

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:71619-DB

**High Court of Judicature at Allahabad
Lucknow**

Reserved on 20.09.2024

Delivered on 24.10.2024

Court No. - 2

Case :- FIRST APPEAL No. - 174 of 2023

Appellant :-

Respondent :-

Counsel for Appellant :- Bhavini Upadhyay, Pankaj Kumar
Tripathi, Sandhya Dubey

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

(Per Om Prakash Shukla, J.)

- (1) Office has reported sufficiency of service of notice on sole respondent vide report dated 26.09.2023, but none appears on her behalf before this Court to oppose the appeal, hence the appeal was heard *ex parte* on 20.09.2024.
- (2) Heard Ms. Bhavini Upadhyay, learned Counsel representing the appellant-husband and perused the impugned judgment as well trial Court's record.
- (3) By means of the present appeal under Section 19 (1) of Family Courts Act, 1984 read with Section 28 of Hindu Marriage Act, 1955 and Section 96 of the Code of Civil Procedure, 1908, appellant/husband assails judgment and decree dated 29.04.2023 passed by Principal Judge, Family Court-II,

Pratapgarh (hereinafter referred to as 'Family Court') in Suit No. 787 of 2019 : *Pawan Kumar Pandey Vs. Smt. Sudha*, whereby learned Family Court has dismissed the said suit filed by the appellant/husband for grant of decree of divorce under Section 13 of the Hindu Marriage Act, 1955.

(4) At the very outset, it is essential to advert to the brief factual matrix to provide context to the manner in which the present proceedings have arisen before this Court.

A) Appellant and respondent got married on 08.06.2003 in accordance with Hindu Rites and Customs. The respondent-wife came to her marital home and kept performing her duties for some time. However, subsequently, the appellant/husband filed divorce suit, bearing No.787 of 2019, on 11.07.2011 under Section 13 of Hindu Marriage Act, 1955 (hereinafter referred to as '*H. M. Act*') on the allegation that after marriage, his wife came to the marital home thrice and during this period, her mental condition was not good as his wife was suffering from Schizophrenia, which disease he came to know after marriage and before marriage, his father-in-law never told him about her illness. It was pleaded that the disease of Schizophrenia is hereditary and whatever children his wife will bear, will suffer from this disease and also due to this disease, her fertility has become zero due to which the husband's lineage will end. The husband further pleaded that he made constant efforts for his

wife's treatment but the doctors told him that the disease is incurable. It has also been pleaded by the husband that in a state of mental illness, the mental condition of his wife was unnatural like she gets up and goes anywhere without informing anyone, loses sense of wearing clothes and at night when the family members are asleep, she leaves the house alone. In this way, according to the plaintiff, an unpleasant incident could occur at any time. It has been stated by the husband that his wife is being treated by a psychiatrist at Allahabad for a long time, but till now there is no improvement and there is no possibility of improvement either. Husband has further stated in plaint that lastly in June, 2011, the plaintiff took medical advice and on medical advice, he became fully convinced that mental disease of wife is continuous and incurable and of such a kind and to such an extent that husband cannot reasonably accept to live with wife and as such, he filed a suit for divorce on the ground of desertion, cruelty and mental disorder of wife under Section 13 of the H. M. Act., praying to grant him decree of divorce.

- B)** The respondent/wife appeared before the learned Family Court and denied allegations of mental disorder. She pleaded in written statement that after marriage, she went to her marital home and performed her marital duties but her husband and his family members started torturing/harassing her in various ways to get more dowry, due to which she became stressed. She

stated that she never suffered from any type of mental illness before or after marriage rather she tolerated the mental harassment by her husband and his family members. It was also pleaded in the written statement by the wife that her husband and his family members took all her jewellery and *stridhan* and while beating her, threw her out of the marital home and her husband is planning to get re-married, hence the wife prayed for dismissal of the husband's petition seeking divorce.

C) On the basis of pleadings of parties, the Family Court has framed the following issues :-

1. क्या विपक्षी श्रीमती सुधा बिना किसी युक्ति-युक्त कारण के अपने पति/याची पवन कुमार से अलग रह रही है ?
2. क्या विपक्षी श्रीमती सुधा द्वारा अपने पति/याची पवन कुमार के साथ कूरता का आचरण किया जा रहा है जिसके आधार पर याची पवन कुमार, विपक्षी श्रीमती सुधा से वैवाहिक विच्छेद की डिक्री प्राप्त करने का अधिकारी है ?
3. अन्य उपषम यदि कोई है ?

D) In addition to the aforesaid issues, the Family Court, keeping in mind the fact that the husband has presented the plaint for decree of divorce against wife on the basis of her mental illness called Schizophrenia as per the provisions of Section 13 (1) (iii)

of the H.M. Act, framed following additional issue for consideration :-

1. क्या याची दावे में वर्णित कारणों पर विपक्षी की मानसिक अक्षमता के आधार पर धारा 13 (1) (iii) के अंतर्गत विवाह विच्छेदन की डिक्ली प्राप्त करने का अधिकारी है ?

E) Both the parties led evidence before the Family Court on the issues framed. The husband examined himself as P.W.1 by filing his affidavit as his examination-in-chief, wherein he verbatim reiterated the averments made in his plaint. In his cross-examination, he stated that his marriage with respondent was solemnized on 08.06.2003 according to Hindu rituals and ‘Saptapadi’ ceremony. He admittedly stated that neither his father nor he went to see the bride before marriage nor did he visit the bride alone. He was confronted with his statement during cross-examination in a maintenance case filed by the wife, wherein he stated that he had met the respondent before marriage and they had discussed their relationship and the same has not been rebutted by him. He further stated that he has been working with the Uttar Pradesh Fire Department since three years prior to the marriage. His first posting was in the Sitapur district. After their wedding, his wife came to his house and stayed with him for a week, but he did not remember how many days of leave he took at that time. He also stated that he went along with his wife for her treatment at Lucknow but he

returned back from there at the instance of his father-in-law as his father-in-law told him that they would take her to Allahabad for treatment because she was already being treated there. He also stated that he did not consult any doctor for his wife's treatment, however, at the time of her marriage, she brought treatment documents indicating she had a mental illness. He has submitted a certificate regarding the illness of his wife in the case, stating that Dr. Renu Verma from Pratapgarh had diagnosed her as mentally ill. P.W.1 has also stated that in this case, he had entered into a settlement at the mediation center of trial Court, however, the settlement did not fructify on account of the fact that the terms and conditions of the settlement between the parties were altered by his brother-in-law. He also stated that his wife had completed her Master's degree before marriage and after marriage, he made her fill application form seeking employment to the post of Postmaster, which required a land to be allocated, therefore, his father transferred a land in the name of his wife for this purpose in Umri village.

- F)** PW-1 has further stated that the divorce case was filed approximately seven years after marriage. In his plaint, initially, the type of mental illness of his wife was not specified, but he later amended the plaint and added that his wife is suffering from Schizophrenia disease, after he came to know about it in 2019. He has also stated that after the said settlement, he went

to bring his wife from her parental home, but she did not come back. He also stated that when his wife came to his home after marriage, she did not fulfill her marital duties. The first time she came, she stayed for about four to five days, then returned two or three months later for another six to seven days. Overall, she did not stay longer than six or seven days. He asserted that he had never had a physical relationship with her and this fact has been stated in the divorce petition. However, when the husband was shown the plaint for divorce, P.W.1 could not specify in which para it was so mentioned. He admitted that he could not explain why that detail was not included in the plaint/affidavit. He also stated that due to Schizophrenia, his wife would suddenly fall and become aggressive, regaining consciousness after about half an hour, then would take medication and sleep. He also stated that he took his wife for treatment on 10.06.2003, but her father later brought her to another doctor, namely, Dr. A.K. Tandon.

- G)** Husband/plaintiff filed documentary evidence viz. photocopy of Kisan Vikas Patra, photocopy of mutation, photocopy of letters, photocopy of the case filed by wife under Section 125 Cr.P.C. :*Sudha Vs. Pawan Kumar Pandey*, photocopy of the cross-examination of the husband as P.W.1 in the case filed under Section 125 Cr.P.C. by the wife, receipt of S.R.N. Hospital, Allahabad, photocopy of the application submitted by

the wife, photocopy of the application submitted by the brother of the wife, namely, Vinod Kumar Dwivedi, photocopy of the written application submitted by wife, photocopy of outdoor patient card of S.R.N. Hospital.

- H)** The wife, in support of her case, examined herself as D.W.1 and her brother, namely, Vinod Kumar Dwivedi son of Ramadhar Dwivedi as D.W.2, wherein they reiterated the averments of written statements. In cross-examination, D.W.1/wife has stated that prior to the marriage, her husband along with his family and other women visited privately at Belha Devi Temple, where they all interacted with her. After the marriage, she maintained her marital responsibilities and there was regular interaction and a physical relationship between both of them. She asserted that her husband's claim that her parents deceived him into marriage while hiding her medical condition, is false. She has stated that she was never ill and had managed household work without any issue. She was never in need of medical treatment from her father nor did her husband take her to any doctor prior to the marriage. The prescriptions submitted by her husband were fraudulent. She did not have Schizophrenia or any symptoms of such a condition. Her physical and mental abilities have never been compromised by any illness. She denied that she would be incapable of procreation and that any offspring would inherit this alleged

hereditary condition. She stated that there is no link between the alleged condition and reproduction. Husband and his family are greedy and have subjected her to various forms of harassment for dowry. She has stated that her husband, who is wealthy and in a government job, has failed to fulfill his marital duties and has filed this case based on fabricated claim. She has stated that she desires to fulfill her marital duties and live with her husband and his family, but she is continually subjected to harassment and violence, leading her to worry about her future. She has also stated that she has always been academically inclined, achieving high marks in school and excelling in debates, indicating her mental acumenity. The mention of Schizophrenia in the divorce appears to be an afterthought, reflecting legal advice rather than reality. She denied that she was mentally disturbed, as indicated in a document submitted by her sister-in-law. She stated that her marriage was solemnized with the plaintiff in the year 2003 and she had been living in her parental home for the past 15 years, with only 4-5 visits to her in-laws' home during that time. She stated that during these visits, she would stay for approximately 2-3 months and had no dispute with her husband or with anyone else in her in-laws' family. However, she did mention occasional harassment related to dowry demands from her in-laws. In this regard, she had filed a First Information Report (FIR) against her in-laws at the Mandhata police station

regarding the dowry demands. She has also stated that since her last visit to her in-laws, there had been no communication from her husband or his family, and her family had also not made any visits to her in-laws. She has also stated that her in-laws did not arrange for her medical treatment. She has stated that she was never admitted to SRN Hospital by either her in-laws or her parents. She has also stated that a compromise was made in 2012, where she agreed to go with her husband, provided that he would keep her with him. She has stated that while living with her in-laws, she and her husband maintained a physical relationship. She has also stated that she had applied for the post of Postmaster, and her father-in-law had executed a deed for 5 biswas of land in her name as a requirement for the job application, which she has subsequently sold and she has also stated that this marriage was by her consent.

- I) D.W.2, Vinod Kumar Dwivedi, the brother of the respondent, stated that plaintiff/husband and his family members began subjecting her to various forms of torture and harassment for additional dowry. This led to significant mental and physical distress to the defendant/wife. He stated that defendant has never suffered from any mental illness either before or after marriage; the distress she experienced was solely due to mental harassment inflicted by the plaintiff and their family members. He stated that the plaintiff/husband was a wealthy individual

with a government job, who, due to his ill intentions, failed to fulfill his marital duties and has falsely accused the defendant of having a fabricated mental illness. He insisted that defendant has never suffered any mental health issue and is an educated woman and is currently unemployed. He emphasized that the plaintiff made false allegations of mental illness against defendant without any evidence. He has stated that defendant still desires to fulfill her marital responsibilities and continues to strive for a life with her family. He has highlighted that plaintiff has made promises through mediation to uphold his marital duties, provide care, and ensure medical treatment for the defendant, but has failed to follow through. Instead, he sought a decree of divorce based on false accusations.

- J)** No documentary evidence has been led by the wife D.W.1 and his brother D.W.2.

- K)** The Family Court, after appraising the pleadings and evidence on record, has returned a finding that neither any evidence has been led by the plaintiff/appellant in respect of issues no.1 and 2 as mentioned above nor the same was pressed by the plaintiff/appellant, therefore, issue nos.1 and 2, as mentioned above, have been decided due to lack of evidence and not being pressed by the appellant.

- L) So far as additional issue i.e. क्या याची दावे में वर्णित कारणों पर विपक्षी की मानसिक अक्षमता के आधार पर धारा 13 (1) (iii) के अंतर्गत विवाह विच्छेदन की डिक्ली प्राप्त करने का अधिकारी है ?, the Family Court has returned a finding that basis for presenting the suit by the appellant has not been established from the evidence produced by the appellant himself, therefore, in such situation when the alleged disease of the wife/defendant is not proved by evidence presented by the plaintiff and further when it has not been proved that the wife/defendant is suffering from Schizophrenia and is incapable of producing children, then, his claim is not worthy of a decree.
- M) Apart from this, the learned Family Court has also returned a finding that if it is believed that the wife was suffering from some kind of disease, then, being the husband, it is the responsibility of the plaintiff to provide a proper treatment for such kind of disease to his wife/defendant but from the evidence of plaintiff/husband, it was clear that he never provided any treatment for the defendant as a wife and she was abandoned from without any sufficient reason. It has also been recorded that the plaintiff has expressed the desire to get a divorce from defendant/wife, which seems more indicative of the plaintiff's neglect of marital relations towards his wife. In this background, additional issue no.1 has been decided against the plaintiff/husband.

N) Recording the aforesaid findings, the Family Court has dismissed the suit filed by the husband/plaintiff under Section 13 of the H.M. Act vide judgment and decree dated 29.04.2023. It is this judgment and decree dated 29.04.2023, which has been challenged in the present appeal.

(5) Ms. Bhavini Upadhyay, learned counsel appearing on behalf of appellant/husband has premised her submission on the following points :-

I. That the appellant/husband had filed a suit for grant of divorce under Section 13 of the H.M. Act on the grounds of desertion, cruelty and incurable unsoundness of mind, which in fact was noted by the learned Family Court while framing issues but the learned Family Court has erred in dismissing the suit without giving any finding on the first two grounds i.e. desertion and cruelty;

II. That under Section 13(1)(iii) of H.M. Act, mental disorder is enumerated as one of the grounds for divorce. The husband/plaintiff has pleaded in the suit that his consent for marriage was obtained by concealment of factum of mental health of his wife, as she was suffering from Schizophrenia and was under treatment even before marriage and this fact was deliberately suppressed from husband. In this regard, even in her statement, she has

admitted several times about expenditure on her medication;

III. That the conduct of the wife/respondent was highly contradictory in nature viz. she had stated in her deposition, on one hand, that she had no grievance whatsoever against her husband and her in-laws and on the other hand, she had lodged a case of dowry against her husband and her in-laws and also never tried to return to matrimonial house, which according to the husband/appellant is sufficient to constitute cruelty and as such the failure of the learned Family Court in considering and returning a finding on the said ground has made the impugned judgment erroneous;

IV. That the findings recorded by the learned Family Court to the effect that there was no sufficient evidence to prove desertion and cruelty amounts to ignorance of the evidence on record particularly because both parties gave evidence to the effect that wife had not been living with the husband for a period of at least five years preceding the date of presentation of the suit and since then, the wife had admitted to be living comfortably in her parental home;

(6) Having regard to the submission of the learned Counsel representing the appellant/husband and going through the record available before this Court in this appeal as well as the impugned judgment and decree and the record of the trial Court, the points of determination arise in consideration before us in the present appeal are as under :-

- I. Whether the findings of the Family Court regarding issue no. 2 with respect to the plea of cruelty as grounds for divorce, is perverse and unsustainable thereby rendering the impugned judgment unsustainable ?
- II. Whether the findings of the Family Court regarding issue no. 1 with respect to the plea of desertion as grounds for divorce, is perverse and unsustainable thereby rendering the impugned judgment unsustainable ?
- III. Whether the findings of the Family Court regarding additional issue no.1 with respect to the plea that wife is suffering from such a disease, which may be treated as mental disorder under Section 13(1)(iii) for grant of decree of divorce, are perverse and unsustainable thereby rendering the impugned judgment unsustainable ?

Point No. 1 is implicit in Point no. 2.

(7) In **Rakesh Raman Vs. Kavita** : 2023 SCC OnLine SC 497, the Hon'ble Supreme Court has explained the meaning of the word

“Cruelty” used in Section 13 of the H.M. Act in the following words :-

“17. Cruelty has not been defined under the Act. All the same, the context where it has been used, which is as a ground for dissolution of a marriage would show that it has to be seen as a ‘human conduct’ and ‘behavior’ in a matrimonial relationship. While dealing in the case of Samar Ghosh (supra) this Court opined that cruelty can be physical as well as mental :-

“46...If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

19. Cruelty can be even unintentional :-

...The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.”

20. This Court though did ultimately give certain illustrations of mental cruelty. Some of these are as follows:

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

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

- (8) In the present case, the appellant is working in Uttar Pradesh Fire Department. He got married to the respondent on 08.06.2003. Apparently, both the parties belong to reputed families. The respondent/wife has lodged F.I.R. against the plaintiff/appellant and his family members. In cross-examination, D.W.1/respondent-wife herself has stated that after marriage, parties cohabitated only for a brief period and that she has been residing separately since 2012. Now, a period of more than a decade has elapsed since the parties started living separately.
- (9) When this Court examines the aforesaid facts in light of the law explained in Rakesh Raman (Supra), we find that parties are living separately for a period exceeding a decade i.e. since 2012. In cross-examination, P.W.1 has stated that after solemnization of marriage, the respondent came to matrimonial home for the first time and lived there only for 4-5 days and

thereafter went to her parental home and subsequently, after 2-3 months, respondent/wife again came to matrimonial home and lived there only for 6-7 days. P.W.1 has also stated that respondent/wife never stayed matrimonial home more than 6-7 days after marriage and during stay at matrimonial home, there was no physical relationship with the respondent. These facts have not been contradicted by D.W.1 (respondent/wife) in her testimony before the Family Court. On consideration of these facts coupled with the factum of matrimonial life of the parties as is evident from the record, it appears that acute mental pain, agony and suffering as would not make possible for the appellant to live with the respondent could come within the broad parameters of mental cruelty.

- (10) Moreso, the respondent is not contesting the appeal in spite of service on notice having been issued by this Court. She has not come forward to oppose the pleas of the appellant. This shows her disinclination to live with the appellant in spite of the stand taken by him. Thus, the feeling of deep anguish, disappointment, frustration of the appellant caused by the conduct of respondent for a long time may also lead to mental cruelty and the long period of continuous separation i.e. for more than a decade establishes that the matrimonial bond is beyond repair. The marriage between the parties becomes a fiction though supported by a legal tie. By refusing to sever that

tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such a situation, it may also lead to mental cruelty. In such circumstances, this Court is of the view that the matrimonial bond had been ruptured beyond repair because of the continuous mental cruelty caused by the respondent/wife.

- (11) The term “desertion” has been explained by the Hon’ble Supreme Court in **Debananda Tamuli v. Kakumoni Katakya**: (2022) 5 SCC 459, in the following words: -

“7....The law consistently laid down by this Court is that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be animus deserendi on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.

* * *

8. The reasons for a dispute between husband and wife are always very complex. Every matrimonial dispute is different from another. Whether a case of desertion is established or not will depend on the peculiar facts of each case. It is a matter of drawing an inference based on the facts brought on record by way of evidence.”

- (12) The respondent lived with the appellant only for few days though interregnum period after marriage and she did not return to live with him till date, i.e. for more than a decade. The respondent is not contesting the appeal, which shows that she has no interest in her relation with the appellant and which indicates that the respondent has abandoned the relationship between herself and the appellant and an *animus deserendi* on her part, which is sufficient to constitute desertion.
- (13) In view of the aforesaid facts, we are of the considered view that the facts of the present case sufficiently points towards the willful desertion by the respondent/wife without any plausible reasons, which are sufficient for grant of a decree of divorce in favour of the plaintiff-appellant. The Family Court has erred in not considering the plaintiff's suit to the aforesaid aspect of the matter. Thus, point nos. 1 and 2 are decided in favour of the appellant.

Point No. III

- (14) Section 13(1)(iii) H.M. Act provides that either of spouse can apply for dissolution of marriage in case the other spouse is of unsound mind or suffering from mental disorder. It is suffice to reproduce the provision at this stage, which reads as under :-

"Section 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--

(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"

- (15) The Apex Court in the matter of **Kollam Chandra Sekhar vs. Kollam Padma Latha** : (2014) 1 SCC 225 has considered the aspect of grant of decree on the ground that other spouse is suffering from schizophrenia. The Apex Court framed question No.1 that, whether the respondent is suffering from a serious mental disorder i.e. schizophrenia or incurable unsoundness of mind, and can this be considered as a ground for divorce under Section 13(1)(iii) of the Hindu Marriage Act, 1955 ?
- (16) To answer the aforesaid framed question, the Hon'ble Supreme Court considered its various earlier precedents including judgment of **Ram Narain Gupta vs Smt. Rameshwari Gupta** : (1988) 4 SCC 247 and judgment of Vinita Saxena (supra), wherein the Apex Court observed as under :

*"In our considered view, the contents of the report as stated by the team of doctors do not support the case of the appellant that the respondent is suffering from a serious case of schizophrenia, in order to grant the decree of divorce under Section 13(1)(iii) of the Act. The report states that the respondent, although suffering from "illness of schizophrenic type", does not show symptoms of psychotic illness at present and has responded well to the treatment from the acute phases and her symptoms are fairly under control with the medication which had been administered to her. **It was further stated that if there is good compliance with treatment coupled with good social and family support, a schizophrenic patient can continue their marital relationship.** In view of the aforesaid findings and reasons recorded, we have to hold that the patient is not suffering from the symptoms of schizophrenia as detailed above".*

(emphasis supplied)

- (17) In view of the above pronouncement, it appears that the ground of a spouse suffering from schizophrenia, by itself is not sufficient for grant of a decree of divorce under Section 13(1)(iii) of H.M. Act as it may involve various degree of mental illness. The law provides that a spouse in order to prove a ground of divorce on the ground of mental illness, ought to prove that the spouse is suffering from a serious case of schizophrenia which must also be supported by medical reports and proved by cogent evidence before Court that disease is of such a kind and degree that husband cannot reasonably be expected to live with wife.

(18) Section 13 (1) (iii) of H.M. Act does not make mere existence of a mental disorder of any degree sufficient in law to justify dissolution of a marriage. The contest in which the ideas of unsoundness of mind and mental disorder occur in section as ground for dissolution of a marriage, require assessment of degree of mental disorder and its degree must be such that spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognized as grounds for grant of decree. The medical concern against too readily reducing a human being into a functional nonentity 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) of H.M. Act. The personality disintegration that characterizes schizophrenia may be of varying degrees and that not all schizophrenics are characterized by same intensity of disease. The burden of proof of existence of requisite degree of mental disorder is on the spouse who bases his or her claim on such a medical condition.

(19) Coming to facts of the present case and considering above pronouncements and legal proposition, findings of learned Family Court recorded in respect of additional issue no.1 have been examined, wherein Family Court has opined that husband has failed to prove the gravity and degree of disease and has merely brought on record the factum of long treatment of

schizophrenia. The learned Family Court considered the balancing fact of the wife being educated upto M.A. (previous) and, therefore, refused to accept that the disease of alleged mental illness was such that she cannot lead a normal life. Therefore, looking to evidence available on record, learned Family Court decided additional issue No.1 against appellant/husband.

(20) After considering entire evidence available on record, this Court has no hesitation in accepting findings and approach of learned Family Court, which appears to be valid and practical. Though, appellant/ husband was able to prove that respondent/ wife is suffering from schizophrenia, but he failed to prove that disease is of such a kind and degree, which may be accepted for dissolution of marriage in terms of Section 13 (1) (iii) of H.M. Act. No sufficient material was brought on record by husband except prescriptions of Doctors, which do not contain any specific finding that disease is having grave consequences as is referred under Section 13 (1) (iii) of the H.M. Act, therefore, in considered opinion of this Court, findings of the Family Court in this regard are just, proper, legal and do not suffer from any perversity and do not call for any interference by this Court in this appeal. Point no.III is answered accordingly.

(21) As regard the contention of the appellant's counsel that the trial Court omitted to consider that the ground of divorce was

concealment of material fact considering the mental condition of respondent-wife, we are of the opinion that the suit was filed under Section 13 of the H.M. Act and not under Section 12 of the H.M. Act. This ground is not available under Section 13 of the H.M. Act but under Section 12 (1) (c) of the H.M. Act. No objection was raised nor any application was given for framing any issue in terms of Section 12 (1) (c) of the H.M. Act, therefore, this plea is rejected.

(22) In view of the aforesaid facts, we set-aside the judgment and decree dated 29.04.2023 passed by the Principal Judge, Family Court-II, Pratapgarh in Suit No. 787 of 2019. Marriage between the parties is dissolved. Suit No. 787 of 2019 is decreed accordingly.

(23) Appeal is **allowed** in the above terms.

(24) There shall be no order as to cost.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date : 24th October, 2024
Ajit/-