respondent filed a counter affidavit. It is stated in the counter affidavit that the special leave petition is devoid of any merit inasmuch as the Courts below have given findings of fact in favour of the respondent and the Courts below have rejected the pleas of the appellant on the ground that she has not made out any case for grant of divorce. It was submitted that the appellant even before the marriage was having intimacy with the respondent from 1986 to 1993 and she did not find any abnormality in the behaviour of the respondent. It was also submitted that the appellant has not made out any case seeking divorce on the ground of causing cruelty to her inasmuch as she has failed to prove any instance leading to causing such cruelty to her by the respondent. It was submitted that the respondent is willing to take the appellant and keep her happy to the fullest and it is the desire of the respondent that the marriage should not break on the ground that she is building up her career in America for the past 12 years. Since concurrent findings of fact is in favour of the respondent, the appellant ought not to be stated that the respondent and his mother were involved in causing cruelty to her and that the Courts below have also disbelieved the version of the appellant that the cruelty was caused by the respondent due to his mental disorder. It was further contended that the appellant did not lead any evidence to prove as a matter of fact that the respondent was suffering from Schizophrenia and that the appellant has filed the petition deliberately and wilfully and with a view to harass the respondent and his mother. It was also contended that the mere branding of spouse as Schizophrenic is not sufficient and that the degree of mental disorder of the spouse must be proved to be such that the appellant \026 spouse cannot be reasonably be expected to live with the other. It was also submitted that from the evidence and pleadings, it has clearly been stated that the appellant was having sex with the respondent without any problem and there is no truth in the allegation made by the appellant. The other allegations mentioned in the Divorce Petition have not been proved at all and that the appeal filed by the appellant deserves to be rejected.

We heard Ms. Kamini Jaiswal, learned counsel appearing for the appellant-wife and Mr. Dhruv Mehta, learned counsel appearing for the respondent-husband.

We have perused the pleadings, annexures filed along with the appeal and the orders passed by the courts below and the grounds of appeal.

Learned counsel for the appellant while reiterating the averments made in the appeal submitted the following grounds for granting divorce as prayed for by the appellant-wife :

1) Non-consummation of the marriage itself would constitute mental cruelty to

a married woman.
2) The respondent attempted to commit suicide also amounts to mental cruelty and harassment.
3) The appellant has lived only for five months after the marriage and she was mercilessly beaten by the respondent and his mother.
4) There was absolutely nothing to show that the documents and prescription given by the doctors have been concocted. They are the official records of the Hospital.
5) The medical prescriptions and the evidence of doctors clearly illustrate that the respondent was under the treatment of Dr. Samantha and was a case of Paranoid Schizophrenia.
6) The respondent, before his cross examination could be concluded, deliberately did not appear in the witness box to complete his deposition and his evidence had to be closed.
7) The appellant was denied the matrimonial bliss of physical relation by the respondent because of his incompetency which itself constitute cruelty for a married woman.
8) The threat to commit suicide by the respondent amounts to cruelty and the Courts below took cognizance of the fact that the respondent consumed "Baygon spray".
9) Because Dr. Samantha was not alive, the medical record authored by him can only be proved by secondary evidence though Dr. D.S. Arora, medical Superintendent who certified on oath that the respondent was admitted in Aashlok Hospital and stated that he had brought the records in respect of Pankaj Pandit. He also identified the signatures of Dr. Samantha and the medical prescriptions of his having treated the respondent have also been produced and proved by him where it had been categorically stated that the respondent is suffering from Paranoid Schizophrenia.
10) Likewise on the ground of non-availability of Dr. Abhyankar, who had authored the medical prescription as he was no more in service of the hospital cannot be fatal to disregard the evidence of the other doctor, who produced and proved the entire record.
11) The marriage between the appellant and the respondent hardly lasted for five months and both of them are living separately for the last 13 years.
Learned counsel appearing for the appellant cited the following decisions:
1) Shrikant Anandrao Bhosale vs. State of Maharashtra, (2002) 7 SCC 748,
2) A. Jayachandra vs. Aneel Kaur, (2005) 2 SCC 22,
3) Smt. Uma Wanti vs. Arjan Dev , AIR 1995 P&H 312
4) Harbhajan Singh Monga vs. Amarjeet Kaur AIR 1986 MP 41
5) Mrs. Rita Nijhawan vs. Shri Balkishan Nijhawan, AIR 1973 Delhi 200
6) Yuvraj Digvijay Singh vs. Yuvrani Pratap Kumari, AIR 1970 SC 137.
7) Vijay Kumar Ramchandra Bhate vs. Neela vijaykumar Bhate, AIR 2003 SC 2462
8) B.N. Panduranga Shet vs. N. Vijaylaxmi, AIR 2003 Karnataka 357
Mr. Dhruv Mehta, learned counsel appearing for the respondent, per contra, after referring to the grounds of divorce and the findings recorded by the trial Court and the High Court which has affirmed the findings of the trial Court, submitted that in order to make out a ground for divorce under Section 13(1)(iii) of the Act, it is not necessary to establish that the respondent is suffering continuously or intermittently from mental disorder but it must further be established that it is of such a kind and to such an extent that the appellant cannot be reasonably be expected to live with the respondent. In other words, the burden is not discharged by merely establishing that the respondent is suffering from mental disorder which in the present case would include Schizophrenia by virtue of the Explanation to the said provision but the appellant must further lead evidence to establish that the mental disorder is of such a kind and to such an extent that the appellant cannot reasonably be expected to live with the respondent.
According to learned counsel for the respondent, the above contention finds support from a decision of this Court in Ram Narain Gupta vs. Smt. Rameshwari Gupta, 1988(4) SCC 247. For ready reference, the relevant paras from the said judgment are as under:
"20. The context in which the ideas of unsoundness of

'mind' and 'mental disorder' occur in the section as grounds for dissolution of a marriage, require the assessment of the degree of the 'mental disorder'. Its degree must be such that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree. If the mere existence of any degree of mental abnormality could justify dissolution of a marriage few marriages would, indeed, survive in law.

xx xx xx

28. The reasoning of the High Court is that the requisite degree of the mental disorder which alone would justify dissolution of the marriage has not been established. This, it seems to us, to be not an unreasonable assessment of the situation - strong arguments of Shri Goel to the contrary notwithstanding.

xx xx xx

30. \005..the burden of proof of the existence of the requisite degree of mental disorder is on the spouse basing the claim on that state of facts.

33. This medical concern against too readily reducing a human being into a functional non entity and as a negative unit in family or society is law's concern also and is reflected, at least partially, in the requirements of Section 13(1)(iii). In the last analysis, the mere branding of a person as schizophrenic will not suffice. For purposes of Section 13(1)(iii) 'schizophrenia' is what schizophrenia does."

It was further submitted that the aforesaid judgment of this Court has been followed by the Karnataka High Court in the case of B.N. Panduranga Shet vs. N. Vijayalaxmi, (supra). Learned counsel also relied on the decision of the Calcutta High Court in the case of Rita Roy vs. Sitesh Chandra AIR 1982 Calcutta 138 and the decision of the Himachal Pradesh High Court reported in (1995) DMC 71 (DB). Learned counsel also cited the judgment of this Court in Rakesh K. Gupta vs. Ram Gopal Agarwala & Ors., AIR 2005 SC 2426 for the proposition that even in a custody dispute between the husband and wife wherein it was alleged by the husband that the wife is suffering from Paranoid Schizophrenia, this Court still awarded custody of the child to the mother.

According to the learned counsel, the evidence which has been brought on record by the appellant is wholly insufficient to infer that the respondent was suffering from the said mental disorder and the doctors who are alleged to have treated the respondent have not been examined as witnesses by the appellant and what has been brought on record are certain prescriptions made by the said doctors and the same are sought to be proved by examining the Medical Superintendent of Aashlok Hospital, Safdarjung Enclave. Therefore, he submitted that in view of the above fact, no inference can be drawn that the respondent was suffering from Paranoid Schizophrenia and that the appellant has not been discharged of the burden as required by the statutory provision. Learned counsel contended that the words used in sub-clause (iii) of Section 13(1) to the effect that "mental disorder of such a kind and to such an extent that the appellant cannot reasonably be expected to live with the respondent" must be given full effect as it is a well accepted principle of statutory interpretation that a Court must make every effort to give effect to all words in a statute since Parliament cannot be held to have been wasting its words or saying something in vain. Learned counsel, for this proposition, relied on the following two decisions of this Court:

(a) Shin Etsu Chemical Company Ltd. Vs. Aksh Optifibre Ltd., (2005) 7 SCC 234.

(b) Union of India vs. Popular Construction , (2001) 8 SCC 470

Concluding his submissions, learned counsel submitted that the appellant having failed to establish the aforementioned requirement of the statute, the appeal must fail on this ground.

In Re : Cruelty

It was submitted that in order to make out a ground for divorce under Section 13(1)(i-a) of the Act, the conduct complained of should be grave and weighty so as to come to the conclusion that the appellant spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". For this proposition, he relied on the judgment of this Court in

A. Jayachandra vs. Aneel Kaur (supra). Para 13 of the aforementioned judgment is as under:
"13. \005..but before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it\005\005\005"

It was argued that the trial Court, after examining the evidence, has come to the conclusion that the acts complained of are not such as would constitute cruelty and in any event the ground for divorce under Section 13(1)(i-a) is not made out. It was submitted that the trial Court had occasioned to see the demeanour of witnesses and, therefore, the view taken by the trial Court unless it can be said to be perverse should not be faulted with. It was also contended that the approach in such cases should be to perverse the matrimonial home. The judgment in the case of Savitri Pandey vs. Prem Chandra Pandey, (2002) 2 SCC 73 was relied on for this purpose.
Answering the contention raised by the counsel for the appellant that the parties have not lived together for a long time and therefore, this is a fit case to pass a decree of divorce, learned counsel for the respondent, submitted that this is a wholly untenable argument and has to be rejected by this Court. For this, he relied on the ruling of this Court in the case of A. Jayachandra vs. Aneel Kaur (supra).
Concluding his arguments, learned counsel appearing for the respondent submitted that both the trial Court and the High Court have recorded concurrent findings and have rejected the prayer of the appellant to grant decree of divorce under Section 13(1)(i-a) and (iii) of the Act and, therefore, this Court under Article 136 of the Constitution of India cannot interfere with the said findings unless it is established that the findings recorded by the trial Court and the High Court are perverse.
Arguing further, he submitted that the findings of the trial Court are based on the consideration of the entire evidence and well reasoned and in similar circumstances, this Court refused to interfere with the concurrent findings of fact arrived at by the Courts in

Savitri Pandey vs. Prem Chandra Pandey (supra).
We have given our thoughtful and anxious consideration for the rival submissions made by the respective counsel appearing on either side.
The appellant filed a petition for divorce under Section 13(1)(i-a) and (iii) of the Act on the ground of mental and physical cruelty. It is also her case that on account of Paranoid Schizophrenia that the respondent was suffering from, the appellant could not be reasonably expected to live with the respondent. Section 13 (1)(i-a) and (iii) are reproduced hereunder:

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

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

(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

* * * * *

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

Explanation - In this clause, -

(a) the expression "mental disorder' means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

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

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

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

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

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

Explanation - In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

(I-A) Either party to a marriage, whether solemnized before or after the commencement of this Act may also present a petition for the dissolution of the marriage by a decree of divorce on the ground -

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground -

(i) in the case of any marriage solemnized before the commencement of this act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality; or

(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956) , or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; or

(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation - This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976.

It is not in dispute that the marriage has lasted hardly for five months and was never consummated on account of the fact that the respondent was incapable of performing his matrimonial obligations. The appellant has examined herself as PW-1. She has specifically stated in her deposition that the marriage was not consummated at all. It has further come out in her deposition that she accompanied the respondent at AIIMS and met Prof. Dr. Prema Bali, Sexologist and Marriage Counsellor. In her deposition, it had also come out that the Doctor informed her that the respondent cannot perform the marital obligations. She was also informed by the said Doctor that the respondent was a Psychopathic case and he has no power of concentration. She was also informed that the disease is of incurable in nature. The appellant has further deposed that respondent kept on sleeping for three days immediately after solemnization of marriage and the appellant was told that she should not disturb him. It

was further stated in her evidence that on 4.7.1993, the appellant was blamed for the respondent's illness and was mercilessly beaten up and on the same day the respondent consumed "Baygon Spray" to commit suicide and he was taken to Aashlok Hospital, Safdarjung Enclave by the appellant and her brother.

In her cross-examination, the appellant has stated that though they were studying together in the Engineering College, however, there were no special meetings between them except meeting in the class. It has also come on record that there was no intimacy between the appellant and the respondent. The appellant has emphatically denied the allegation about the intimacy between the appellant and the respondent prior to marriage w.e.f. 1987. She also stated on oath that it was a marriage though of her choice but solemnized only after her parents had given the consent. In the cross-examination, the respondent has not been able to shake or destroy the case of the appellant.

In support of her case, PW-2, J.S. Saxena \026 father of the appellant, was examined. He supported the appellant's case and corroborated her evidence. Even in the cross-examination of PW-2, there is no material change or inconsistency.

With regard to the grant of cruelty, there is deposition of the appellant and her father on record which clearly establishes and proves that the appellant was treated with cruelty by the respondent and his mother. With regard to the plea of mental insanity i.e. Section 13(1)(iii), the appellant adduced the evidence of Dr. D.S. Arora, Medical Superintendent, Aashlok Hospital as well as Dr. Kuldeep Kumar of Safdarjung Hospital. Dr. D.S. Arora, a summoned witness produced the entire record pertaining to the respondent. He exhibited the case of the respondent maintained by Dr. C.R. Samantha. Dr. D.S. Arora identified the signatures of Dr. C.R. Samantha and proved Ex. PW-3/1. The original record of respondent was produced in the Court. Dr. D.S. Arora also proved the prescriptions \026 Ex. PW-3/2 and Ex. PW-3/3. Ex. PW-3/5 was the prescription written by Dr. D.S. Arora and it was bearing his signatures. The entire medical history and record of the respondent pertaining to his medical illness, his visit and admission to Aashlok Hospital on 4.7.1993 and discharge on 7.7.1993 as well as the case history of the respondent maintained by Dr.C.R. Samantha were duly proved and exhibited. According to the medical record, the respondent was admitted with reference to a case of Psychopathic and depression for the last fortnight, now admitted for disturbed consciousness. He was suggested to take Triperidol medicine. The other prescription has been authored by Dr. D.S. Arora who stated that the respondent had consumed "Baygon Spray". It was also specified that the respondent is a known case of depression. Medicine 'Triperidol' was suggested to be administered to him. With regard to the consumption of "Baygon Spray", a stomach wash was carried out upon the respondent and he was administered injections 'Atropine', and 'Dextrose-1/V and PAM 1 to 1/V. The evidence of Dr. D.S. Arora and the record signed by Dr. C.R. Samantha are admissible in evidence and has been legally proved. The evidence of Dr. Kuldeep Kumar of Safdarjung Hospital also establishes the case of mental insanity and the fact that the respondent was a case of Paranoid Schizophrenia. The said Doctor produced the original record and made necessary deposition. He had brought the originals during his examination and it is recorded that the respondent had visited the Psychiatric Ward on 12.12.1992 along with his mother. Dr. Abhyankar also recorded about the history of respondent's illness. It was also recorded by the said Doctor that the respondent suffers from delusion of persecution and reference effect and on the physical examination it had been observed that the respondent has clear systematized delusion of persecution and reference and, therefore on the review it is clear that the respondent is suffering from Paranoid Schizophrenia. The medical record of the respondent maintained by the Safdarjung hospital (Outdoor Patient Department) has been established that the respondent visited Hospital on 21.12.1992 and was advised for psychological testing. It was observed in a medical sheet that the respondent was initially diagnosed for psychosis. However, on subsequent visits and after detailed examination it has been confirmed that he suffers from Paranoid Schizophrenia.

The appellant has also produced on record a communication dated 9.5.1994 addressed by Professor Dr. Prema Bali, who was working in the Institute of Sexology and Marriage Counselling. Dr. Prema Bali is the relative of respondent and she has communicated to the appellant that the respondent has a psychiatric problem as his case is a case of Paranoid Schizophrenia.

It would be pertinent to observe that there is no evidence whatsoever adduced by the respondent or on his behalf. In fact, after recording of the examination-in-chief and part cross-examination, the respondent refused to come in the witness box and ran away. The observation has been made by the trial Court in the proceedings.

A RESEARCH ON THE DISEASE

"Schizophernia is one of the most damaging of all mental disorders. It causes its victims to lose touch with reality. They often begin to hear, see or feel things that aren't really there (hallucinations) or become convinced of things that simply aren't true (delusions). In the paranoid form of this disorder, they develop delusions of persecution or personal grandeur. The first signs of paranoid schizophrenia usually surface between the ages of 15 and 34. There is no cure, but the disorder can be controlled with medications. Severe attacks may require hospitalization.

The appellant has filed Annexures L,M,N,O,P and Q which are extracts about the aforesaid disease. The extracts are sum and substance of the disease and on a careful reading it would be well established that the evidence and documents on record clearly make out a case in favour of appellant and hence appellant was entitled to the relief prayed. In the memorandum and grounds of Appeal, some salient features of the disease have also been specified. Some of the relevant part of the extracts from various medical publications are reproduced herein below:

What is the disease and what one should know?

* A psychotic lacks insight, has the whole of his personality distorted by illness, and constructs a false environment out of his subjective experiences.
* It is customary to define 'delusion' more or less in the following way. A delusion is a false unshakeable belief, which is out of keeping with the patient's social and cultural background.' German psychiatrists tend to stress the morbid origin of the delusion, and quite rightly so. A delusion is the product of internal morbid processes and this is what makes it unamenable to external influences.
* Apophanuous experiences which occur in acute schizophrenia and form the basis of delusions of persecution, but these delusions are also the result of auditory hallucinations, bodily hallucinations and experiences of passivity. Delusions of persecution can take many forms. In delusions of reference, the patient feels that people are talking about him, slandering him or spying on him. It may be difficult to be certain if the patient has delusions of self-reference or if he has self-reference hallucinosis. Ideas of delusions or reference are not confined to schizophrenia, but can occur in depressive illness and psychogenic reactions.

Causes

The causes of schizophrenia are still under debate. A chemical imbalance in the brain seems to play a role, but the reason for the imbalance remains unclear. One is a bit more likely to become schizophrenic if he has a family member with the illness. Stress does not cause schizophrenia, but can make the symptoms worse.

Risks

Without medication and therapy, most paranoid schizophrenics are unable to function in the real world. If they fall victim to severe hallucinations and delusions, they can be a danger to themselves and those around them.

What is schizophrenia?

Schizophrenia is a chronic, disabling mental illness characterized by:

* Psychotic symptoms
* Disordered thinking
* Emotional blunting

How does schizophrenia develop?

Schizophrenia generally develops in late adolescence or early adulthood, most often:

* In the late teens or early twenties in men
* In the twenties to early thirties in women

What are the symptoms of schizophrenia?

Although schizophrenia is chronic, symptoms may improve at times (periods of remission) and worsen at other times (acute

episodes, or period of relapse).

Initial symptoms appear gradually and can include:

* Feeling tense
* Difficulty concentrating
* Difficulty sleeping
* Social withdrawal

What are psychotic symptoms?

Psychotic symptoms include:

* Hallucinations: hearing voices or seeing things
* Delusions : bizarre beliefs with no basis in reality (for example, delusions of persecution or delusions of grandeur)

These symptoms occur during acute or psychotic phases of the illness, but may improve during periods of remission.

A patient may experience

* A single psychotic episode during the course of the illness
* Multiple psychotic episodes over a lifetime
* Continuous psychotic episodes

During a psychotic episode, the patient is not completely out of touch with reality. Nevertheless, he/she has difficulty distinguishing distorted perceptions of reality (hallucinations, delusions) from reality, contributing to feelings of fear, anxiety, and confusion.

The disorder can prove dangerous for some - especially when symptoms of paranoia combine with the delusional symptoms of schizophrenia. In fact, doctors say paranoid schizophrenics are notorious for discontinuing the treatments which help control their symptoms.

The Indian Drug Review has specified the Drug Trifluoperidol as a sedative and tranquilizer. With regard to administration it has been suggested that it is given to patient suffering from Schizophrenia. Incidentally this drug was being administered on medical advice to the respondent."

In our view, the trial Court failed to appreciate the uncontroverted evidence of the appellant who had proved the case on every count. It has been established beyond doubt by the Medical doctors who had deposed as witnesses and brought the original medical record of the respondent that the respondent is suffering from mental disorder. Further ground for grant of divorce on the plea of mental insanity/mental disorder is different than cruelty. The appellant, in our view, had proved beyond doubt that the respondent suffered from mental disorder and that the appellant suffered cruelty by and at the behest of the respondent.

Learned single Judge of the High Court failed to appreciate that in the absence of any evidence led by the respondent, the appellant's evidence had to be relied upon and on the basis of the evidence, the decree for divorce was bound to be granted in favour of the appellant. The appellant had also given specific instances of cruelty which clearly establish that she had a reasonable apprehension that it will be harmful or injurious for her to live with the respondent.

LEGAL PROPOSITION ON THE ASPECT OF CRUELTY

It is settled by catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the Section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case.

The word 'cruelty' has not been defined and it has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se

unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions, their culture and human values to which they attach importance. Judged by standard of modern civilization in the background of the cultural heritage and traditions of our society, a young and well educated woman like the appellant herein is not expected to endure the harassment in domestic life whether mental, physical, intentional or unintentional. Her sentiments have to be respected, her ambition and aspiration taken into account in making adjustment and her basic needs provided, though grievances arising from temperamental disharmony. This view was taken by the Kerala High Court in the case reported in AIR 1991 Kerala 1.

In 1993 (2) Hindu L.R. 637, the Court had gone to the further extent of observing as follows:

"Sometime even a gesture, the angry look, a sugar coated joke, an ironic overlook may be more cruel than actual beating"

Each case depends on its own facts and must be judged on these facts. The concept of cruelty has varied from time to time, from place to place and from individual to individual in its application according to social status of the persons involved and their economic conditions and other matters. 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 this connection, the culture, temperament and status in life and many other things are the factors which have to be considered.

The legal concept of cruelty which is not defined by statute is generally described as conduct of such character as to have caused danger to life, limb or health (bodily and mental) or to give rise to reasonable apprehension of such danger. The general rule in all question of cruelty is that the whole matrimonial relations must be considered, that rule is of a special value when the cruelty consists not of violent act but of injurious reproaches, complains accusations or taunts. It may be mental such as indifference and frigidity towards wife, denial of a company to her, hatred and abhorrence for wife or physical, like acts of violence and abstinence from sexual intercourse without reasonable cause. It must be proved that one partner in the marriage however mindless of the consequences has behaved in a way which the other spouse could not in the circumstances be called upon to endure, and that misconduct has caused injury to health or a reasonable apprehension of such injury. There are two sides to be considered in case of cruelty. From the appellant's side, ought this appellant to be called on to endure the conduct? From the respondent's side, was this conduct excusable? The court has then to decide whether the sum total of the reprehensible conduct was cruel. That depends on whether the cumulative conduct was sufficiently serious to say that from a reasonable person's point of view after a consideration of any excuse which the respondent might have in the circumstances, the conduct is such that the petitioner ought not be called upon to endure.

As to what constitute the required mental cruelty for purposes of the said provision, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home.

If the taunts, complaints and reproaches are of ordinary nature only, the court perhaps need consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer.

The modern view of cruelty of one spouse to another in the eye of law has been summarised as follows in (1977) 42 DRJ 270 Halsbury Laws of England Vol.12, 3rd edition page 270:-

"The general rule in all kinds of cruelty that the whole matrimonial relations must be considered and that rule is of special value when the cruelty consists not of violent acts, but of injurious reproaches, complaints, accusations of taunts. Before coming to a conclusion, the judge must consider the impact of the personality and

conduct of one spouse on the mind of the other, and all incidents and quarrels between the spouses must be weighed from the point of view. In determining what constitutes cruelty, regard must be had to the circumstances of each particular case, keeping always in view the physical and mental condition of the parties, and their character and social status."

This Court in Dastane vs. Dastane AIR 1975 SC 1575 observed as under:-

"The Court has to deal not with an ideal husband and an ideal wife, (assuming any such exist) but with the particular man and women before it. The ideal couple or a mere ideal one will probably have no occasion to go to a matrimonial court or, even if they may not be able to drawn their differences, their ideal attitudes may help them overlook or gloss over mutual fault and failures.

Marriage without sex

The Division Bench in the case of Rita Nijhawan vs. Balkrishan Nijhawan in AIR 1973 Delhi 200 at 209 observed as follows:

"Marriage without sex is an anathema. Sex is the foundation of marriage and without a vigorous and harmonious sexual activity it would be impossible for any marriage to continue for long. It cannot be denied that the sexual activity in marriage has an extremely favourable influence on a woman's mind and body. The result being that if she does not get proper sexual satisfaction it will lead to depression and frustration. It has been said that the sexual relations when happy and harmonious vivifres woman's brain, develops her character and trebles her vitality. It must be recognized that nothing is more fatal to marriage than disappointment in sexual intercourse."

Section 13(1)(iii) 'mental disorder' as a ground of divorce is only where it is of such a kind and degree that the appellant cannot reasonably be expected to live with the respondent. Where the parties are young and the mental disorder is of such a type that sexual act and procreation of children is not possible it may furnish a good ground for nullifying the marriage because to beget children from a Hindu wedlock is one of the principal aim of Hindu Marriage where sanskar of marriage is advised for progeny and offspring. This view was taken in AIR 1991 MP 205.

This Court in Digvijay Singh vs. Pratap Kumari, AIR 1970 SC 137 has held as follows

"A party is impotent if his or her mental or physical condition makes consummation of the marriage a practical impossibility. The condition must be one, according to the statute, which existed at the time of the marriage and continued to be so until the institution of the proceedings. In order to entitle the appellant to obtain a decree of nullity, establish that his wife, the respondent, was impotent at the time of the marriage and continued to be so until the institution of the proceedings."

Lord Denning in Sheldon v. Sheldon (1966) 2 All ER 257,

"The categories of cruelty are not disclosed. Each case may be different. We deal with the conduct of human being who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capability to tolerate the conduct complained of. Such is the wonderful realm of cruelty."

Spouses owe rights and duties each to the other and in their relationship they must act reasonably. In every case where cruelty exists it is possible to say that the spouse at fault has been unreasonable. The list of cruelty, therefore, should be breach of the duty to act reasonably, whether in omission or commission, causing injury to health. Such a list avoids imputing on intention where in fact none may exist. Further all such matters are foresight, desires, wishes, intention, motives, perception, obtuseness, persistence and indifference would remain relevant but merely as matter of evidence bearing upon the requirement to act reasonably or as aggravation of the matters charged.

We can also take note of the fact that the respondent had filed a revision against the order of the trial Court's direction for setting up of a medical Board to examine the

respondent. At the time of hearing, this Court directed the counsel for the respondent to ascertain from the respondent as to whether he is willing to submit himself for medical examination. However, the respondent refused to submit himself for medical examination and go before the medical Board. This would but confirm the contention of the appellant that the respondent is suffering from Paranoid Schizophrenia and that this Court can draw adverse inference in view of the conduct of the respondent.

In the case of Smt. Uma Rani vs. Arjan Devi (supra), it has been held that unsoundness of mind may be held to be cruelty.

In the case of Harbhajan Singh Monga vs. Amarjeet Kaur (Supra), it has been held that attempt to commit suicide by one spouse has been found to amount to cruelty to other.

The observation made by this Court in the case of Shobha Rani vs. Madhukar Reddi, AIR 1988 SC 121 can be reproduced to appreciate the facts and circumstances of the case on hand. It reads as follows:

"There has been a marked change in the life around us. In matrimonial duties and responsibilities in particular, there is a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatized as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. The Judges and lawyers, therefore, should not import their own notions of life. Judges may not go in parallel with them. There may be a generation gap between the Judges and the parties. It would be better if the Judges keep aside their customs and manners. It would be also better if Judges less depend upon precedents."

Humane aspects which this Court should consider:

? The appellant was 24 years of age when she got married.

? The marriage lasted for four to five months only when she was compelled to leave the matrimonial home.

? The marriage between the parties was not consummated as the respondent was not in a position to fulfil the matrimonial obligation.

? The parties have been living separately since 1993. 13 years have passed they have never seen each other.

? Both the parties have crossed the point of no return.

? A workable solution is certainly not possible.

? Parties at this stage cannot reconcile themselves and live together forgetting their past as a bad dream.

? Parties have been fighting the legal battle from the year 1994.

? The situation between the parties would lead to a irrefutable conclusion that the appellant and the respondent can never ever stay as husband and wife and the wife's stay with the respondent is injurious to her health.

? The appellant has done her Ph.d. The respondent, according to the appellant, is not gainfully employed anywhere.

? As a matter of fact, after leaving his deposition incomplete during the trial, the respondent till date has neither appeared before the trial Court nor before the High Court.

The facts and circumstances of the case as well as all aspects pertain to humanity and life would give sufficient cogent reasons for us to allow the appeal and relieve the appellant from shackles and chain of the respondent and let her live her own life, if nothing less but like a human being.

In our view, the orders of the Courts below have resulted in grave miscarriage of justice to the appellant who has been constrained into living with a dead relationship for over 13 years. The resultant agony and injustice that has been caused to the appellant, it is a fit case for interference under Article 136 of the Constitution of India and reversal of findings of the Courts below which have resulted in grave miscarriage of justice.

In the result, the civil appeal stands allowed. There will be a decree for divorce in favour of the appellant-wife and against the respondent-husband. The order of the trial Court as affirmed by the High Court, stands set aside. There will be no order as to costs.