



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

FAMILY COURT APPEAL NO. 46 OF 2023

1.

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... APPELLANT
(Ori. Petitioner)

...VERSUS...

1.

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Workplace address -

1.

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2.

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...RESPONDENT
(Ori. Respondent)

Mr. F. T. Mirza Ld. Sr. Counsel with Mr. J. B. Gandhi & Ms. Preeti Gwalani & Rozat Akolawale, Advocates for the appellants.
Mr. V. H. Goenka, Advocate for the respondent.

**CORAM : SMT. M.S. JAWALKAR AND
NANDESH S. DESHPANDE, JJ.**

**RESERVED ON : 16th FEBRUARY, 2026.
PRONOUNCED ON : 27th MARCH, 2026.**

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

1. The present appeal is filed under Section 19 of the Family Courts Act, challenging the judgment dated 18.08.2023 in Petition No. A-98 of 2021, which was dismissed by the Family Court at Akola. The present appeal was admitted by this Court on 04.10.2023. Thereafter, we have heard the appeal and also gone through the record of the matter with the assistance of learned counsels appearing for the respective parties.

2. The husband, i.e., the appellant herein, filed a petition seeking decree of divorce against the wife, i.e., the respondent herein, on the ground of cruelty and disorder or unsoundness of mind, as contemplated under Section 13(1) (i-a) and 13(1)(iii) of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act of 1955').

3. Facts as emerging from the petition and from the judgment of the Family Court are as under:-

(a) The marriage between the parties was solemnized on 09.03.2019. The said marriage was an arranged marriage performed with the consent of the parties and also their relatives. It is further stated in the petition that the appellant husband and the respondent wife, met for the first time in November 2018 for the purpose of assessing the compatibility and knowing each other as life partners. At the said time, the appellant husband as also the respondent wife were Medical Professionals, the appellant husband was pursuing his Post Graduation in M.Ch. Surgical Oncology and the respondent wife was pursuing her Post-Graduate degree in Radiodiagnosis from Lilavati Hospital in Bandra, Mumbai.

(b) The appellant husband, at the relevant time, was working at Tata Hospital, Parel Mumbai. As stated above, the marriage between the parties took place on 09.03.2019 at Akola, as per Hindu Rites and Customs. After the performance of marriage, the parties resided with the parents of the husband at Akola for two days and then left for Mumbai. It is further stated in the petition

that at the convocation ceremony of the husband at Mumbai, having completed his M.Ch in Surgical Oncology, the conduct of the respondent wife was of total withdrawal and she did not interact with the friends/colleagues of the husband which caused severe mental agony to him. It is further stated in the petition that thereafter the parties went to Maldives for honeymoon wherein, the respondent wife was least interested in the normal activities of a couple without any apparent reason. This fact was supplemented with repeated threats of cancelling the honeymoon. After returning from Maldives, there was no change in the behavioural pattern of the respondent wife. It is alleged that she was short-tempered, always yelling, abusing and throwing tantrums for no reason.

(c) The husband i.e. appellant further states in the petition that the respondent wife never had any emotions, love, sympathy or care towards the husband and her behaviour was totally unpredictable and impulsive in nature. The husband in turn tried to pacify things and attributed the respondent wife's unreasonable behaviour to her initial adjustment phase in the new home and married life. However, there was no sign of any improvement in the behavioural pattern of the respondent wife.

(d) It is further stated in the petition that when the husband and wife were riding on a motorcycle in Bandra (Mumbai), on crowded streets, the respondent wife for no logical reason jumped from the motorcycle creating a scene on the road. She even slapped the appellant in full public view and threatened to commit suicide. It is further stated in the petition that in June 2019, when the appellant husband tried to communicate these problems to the parents of the respondent wife, they paid no heed to him. It is, therefore, alleged that they had willfully concealed the mental condition of the respondent wife. Furthermore, on 16.06.2019, the father of the respondent wife took her to one Dr. Aditi Acharya, a prominent psychiatrist in Mumbai, who prescribed her some medications. However, since there was no desired outcome of the said medication, her parents took her to another psychiatrist, namely Dr. Nahid Dave. It is alleged in the petition that both the psychiatrists, after a meticulous case discussion amongst themselves, diagnosed the wife with “personality disorder”.

(e) In the backdrop of above mentioned events, both the appellant husband and the respondent wife decided to take a

professional marriage counseling for a prolonged period of time the same was accordingly done. However, the same also did not yield any desired result. During that period as well, it is alleged that the respondent wife used to abuse the appellant husband in filthy language and her behavioural pattern was changing from bad to worse. It is alleged in the petition that during the said period of cohabitation between the parties, the mental health of the respondent wife was evaluated by eight psychiatrists and psychotherapists.

(f) The petition further avers that in the month of April 2020, the respondent wife tried to gulp down a large dose of psychiatric medicines over a petty dispute between the parties. The husband was fed up with this abnormal behaviour and therefore on 07.05.2020 returned to Akola. However, the respondent wife continued her erratic behaviour over telephone, abusing, blackmailing and accusing the appellant husband. The appellant husband further states in the petition that the parents of the respondent wife continued to cover up her psychological issues. In the month of August 2020, the appellant received a telephonic call from one Radhika, who is the sister of the respondent wife,

informing that the respondent has tried to commit suicide by consuming a large number of psychiatric medications at once. The petition further avers that the respondent wife, at multiple occasions, informed the appellant that she is looking for another companion and seeks divorce from him. Accordingly, appellant husband contacted an Advocate, namely Advocate Parwani, and prepared a draft for mutual consent divorce. It is alleged that the appellant husband intimated this fact to the respondent wife and after meeting Advocate Parwani, both of them went for a dinner together. At the said dinner, dispute arose between husband and wife on some petty issue resulting in wife blowing kicks, scratching and even biting the husband, as a result of which he was badly injured and started bleeding. It is alleged that, in that condition also, the appellant husband took the respondent wife to her friend's (Ravina) house, as per her wish and from there they went to the maternal home of the respondent wife. It is further stated that the appellant husband narrated the behaviour of the respondent wife to her parents and relatives but they did not pay any heed to the same.

(g) It is further stated that after 3-4 days of the above mentioned incident, i.e., on 21.03.2021, wife i.e. the respondent sent a long

Whatsapp message seeking apology and expressing remorse for her irrational and uncontrollable behaviour of the said night. Being unable to bear the said cruelty of the respondent, the appellant husband approached the Family Court for seeking divorce on the ground of mental cruelty and unsoundness of mind / mental disorder.

(h) In response to the notice / summons issued by the Family Court, the respondent wife filed her written statement thereby specifically denying all the allegations made against her by the appellant husband. It is her contention that the husband is very dominating in character and always condemns her for every wrong and is never satisfied unless she apologises. It is further stated in the written statement, that the appellant husband used to have long conversations with his mother on phone and only after the call, he used to talk with the respondent wife. The respondent wife has made a counter allegation that it is the appellant husband who continuously threatened her of divorce.

(i) It is further alleged that it was only for the satisfaction of the appellant husband that the respondent went along with her

husband to the psychiatrist. She further states that both of them have undergone personality test but the husband has not mentioned the said fact in the petition. It is further stated in the written statement that one Dr. Deepak Kelkar, a well-known psychiatrist from Akola, who was introduced by the husband to the wife has stated that he found no behavioral problem with the respondent wife and advised her to immediately stop the medicines prescribed by the other psychiatrists.

(j) As far as preparation of the divorce deed and meeting with Advocate Parwani is concerned, the respondent wife states that the said divorce deed was prepared without her having any intimation or knowledge in that regard. It is further stated that the appellant husband took her to the office of Advocate Parwani on the pretext of going for dinner. However, after realizing the said fact, she refused to sign the deed.

(k) In the written statement, the respondent wife further states that on 16.03.2020, the appellant forcefully entered the house of the parents of the respondent and created a scene. The respondent wife made a counter allegation that due to the conduct of the

appellant husband, she suffered extreme mental agony and was in a state of constant mental tension. On 06.06. 2021, the appellant husband sent a soft copy of divorce petition filed by him against the respondent wife on her email. It is further stated that on 14.06.2021 and 09.07.2021, the appellant husband and his mother sent a letter on WhatsApp to the relatives of the respondent wife with defamatory statements against her and her family members.

4. On the basis of these pleadings, the Family Court framed issues and the parties went on trial. Both the parties examined themselves and the respondent wife also examined one witness namely Sandip Sureshchand Sureka (maternal uncle of the respondent wife).

5. Interestingly enough, during the course of arguments, the appellant husband filed a pursis vide Exhibit No. 86. The said pursis states that he does not wish to press the ground of unsoundness of mind as contemplated under Section 13(1)(iii) of the Act of 1955. The said pursis was filed on 05.08.2023. The pursis mentions that the petitioner is not pressing the decree of divorce on the ground of unsoundness of mind as reflected under Section 13(1)(iii) of the Act

of 1955 to “avoid any inconvenience to the respondent wife in future”.

6. The learned Family Court after hearing the parties at length, passed a judgment on 18.08.2023, thereby dismissing the petition filed by the appellant husband. It is this judgment, which is impugned in the present appeal.

7. In the backdrop of these facts, the only residuary ground of divorce is of cruelty as provided under Section 13(1)(i-a) of the Act of 1955.

8. The following points arise for our determination and the findings thereon are recorded as under:-

	Points	Findings
1.	Does the appellant husband prove that the respondent wife has treated him with cruelty as envisaged under Section 13(1)(i-a) of the Act of 1955?	Yes

2.	Does the respondent wife proves that the allegations of cruelty made in the petition are intrinsically connected with the allegations of unsoundness of mind?	No
3.	Is the appellant husband entitled for a decree of divorce on the ground of cruelty?	Yes
4.	Does the judgment of the learned Family Court warrants interference in appellate jurisdiction?	Yes As per final order
5.	What order?	Appeal is allowed

DOCUMENTARY EVIDENCE OF HUSBAND

Ex.No.	Evidence
Ex. 33	Sorry card given by wife.
Ex. 35 (1 to 9)	Mobile chats between husband and wife

DOCUMENTS EXHIBITED IN CROSS-EXAMINATION OF HUSBAND

Ex.No.	Evidence
Ex. 40	Parichay patra.
Ex. 41	Message sent by husband to Dr. Virendra Modi dtd.14/06/21.
Ex. 42	Message at Sr.No.27/9.
Ex. 43	Message at Sr.No.27/8.
Ex. 44	Message at Sr.No.27/11.
Ex. 45	Message at Sr.No.27/12.
Ex. 46	Message sent by husband to Dr. Divya Choudhary.

Ex.No.	Evidence
Ex. 47	Message at Sr.No.27/17.
Ex. 48	Photographs of first Bhaubij and Rang Panchami.
Ex. 55	Document at Sr.No.42 filed with List Ex.3

ORAL EVIDENCE OF WIFE

Ex.No.	Evidence
Ex. 61	Affidavit evidence of wife.
Ex. 79	Affidavit evidence of witness for wife.

DOCUMENTARY EVIDENCE OF WIFE

Ex.No.	Evidence
Ex. 72 & 72(1)	Email filed with list Ex.54
Ex. 73 (1 to 3)	Parichay patra received wife on her phone, filed with list Ex.54.

Since all the points are interconnected with each other, the same are being discussed in conjunction and not separately.

9. Section 13(1)(i-a) of the Act of 1955, which would be relevant for the adjudication of the present appeal, is reproduced hereunder :

“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-a) 'has, after the solemnization of the marriage, treated the petitioner with cruelty;".'

10. In the backdrop of these facts and the documents referred to above, we have heard Mr. F. T. Mirza, learned Senior Counsel, with Mr. J. B. Gandhi, Ms. Preeti Gwalani, and Ms. Rozat Akolawale, learned counsel for the appellant husband, as also, Mr. V. H. Goenka, learned counsel for the respondent wife.

11. The learned Senior Counsel, by taking us through the voluminous record of the matter, has pointed out various infirmities in the judgment. As regard to the messages sent on WhatsApp, as also the email / PDF dated 18.07.2020 (Exhibit No. 35), the learned Senior Counsel submits that the trial Court has recorded a finding that the respondent wife has admitted in her cross-examination that all these four messages were sent by her to the husband when they were residing separately. He, therefore, submits that the finding recorded by the trial Court that the burden has shifted on the appellant husband, in view of the cross-examination, is totally incorrect, since it is the wife who has chosen to allege that the messages are fabricated.

12. Further, he submits that as far as the aspect of signing the mutual divorce petition at the office of Advocate Parwani is concerned, the finding of the trial Court relying on the cross-examination of the respondent wife, is again based on presumption, inasmuch as the trial Court is not sure regarding the same. He points out in the finding of the trial Court, that the reason of quarrel may be the refusal of the wife to sign the divorce petition. He, therefore, submits that the said finding is inconclusive.

13. Taking his argument further, he submits that the cross-examination of the wife regarding the aspect of the mutual divorce petition has elucidated many admissions which support the case of the appellant husband. It is his further submission that the finding of the trial Court regarding the breaking of any part of the car without a hard object is not easy has no basis and is inherently incorrect.

14. It is his further submission that the conclusion reached by the trial Court that the cross-examination is suggestive of the fact that there was no dispute between the appellant husband and respondent wife *per se* and only between the wife and the mother-

in-law is also erroneous and lacks any factual basis. It is his further submission that the finding recorded by the trial Court regarding the episode of the husband going to the clinic of one Dr. Panpaliya to seek treatment is also erroneous for the reason that it is a normal conduct of any person as he did want to disclose any fact/quarrel to the employees of his own hospital.

15. It is his further submission that only because the parents of respondent wife were not examined, cannot be said to be indicative of the fact that the appellant husband did not prove cruelty. By pointing out paragraph 48 of the impugned judgment, it is contended that the benefit arising from the admission of the appellant husband's witness during cross-examination was extended to respondent wife but not to him. He, therefore, submits that such approach is erroneous and cannot be countenanced.

16. As far as the publishing of the bio-data at Exhibit No. 40 is concerned, it is the submission of the learned Senior Counsel that the finding regarding the same being made with malicious intention to defame the respondent wife. This fact was indicative enough for the trial Court to grant a decree of divorce. By taking us through

paragraph 55 of the impugned judgment, the learned Senior Counsel submits that the findings recorded regarding the fact that the allegations of cruelty are not conveniently pleaded are totally erroneous, since the husband has chosen to make all allegations with sufficient clarity in the pleadings.

17. It is further submitted that the entire approach of the trial Court, with respect to the allegations that they were made at drop of a hat, is entirely flawed. The reasoning of the trial Court that in order to level the allegations of unsoundness of mind/ mental disorder against the respondent wife should be pleaded and proved need with clarity and cogent material is completely erroneous. He further submits that even though, during the course of arguments, the ground of unsoundness of mind / mental disorder was not pressed, still the trial Court has ventured to consider that ground and has recorded a finding that the statement is deceiving. This observation, according to the appellant, is without any reason and is vague in nature.

18. He further submits that the finding of the trial Court that the husband should show or prove the reasons behind such abnormal

conduct of the respondent wife is without any basis and is contrary to the settled position of law. He also submits that the finding of the trial Court with regard to the allegations made by the husband does not pertain to mental cruelty but are of simple trivialities of marital life, is without any basis, since the husband has sufficiently proved that the conduct of the respondent wife has caused disturbance to his mind which is mental cruelty.

19. He further submits that the trial Court did not consider the background and social status of the families, which is a relevant factor in terms of the settled position of law in this regard. He also submits that, even a reasonable apprehension in the mind of a spouse that living together with the partner would endanger his life, limb, and liberty is sufficient enough to reach the conclusion of mental cruelty. He submits that admittedly there is no petition filed for restitution of conjugal rights by the respondent wife. It is submitted that had it been the real intention of the respondent wife to cohabit, she could have reflected so by filing the said petition. Furthermore, it is submitted that while applying for passport, the respondent wife has shown her marital status as separate, as also, she remained absent for mediation. He therefore submits that, in a

nutshell, it was incumbent on the trial Court to record the findings in favour of the husband for mental cruelty. He, therefore, prays for allowing the appeal.

20. In support of his contentions, the learned Senior Counsel for the appellant husband, has relied upon the following judgments of the Hon'ble Apex Court.

I) *Shilpa Sailesh Vs. Varun Sreenivasan* reported in (2023) 14 SCC 231

II) *Roopa Soni v. Kamalnarayan Soni* reported in 2023 (6) Mh.LJ.534.

III) *Amutha v. A.R. Subramanian* reported in 2024 SCC OnLine 3822.

IV) *Yogendra Bhoir v. Prema Bhoir* reported in 2025 SCC OnLine 4997.

V) *Beena M.S. v. Shino G.Babu* reported in 2022 SCC OnLine Ker 778.

VI) *Naveen Kohli v. Neelu Kohli* reported in (2006) 4 SCC 558.

VII) *Samar Ghosh v. Jaya Ghosh* reported in (2007) 4 SCC 511.

21. *Per contra*, Mr. V. H. Goenka, the learned counsel appearing for the respondent wife, submits that, as can be seen from the record, the majority of the life of the respondent wife has been spent in Mumbai. She was working in various hospitals, firstly as a medical student and then as an intern. He therefore submits that since her life was in the public domain, it was natural that if there were any incidents of abnormal behaviour on her part, the same would have been reflected by filing of complaints against her. In the absence of any such complaint, the allegations made by the appellant husband can be construed as far from truth.

22. He further submits that the allegations of mental cruelty are entirely dependent upon the ground of unsoundness of mind / mental disorder. Having chosen not to press the ground of unsoundness of mind / mental disorder, the appellant husband cannot plead and prove the ground of mental cruelty independently. He further submits that, admittedly, no independent witness was examined by the appellant husband to prove the ground of mental cruelty, on the other hand, the respondent wife has chosen to examine herself and her uncle.

23. By taking us through the evidence and the pleadings, the learned counsel for the respondent wife submits that, it is not clear if the psychiatric treatment undergone by her was also before solemnization of the said marriage. By pointing out various averments made by her in the evidence on affidavit, the learned counsel for the respondent wife submits that the allegations regarding numerous incidents, which allegedly happened in Mumbai, in many places including theaters, malls, markets, restaurants, and even at the workplace of the petitioner, could not be said to be proved for want of examination of independent witnesses. Referring to paragraphs 17 and 22, the learned counsel for the respondent wife submits that, there is no corroborative evidence for any incidence alleged in the petition or in the examination-in-chief

24. By pointing out paragraph 89 of the written statement of the respondent wife, the learned counsel submits that it was only because of the appellant husband's continuous insistence, ridiculous allegations, and constant pressure to take psychiatric medications and in spite of the adverse opinion of all counsellors and psychiatrists, that the life of the respondent wife has now become

miserable. He therefore submits that it was only on the insistence of the appellant husband that she accompanied him to the various psychiatrists.

25. The learned counsel for the respondent wife therefore submits that the core question which this Court would be deciding is that, in the facts and circumstances of the present case, whether the ground of unsoundness of mind / mental disorder is so intrinsically connected to mental cruelty that withdrawal of one ground would *ipso facto* lead to refusal of divorce on the ground of mental cruelty. By stretching this analogy, he submits that there is no separate evidence, for the ground of unsoundness of mind / mental disorder and mental cruelty, and therefore not pressing the ground of unsoundness of mind / mental disorder at the last stage is indicative enough to gauge the hollowness of the claim.

26. Referring to the additional submissions made in the written statement, the learned counsel submits that it was the petitioner, i.e., the appellant herein, who has failed and neglected to discharge the marital obligations as a husband, since there has been constant

interference of the appellant's mother in the day-to-day functioning of their married life, as also their professional life. The same has been admitted by the appellant in his cross-examination.

27. As far as the incident of January 2021 is concerned, the learned counsel for the respondent wife submits that it has been reflected in the cross-examination of the appellant husband that he refused to accompany the respondent wife and only on her insistence the tickets were booked. Therefore, he submits that there is no merit in the petition, as the respondent wife is still ready to reside with the appellant husband.

28. It is his further submission that, as far as the incident about bio-data is concerned, the appellant husband has admitted that the same was prepared after filing of the petition. Referring to Section 22 of the Act of 1955, the learned counsel for the respondent wife submits that the entire burden is on the appellant husband, even if the averments in the petition are defended or not. It is therefore his submission that the appellant husband wants to take benefit of his own wrong.

29. Alternatively, he submits that by virtue of the fiction of Section 23(1)(d) of the Act of 1955, even if any cruelty was practiced by the respondent wife, the same has been condoned. This particular fact is very well reflected in the impugned judgment. He, therefore, prays for dismissal of the appeal.

30. In support of his contentions, the learned counsel for the respondent wife places reliance on the following judgments;

I) ***Deepti Vs. Anil Kumar*** reported in **2023 SCC OnLine Del 5829**.

II) ***Rakesh Jaiswal vs. Vaishali Rakesh Jaiswal*** reported in **2017 SCC Online Bom 8832**.

III) ***Harish Karnewar vs. Leelavati Karnewar*** Family Court Appeal No. 19 of 2017, Bombay High Court, Nagpur Bench, Order dated 26.09.2023

(IV) ***Chandrakiran Pise vs. Anil Pise*** reported in **2014 SCC Online Bom 3507**

(V) ***Dr. N.G. Dastane vs. Mrs. S. Dastane*** reported in **(1975) 2 SCC 326**.

(VI) ***Mansi Mohan Chandarkar vs. Mohan Vishnu Chandarkar*** reported in **2016 SCC Online Bom 16068**.

(VII) *Rajendra Sahebrao Sanap vs. Leena Rajendra Sanap* reported in 2021 SCC Online Bom 13975.

(VIII) *Anvar P.V. vs. P.K. Basheer*, reported in (2014) 10 SCC 473.

(IX) *Atul vs. State of Maharashtra* reported in MANU/MH/4813/2021.

(X) *Sagar Raghunath Nimbole v. State of Maharashtra*, Criminal Application (APL) No. 719/2025, Bombay High Court, Nagpur Bench, Order dated 06.10.2025.

31. In his rejoinder argument, Learned Senior Counsel appearing for the appellant husband submits that there were two separate grounds at the time of filing of the petition, and there are two separate causes of action which are separately mentioned in the petition. It is, therefore, his submission that the two grounds are not interconnected and one can be deciphered from the other.

32. By taking us through the various incidents narrated in the petition, the learned Senior Counsel for the appellant husband submits that they have been described in the petition with utmost

clarity, and the particularities necessary for adjudication have been provided.

33. He further submits that there was no cross-examination, except for an averment that the WhatsApp messages were written on the insistence of the appellant husband, as stated in the written statement. He further submits that, in fact, the respondent wife has admitted that she has sent the WhatsApp messages to the appellant on various dates. He submits that there are two litigations initiated by the wife: one is the private complaint bearing Defamation Case No. 1749 of 2023, and the other is a civil suit bearing Special Civil Suit No. 118 of 2023, which is for monetary damages. He therefore submits that all these facts are sufficiently indicative to conclude that mental cruelty has indeed been practiced.

34. We have considered the contentions canvassed by the learned counsel for the respective parties, we also had gone through the entire record, including various judgments placed on record, as also with the voluminous record of the matter.

35. As far as the incident of refusing to bow down to the elderly people in the family are concerned, the trial Court has disbelieved the same, noting that the photographs filed by the respondent are sufficient to indicate the falsity of the appellant's allegations. In the said photograph, which is at Exhibit 49, the husband and wife are seen taking blessings from one of the senior-most elderly person in a bowing position. This, in the opinion of the Family Court, is sufficient to reject the allegations made by the husband. The Court has, therefore, recorded a finding that this allegation is not proved. In view of the fact that there was no material evidence on record to refute this allegation, we agree with the finding of the Family Court.

36. Another instance regarding the alleged cruelty, as averred by the appellant, is a “*sorry*” (apology) greeting card sent by the wife to the husband on the occasion of their first one-month marriage anniversary. The Family Court accepted the explanation provided by the respondent wife in the context of the allegations made against her. However, in our view, the Family Court erred while shifting the burden on the appellant, particularly on the premise that there was no cross-examination of the respondent wife on the

relevant aspect. The reasoning of the Family Court is fallacious as it was the burden on the wife to prove that the said card was sent at the instance of appellant husband.

37. The next incident quoted by the Family Court is the loss of a necklace, which was a precious one, on the night of the wedding. The finding that gives benefit to the respondent wife with respect to the said incident, in our view, suffers from speculation and conjecture. As can be seen from the relevant portion, even the Family Court is not certain and records a finding that the allegation of the husband does not seem to be probable. In our view, this approach is not correct, and the Court could have arrived at a conclusive finding in that regard. Apart from this the said finding is unsustainable as the Family Court has made out a case of 'probability' which was not even pleaded by the respondent.

38. The most crucial aspect in the present appeal is the WhatsApp messages sent on 18.07.2020, 15.11.2020, 04.12.2020, and 21.03.2021. It is a matter on record that the respondent wife has admitted in her cross-examination that all these four messages were sent by her to the husband. It is also an admitted position on

record that on all these four dates, both were residing separately. The only explanation provided by the respondent wife regarding the sending of the messages is that they were sent on the insistence of the husband. Thus, if the respondent wife chooses to aver and plead that the said WhatsApp messages were in fact sent on the insistence of her husband, in our view, the onus shifts on her to prove the same. The evidence and material on record do not show that the wife has discharged the said onus. Merely stating that the messages were sent on the insistence of the husband would not suffice in law, and the onus would remain undischarged. She has further gone to say that the said messages are edited and fabricated. However, applying the same principle, merely averring that the messages are edited and fabricated is not sufficient unless the specific edits or fabrication (if any) are pleaded and then proved.

39. At this juncture, it is relevant to point out that the messages sent from the mobile phone of the respondent wife could not be produced, since even according to her, and as admitted by her in cross-examination, she had changed her mobile in May 2021, prior to receiving the summons of the proceedings in the Family Court.

40. Furthermore, the Family Court has recorded a finding that the messages do not bear the date of sending, and while the screenshot is filed on record, the remaining contents are typed on a separate paper and then filed on record. According to the Family Court, the said screenshot and the typed paper show “last modified at 11.21,” which is reflected in the document at Exhibit 35(4), whereas the typed content shows at the top as “last modified at 22.34.” The Court has, therefore, gone on to believe the contention raised by the respondent wife that the messages are edited and fabricated.

41. The respondent's reliance on *Anvar P.V. v. P.K. Basheer* reported in (2014) 10 SCC 473 and *Atul v. State of Maharashtra* reported in 2022 ALLMR (Cri) 2396 to challenge the admissibility of the WhatsApp messages on the ground of absence of a Section 65B certificate is wholly misplaced and cannot be countenanced. Both the said decisions arose in the context of criminal proceedings and election matters, where the strict standards of the Indian Evidence Act apply in their entirety. The present proceedings are governed by the Family Courts Act, 1984, and specifically by Section 14 thereof, which explicitly empowers the Family Court to

receive any report, statement, document, or information that may assist it in dealing effectually with the dispute, notwithstanding that the same may not be admissible under the said Act. More fundamentally, the question of formal admissibility of the WhatsApp messages is in any event rendered entirely academic in the present case, inasmuch as the respondent wife herself has admitted in cross-examination that all four messages dated 18.07.2020, 15.11.2020, 04.12.2020, and 21.03.2021 were sent by her. An admission by the party herself constitutes the best evidence in law, and no certificate under Section 65B is required to prove a document voluntarily admitted by the party against whom it is sought to be used.

42. This consideration and the finding recorded thereto, in our view, is clearly erroneous, in as much as the Family Court lost sight of Section 14 of the Family Courts Act as also Section 20 of the said Act which are reproduced as under:-

Section 14 of the Family Courts Act reads as under :

“A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute,

whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872”.

Section 20 of the Family Court Act, 1984 is reads as under:-

“Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

43. The Family Court also failed to appreciate that there were no material particulars regarding the alleged editing and fabricating of the messages and, therefore, as stated by us supra, the onus did not shift onto the wife, particularly when she had admitted the sending of these messages. Thus, the finding of the trial Court is erroneous in nature.

44. The next incident is regarding the insistence of the husband for signing the mutual consent divorce deed at the office of one Advocate Parwani. After elaborately discussing the chief and cross-examination, the Family Court has again disbelieved the alleged incident as stated in the petition by the appellant. The basis for disbelieving such incident, according to the Family Court, is the

matter of common knowledge that it is not easy to break any part of a car without a hard object. The Court further records the finding that there is no documentary evidence to ascertain the car damage. This, in our view, is too far-fetched and too technical a finding, apart from the fact that there is no basis to reach such a conclusion. The Family Court lost sight of the fact that it was not deciding a dispute which is strictly civil in nature, but a marital dispute where emotions play a major role.

45. The next aspect is regarding the alleged unnecessary interference of the mother of the appellant husband. The trial Court has brushed aside the said contention on a very specious reason that these are trivial in nature and common in Indian families. The said finding, in our view, also cannot be endorsed as it is vague in nature. Further, it can be seen that the aspect of attempts at negotiation or mediation has failed. By referring to the relevant cross-examination, the Family Court has recorded that the omission to mention the mental illness of the respondent wife to the mediator is indicative of the falsity thereof. This, in our view, is of little relevance, since admittedly the appellant has not pressed the ground of mental illness for seeking divorce. The pursis filed on

record by the appellant husband indicates that he is not pressing the ground of unsoundness of mind, and thus for the same reason, the appellant husband might have omitted to mention the same to the mediator. As can be seen from the statement in the said pursis, the ground of unsoundness of mind is not pressed 'to avoid any inconvenience in future'. Even though the said statement is not of any clear indication but reasonable enough to infer that the appellant husband was trying to save the respondent wife from future inconvenience.

46. Furthermore, as far as the bio-data of the appellant is concerned, the trial Court has recorded a finding that the contents of the said bio-data are indicative enough to undermine the truthfulness of the husband and that it seems he is in a hurry to get remarried. In our view, the contents of the bio-data are clear enough, but that alone cannot be a ground to infer the alleged hurry of the husband to get divorced and remarried.

47. As far as the aspect of circulation of messages to the near relatives and friends, the trial Court has recorded a finding that the act of the husband amounts to diminishing and lowering the image

of the wife. In our view, this is a relevant aspect, as according to the settled position of law, such conduct would itself amount to cruelty. The next aspect which has weighed with the trial Court in refusing the decree for divorce is that there is no abnormal behaviour prior to the marriage, nor is there any averment in that regard. It is true that there is no averment or evidence adduced to show that there was any abnormal behaviour prior to the marriage, or that there was any complaint regarding such behaviour from the workplace of the respondent wife. This, in our view, may be indicative, but it is not conclusive to infer that there was no cruelty. At times, it can happen that erratic or abnormal behaviour is specific to a particular person, and the respondent wife in this case may have been behaving normally in other situations.

48. After recording such a finding, which in our view is fragile and incorrect, the trial Court has resorted to Section 23 of the Act of 1955, and stated that the husband, by his conduct, has condoned the act of cruelty (if any) and therefore is not entitled to a decree of divorce. The reasoning adopted by the trial Court for recording such finding is that the husband has not shown any reasons behind such abnormal behaviour of the respondent wife. The respondent's

reliance on *Dr. N.G. Dastane v. Mrs. S. Dastane* reported in (1975) 2 SCC 326 in support of the plea of condonation under Section 23(1)(b) of the Hindu Marriage Act is equally unsustainable on the facts of the present case. In *Dastane*, condonation was established because the husband had voluntarily and knowingly resumed full marital relations with the wife after being fully aware of her acts of cruelty which constituted an unequivocal and conscious forgiveness of the matrimonial offence. The factual matrix of the present case is fundamentally different. The appellant husband returned to Akola on 07.05.2020 and the parties have been residing separately ever since. On the contrary, the WhatsApp messages exchanged between the parties post-separation particularly the message of 21.03.2021 wherein the respondent sought apology and expressed remorse for her "*irrational and uncontrollable behaviour*" are not indicative of condonation; on the contrary, they evidence continuing acts of cruelty. As held in *Dastane* (supra), condonation requires a conscious and voluntary forgiveness with full knowledge of the matrimonial offence an element entirely absent in the present case.

49. Thus for the reasons mentioned above the trial Court's finding, in our view, apart from being fallacious, is legally unsound.

If this analogy is taken to be correct, the entire edifice of the law on mental cruelty would crumble. The spouse who approaches the Court on the grounds of mental cruelty is not required to justify or show reasons for the mental cruelty being practiced on him or her. In our view, the trial Court's conclusion falls short of legal validity and is unsustainable. We, therefore, answer point no. 1 accordingly.

50. It seems that the trial Court has been swayed by the fact that the appellant husband chose to withdraw the ground of unsoundness of mind / mental disorder. The respondent's submission that the ground of cruelty is so intrinsically connected to the ground of mental disorder that withdrawal of the latter must necessarily defeat the former, deserves to be rejected for more than one reason. The reliance placed on *Mansi Mohan Chandarkar v. Mohan Vishnu Chandarkar* reported in 2016 SCC Online Bom 16068 in that regard is equally misplaced. In *Mansi Mohan Chandarkar*, the allegations of cruelty were not independently pleaded with specific particulars they were entirely dependent on and derived from the allegation of mental disorder, leaving no residual case of cruelty once the disorder ground failed. The present case stands on an entirely different footing. In contrast, the petition

filed by the appellant contains independent and specific averments of cruelty: the incident of jumping from a motorcycle, public assault, biting and scratching causing bleeding injuries, abusive phone calls, emotional blackmailing, and the WhatsApp messages admitting irrational conduct none of which are predicated upon or require proof of any mental disorder in the clinical sense. The withdrawal of the ground under Section 13(1)(iii) was made, as recorded in pursis Ex. 86, to avoid inconvenience to the respondent not because the allegations of cruelty lacked independent substance. Two distinct causes of action were pleaded in the petition and they remain legally separable. Accordingly, the said decision is distinguishable and does not advance the respondent's case.

51. In this set of facts, we are of the considered opinion that, in spite of the fact that allegations of mental illness were withdrawn, said allegations were not intrinsically connected with the allegations of unsoundness of mind / mental disorder. We, therefore, answer point number 2 accordingly.

52. Thus taking into consideration all the facts in evidence, we are of the considered opinion that the appellant has proved that the

respondent has treated him with cruelty. He is therefore, entitled for grant of divorce on the ground of cruelty, point no. 3 is answered accordingly.

53. In view of these findings, we are of the considered opinion that the finding record by the Family Court are erroneous, perverse and reached conclusions which are not in consonance with the settled position of law as well as evidence on record. The findings and conclusions recorded, being contrary to the settled position of law and resulting from an incorrect appreciation of the evidence, are liable to be interfered with in appellate jurisdiction. Point no. 4 is answered accordingly.

54. One more significant fact which weighs with us is that, admittedly, even though it has been vehemently pleaded by the counsel for the respondent wife that there are exaggerations and that there is no such excessive or unruly behaviour by her, the fact remains that the respondent wife has not applied for the Restitution of Conjugal Rights under Section 9 of the Act of 1955. It is further an admitted position that she is not residing in India. The explanation in this regard is that she was constrained to leave the

country because the appellant husband circulated defamatory messages in the society, and that an offence under the Passports Act has been registered against her, does not appeal to us. Had it been the real intention of the respondent wife to cohabit with the husband, she could have initiated the litigation for restitution by residing in India. The respondent wife's protestation of her willingness to cohabit with the appellant husband finds no support in her own conduct. As held by the Supreme Court in *Amutha v. A.R. Subramanian* reported in **2024 SCC OnLine 3822**, the court must assess the real intention of the parties from their actions, not merely from their pleadings and where one spouse files multiple litigations and simultaneously claims a desire to resume matrimony, such conduct is self-contradictory and indicative of an intention to harass rather than reconcile. In the present case, the respondent wife has not filed a petition for Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act, which itself is a telling indicator of her true intention. The two litigations initiated by her Defamation Case No. 1749/2023 and Special Civil Suit No. 118/2023 further reinforce the inference that her opposition to the divorce is not animated by any genuine desire for reconciliation but is calculated solely to prevent the husband from obtaining relief.

The Special Civil Suit No. 118/2023 was subsequently dismissed for non-prosecution on 12.12.2024. As held by this Court in *Yogendra Bhoir v. Prema Bhoir* reported in **2025 SCC OnLine 4997**, the combination of long separation, continuous litigation, and complete breakdown of matrimony renders continuation of such marriage itself an act of cruelty upon the petitioning spouse. The respondent's conduct, viewed in its totality, leads to no other conclusion than that the respondent wife has been practicing mental cruelty upon the appellant husband.

55. An additional fact which assumes significance is that one of the litigations initiated by the respondent wife, i.e., Special Civil Suit No. 118 of 2023, was dismissed for non-prosecution on 12.12.2024. Thus, it is clear that the respondent wife is only interested in preventing the husband from obtaining a decree of divorce and is not intending to reside with him.

56. The settled legal position, as consistently enunciated by the Supreme Court and various High Courts, is that mental cruelty cannot be assessed in isolation by dissecting individual incidents in a piecemeal or fragmented manner. As held in *Samar Ghosh v. Jaya*

Ghosh (2007) 4 SCC 511, mental cruelty must be assessed from the cumulative conduct of the parties, and even a reasonable apprehension of harm without any physical violence is sufficient to constitute cruelty, provided the conduct is grave enough to make cohabitation impossible. This principle was further reinforced in *Naveen Kohli v. Neelu Kohli* (2006) 4 SCC 558, where the Supreme Court held that an adamant refusal to grant divorce, coupled with continued harassment, itself amounts to mental cruelty. The Supreme Court in *Roopa Soni v. Kamalnarayan Soni* 2023 (6) Mh.LJ. 534 categorically condemned the hyper-technical approach adopted by courts in declining divorce, holding that where both parties have moved on and the marital bond has irreversibly broken down, prolonging the agony of a dead marriage serves no legal or social purpose. In the present case, the trial Court fell into precisely this error by requiring corroborative witnesses for incidents of cruelty occurring within the four walls of a matrimonial home. It further erred in demanding that the husband show reasons for the wife's abnormal behaviour and in rejecting admitted WhatsApp messages on technical metadata grounds all of which constitute an approach that is contrary to the settled position of law.

57. Thus the approach of respondent wife, in our view, itself amounts to mental cruelty, since the husband has been suffering immensely due to the erratic and abnormal behavior of the respondent wife. In that view of the matter, the findings of the trial Court cannot be sustained and warrant interference in appellate jurisdiction.

58. We therefore pass the following order :-

ORDER

- (i) Appeal is allowed.
- (ii) The judgment and decree dated 18.08.2023, passed by the Family Court, Akola in Petition No. A-98/2021, is hereby set aside.
- (iii) The said petition bearing Petition No. A-98/2021 filed by the appellant herein is allowed, and it is declared that the marriage between the parties, solemnized on 09.03.2019, is dissolved.
- (iv) Decree be drawn accordingly.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)

1. After the pronouncement of judgment and in view of the fact that the appeal being allowed and the marriage between the parties stands dissolved, the learned counsel for the respondent wife appearing through video conferencing prays for staying the effect and operation of the impugned judgment.

2. Mr. J. B. Gandhi, learned counsel for the appellant husband, however, vehemently opposes the request and states that once the judgment is pronounced, this Court becomes functus officio.

3. However, having regard to the fact that the petition before the Family Court filed by the appellant husband was dismissed and then marital relationship between the parties subsisted, we are of the view that the judgment and decree passed by us need to be stayed for a further period of four weeks so that the respondent can agitate her legitimate right before the appropriate forum.

4. In that view of the matter, the judgment and decree in Family Court Appeal No. 46 of 2023 is stayed for a further period of four weeks, however, after the expiration of the said period, the said stay would be vacated automatically.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)

Shubham