2025:DHC:8356-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 26.08.2025***

Judgment pronounced on: 22.09.2025

\+ MAT.APP.(F.C.) 217/2017

.....Appellant

Through: Mr. Aman Mehta, Adv.

versus

.....Respondent

Through: Mr Vaibhav Gaggar, Sr. Adv. Mr Rohit Anil Rathi, Mr Satish Rai, Mr. Yashas R. K., Mr. Somdev Tiwari, Mr. Dhruv Dewan.

\+ MAT.APP.(F.C.) 102/2018 & CM APPL. 18894/2018

.....Appellant

Through: Mr. Aman Mehta, Adv.

versus

.....Respondent

Through: Mr Vaibhav Gaggar, Sr. Adv. Mr Rohit Anil Rathi, Mr Satish Rai, Mr. Yashas R. K., Mr. Somdev Tiwari, Mr. Dhruv Dewan.

\+ MAT.APP.(F.C.) 20/2018, CM APPL. 8063/2021 and CM APPL. 14037/2022

.....Appellant

Through: Mr Vaibhav Gaggar, Sr. Adv. Mr Rohit Anil Rathi, Mr Satish Rai, Mr. Yashas R. K., Mr. Somdev Tiwari, Mr. Dhruv Dewan.

versus

.....Respondent

Through: Mr. Aman Mehta, Adv.

2025:DHC:8356-DB

+ MAT.APP.(F.C.) 38/2019

.....Appellant

Through: Mr Vaibhav Gaggar, Sr. Adv. Mr Rohit Anil Rathi, Mr Satish Rai, Mr. Yashas R. K., Mr. Somdev Tiwari, Mr. Dhruv Dewan.

versus

.....Respondent

Through: Mr. Aman Mehta, Adv.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. This present batch of connected Appeals arises out of the same matrimonial proceedings being HMA No. 1061/2017, titled , and involves the same set of parties. The first three appeals, being MAT.APP.(F.C.) 217/2017, MAT.APP.(F.C.) 102/2018 and MAT.APP.(F.C.) 20/2018, assail the interim Order in the proceedings dated 06.12.2017. The last appeal, MAT APPL. (F.C.) 38/2019, is filed by Sh. against the Judgement dated 15.01.2019, wherein his petition for dissolution of marriage under Section 13(1)(a) and (b) of the Hindu Marriage Act, 1955 [hereinafter referred to as "HMA"] was dismissed.

2. These Appeals, having arisen from the same *lis* and involving the same parties, are being disposed of by this common judgment with

the consent of learned counsel for the respective parties.

3. For convenience of reference, the parties shall be referred to as per their status and rank in the main case, i.e., MAT.APP.(F.C.) 38/2019. Sh. shall hereinafter be referred to as the Husband/Appellant, and Smt. as the Wife/Respondent.

APPEALS AND RELIEFS:

i. **MAT.APP.(F.C.) 217/2017**: filed by the Respondent challenging the Impugned Order dated 06.12.2017 to the extent that it allows the application under Section 27 of the HMA and directs the Respondent to give her 'No Objection Certificate' to the Appellant and thereby enabling him to withdraw the amount of Rs. 1,09,00,000/- lying with the HSBC Bank, Mumbai as surplus against the closure of loan account No. 120-023163-001;

ii. **MAT.APP.(F.C.) 102/2018**: filed by the Respondent for modification of the Impugned Order dated 06.12.2017 and to enhance the ad-interim maintenance awarded;

iii. **MAT.APP.(F.C.) 20/2018**: filed by the Appellant seeking to set aside the Impugned Order dated 06.12.2017 insofar as it pertains to the application under Section 24 of the HMA;

iv. **MAT.APP.(F.C.) 38/2019**: filed by the Appellant seeking the grant of dissolution of marriage between the parties and setting aside the Judgement dated 15.01.2019 wherein the petition seeking dissolution of marriage was dismissed.

FACTUAL MATRIX:

4. The common facts of the Appeals are that the marriage between the parties was solemnised on 06.07.1999 at Amritsar, Punjab, in accordance with the Hindu rites and ceremonies and registered in the Office of Sub-Registrar, Noida, Uttar Pradesh. Out of the said wedlock, no issue or child was born.The parties were residing together at 401, Sovereign Apartments, Mumbai [hereinafter referred to as "rented accommodation"]**,** until 14.01.2006, from which date they started living separately. Thereafter, the Respondent came back to Noida on 25.03.2006 to reside in the house of the Appellant's mother at C-88, Sector 33, Noida, Uttar Pradesh.

5. On 20.02.2006, the Appellant filed a petition seeking dissolution of marriage on the ground that the Respondent has committed cruelty in terms of Section 13(1)(ia) of the HMA, before the Family Court, Bandra, State of Maharashtra. Upon moving a Transfer Petition bearing No. 130/2007 before the Supreme Court by the Respondent, the matter was transferred to the Court of District Judge, Tis Hazari Courts, Delhi.

6. In this Petition, the Appellant moved an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] seeking amendment of the petition by adding *desertion* within the scope and meaning of Section 13(1)(ib) of the HMA as another ground for seeking divorce and the same was allowed *vide* order dated 16.09.2017.

7. In the *interregnum*, on 16.12.2008, the Respondent filed an

application under Section 24 of the HMA seeking maintenance *pendente lite* and expenses of the proceedings in the divorce petition.

8. Admittedly, in the proceedings under the Protection of Women from Domestic Violence Act, 2005 [hereinafter referred to as "PWDV"] instituted by the Respondent, the Court awarded ad-interim maintenance at the rate of Rs.30,000/- per month to the Respondent with effect from 05.01.2007. Subsequently, in proceedings under Section 125 of the Code of Criminal Procedure, 1973 [hereinafter referred to as "Cr.P.C."], instituted by the Respondent, the learned M.M. (Mahila Court), Delhi, passed an Order directing the payment of interim maintenance at the rate of Rs.2,00,000/- per month with effect from 13.02.2013.

9. A flat bearing No. 1902, Heritage Apartments, Hiranandani Garden, Powai, Mumbai [hereinafter referred to as the "subject property"], was purchased in the joint names of the parties in February 2005. Admittedly, the EMIs were paid by the Appellant. It was sold by the bank as the loan was not cleared. After the dues were adjusted, a sum of Rs.1.09 crores was deposited in HSBC Bank. On 20.09.2012, an application under Section 27 of the HMA was filed by the Appellant to release the amount in his favour, which was allowed by the learned Family Court.

10. The learned Family Court allowed both the applications *vide* the common Order dated 06.12.2017. The Appellant was directed to pay Rs.1,00,000/- per month with effect from the date of filing the application till the date of passing the order of maintenance by the

learned M.M. under Section 125 of the Cr.P.C., i.e., 13.02.2013, after adjusting Rs.30,000/-, which was paid in the domestic violence case, along with litigation cost of Rs.1,50,000/-. Further, the Appellant was found liable to pay ad-interim maintenance, thereafter at the rate of Rs.2,00,000/- per month. Additionally, while allowing the application under Section 27 of the HMA, the Respondent was directed to issue a 'No Objection Certificate' to the Appellant, enabling him to withdraw the amount of Rs.1.09 crores lying with the HSBC Bank.

11. The Respondent assailed the Order before this Court in MAT.APP.(F.C.) 217/2017 to the extent that the application under section 27 of the HMA was allowed, on the ground that since the property was a joint property and stood in the names of both parties, the balance of the sale proceeds should accordingly be divided between both parties. *Vide* Order dated 14.12.2017 of this Court, 50% of the amount was released in favour of the Husband/Appellant without prejudice to the rights and contentions of the Respondent.

12. On 26.03.2019, this Court, considering that the question of ownership of the property is still open and the right of the Respondent should be preserved, directed the Registrar General to make a Fixed Deposit of 50% of the amount with UCO Bank at a higher rate of interest initially for a period of two years. It was clarified that the rights and contentions of both parties with respect to their right and title over the amount were kept open and to be decided along with the substantive petitions, which were already pending between the parties.

13. Against this Order, SLP 17308/2019 was filed by the

Respondent, which was dismissed on 17.01.2020 with the direction that the question relating to 50% share of the Wife/Respondent herein has to be decided alongwith MAT Appeal (FC) No. 38 of 2019.

14. Cross-appeals were filed against the Impugned Order dated 06.12.2017, insofar as it pertains to the quantum of ad-interim maintenance awarded to the Respondent in the application filed under Section 24 of the HMA. In MAT.APP.(F.C.) 102/2018, the Respondent claims that the *ad-interim* maintenance awarded is disproportionately low, as the Appellant is earning much more than what has been disclosed on record, whereas, in MAT.APP.(F.C.) 20/2018, the Appellant has alleged that the Respondent has been receiving a sum of Rs.2,00,000 per month from him in parallel proceedings.

15. Subsequently, the divorce petition bearing HMA No. 1061/2017 was dismissed *vide* Judgment dated 15.01.2019 passed by the learned Family Judge, on the ground that the Appellant was not able to prove the grounds for cruelty and desertion. Being aggrieved by this Judgment, the Appellant filed MAT APP. (F.C.) 38/2019.

SUBMISSIONS ON BEHALF OF THE PARTIES:

16. ***Respondent/Wife in MAT APPEAL (FC) NO. 217/2017:***

16.1 Learned counsel for the Respondent/Wife has contended that the 50% share of the surplus amount belongs to the Respondent, and constitutes part of her *Stridhana*, as per Section 14 of the Hindu Succession Act, 1956 [hereinafter referred to as "HSA"]. He further

contended that the Appellant has admitted in his additional affidavit dated 20.09.2011 in the proceedings under Section 24 of the HMA that the 50% share belongs to the Respondent. Further, he relied upon the judgments of ***Rashmi Kumari (Smt.) Vs. Mahesh Kumar Bhada***[1], ***Pratibha Rani Vs. Suraj Kumar***[2], and ***Krishna Bhatacharjee Vs. Sarathi Choudhary and Anr.***[3] to contend that a woman is the absolute owner of her *Stridhana*.

17. ***Respondent/Wife in MAT.APP.(F.C.) 102/2018:***

17.1 Learned counsel for the Respondent has contended that the circumstances of the Appellant drastically changed after 2017, and the Appellant started earning a total salary of Rs.1,26,01,554 per annum. In the year 2016, the Appellant filed the Income Declaration Scheme 2016, wherein he had declared the undisclosed income of Rs.42,00,000/- and Rs.23,44,721, totalling a sum of Rs.65,44,721 and therefore, the interim maintenance fixed by the Family Court is not sufficient, and she is entitled to 50% of the earnings of the Appellant.

18. ***Appellant/Husband in Mat. APP. (F.C.) 20/2018:***

18.1 Learned counsel for the Appellant has contended that the claim of maintenance *pendente lite* is conditional on the circumstances that the wife or husband, who makes the request, has no independent income sufficient for her or his support or to meet his necessary expenses. The Respondent had considerable income from the sale of

[1](1997) 2 SCC 397
[2](1985) 2 SCC 370
[3]2015 XII AD (SC) 101

the beauty treatment clinic and her work as a beautician to sustain herself.

18.2 It is the case of the Appellant herein that since September 2017, he has been earning a salary in the range of Rs.5 to 6 lakhs per month, is paying rent for his accommodation and has the responsibility of maintaining his old and ailing mother, aged 81 years. It is further contended that he faced huge uncertainty in job prospects due to the downturn in the oil industry.

19. ***Husband-Appellant in MAT. APP. (F.C.) NO. 38/ 2019:***

19.1 Learned counsel for the Appellant contended that the extent of proof in matrimonial matters is 'preponderance of probabilities' instead of 'beyond a reasonable doubt', and the Appellant provided specific acts of cruelty committed by the Respondent on multiple occasions. He contended that mental cruelty was inflicted not only on Appellant but also on his family by filing frivolous complaints dated 20.02.2008, 13.03.2008 and 19.03.2008 under Section 498A of the Indian Penal Code, 1860, alleging cruelty and dowry demands against the Appellant and his family.

19.2 He further contended that the Respondent did not look after Appellant's parents and, in fact, compelled them to leave the Noida property in March 2008 and shift to a rented accommodation, despite it being owned by the Appellant's mother. Further, he contended that the matrimonial home of the parties was the rented accommodation in Mumbai rather than the residence at Noida, where they resided together.

19.3 Learned counsel contended that the Respondent has made frivolous allegations of adultery, maligning the Appellant's character by imputing illicit relations with two women without producing any proof. He stated that the Respondent admitted she had never met Dr. Abhilasha Wal, and had only relied on unauthenticated Facebook pictures and a CD without compliance with Section 65B of the Indian Evidence Act, 1872. Further, the transcript placed on record has no evidentiary value. The cross-examination of Dr. Abhilasha Wal (RW-5) confirmed that she never resided with the Appellant and that money transfers were trust-based loans. Importantly, the alleged events involving Dr. Abhilasha Wal are post-2008, whereas the divorce petition was filed in 2006, making them irrelevant and barred under Section 23 of the HMA.

19.4 It is the case of the Appellant that the Respondent deserted the Appellant on 25.03.2006. The two components of desertion, that is, the factum of separation and *aminus deserendi*, were proved in this case. It was the Respondent who, on 25.03.2006, left Mumbai for Noida without informing the Appellant and with no intent to return, despite knowing that the Appellant's workplace was in Mumbai. Her two stated reasons, that lack of knowledge of the Appellant's whereabouts and lack of money, stand demolished by her own admissions in cross-examination, where she accepted knowing that the Appellant was residing at Kohinoor Hotel, and further admitted having taken a flight from Bombay to Noida in 2006 while still receiving financial support from the Appellant. On the contrary, the Appellant only took temporary shelter in a hotel, with belongings still

in the matrimonial house, and continued to meet the Respondent to explore reconciliation, as admitted by her in cross-examination.

19.5 Learned counsel contended that desertion is not about the physical place but the state of cohabitation, and the Respondent's unilateral withdrawal from the marriage is evident. It was further contended that the Family Court had already noted down that there is an irretrievable breakdown of marriage between the parties in paragraph No.80, with no possibility of reconciliation. It being a dead marriage, the petition should have been allowed.

20. ***Wife-Respondent in MAT APPEAL (FC) NO. 38 OF 2019:***

20.1 Learned counsel for the Respondent, while supporting the Impugned Judgement dated 15.01.2019, vehemently argued the Appellant failed to prove cruelty, as cruelty must be grave, weighty, and continuous to create a reasonable apprehension of danger in the mind of the spouse. Reliance has been placed on ***N.G. Dastane vs. S. Dastane***[4]***, V. Bhagat vs. D. Bhagat***[5]***, Parveen Mehta Vs. Inderjeet Mehta***[6]***, A. Jayachandra Vs. Aneel Kaur***[7] ***and Samar Ghos Vs. Jaya Ghosh***[8]. Further, the Appellant continued to cohabit and exercise conjugal rights with the Respondent even after filing the Divorce petition, and therefore any alleged acts of cruelty were condoned by the Appellant.

[4](1975) 2 SCC 326
[5](1994) 1 SCC 337
[6](2002) 5 SCC 706
[7](2005) 2 SCC 22
[8](2007) 4 SCC 511

20.2 Learned counsel for the Respondent submitted that the mother of the Appellant has challenged the Impugned Judgement dated 15.01.2019 on identical grounds before the Supreme Court in SLP (Civil) No. 5548/2019, post-filing of the present petition. The said SLP was dismissed *vide* Order dated 15.11.2019, holding that no reason to interfere. Hence, it is contended, the Appellant is estopped from raising the same issues in parallel proceedings.

20.3 Learned counsel, while relying on the judgment of ***Shilpa Sailesh vs. Varun Sreenivasan***[9], contended that the Supreme Court alone has the discretion under Article 142 of the Constitution of India to dissolve a matrimonial alliance on the ground of irretrievable breakdown.

20.4 Learned counsel contended that, considering that the Appellant himself deserted the Respondent on 14.06.2006 and was engaged in relationships with two women, he cannot be allowed to take advantage of his own wrong in terms of Section 23 of the HMA.

ANALYSIS & FINDINGS:

21. We have heard the learned counsel for the parties at length and with their able assistance, have perused the pleadings of the Appeals along with the Impugned Order and Judgement.

22. It is evident that three principal questions arise out of the facts in place:

i. whether the grant of ad-interim maintenance in favour of

[9] 299 (2023) DLT 458 (SC)

the Respondent was proper.

ii. whether the Respondent is entitled to a 50% share in the proceeds of the property held jointly by the parties;

iii. whether the dismissal of the petition for dissolution of marriage was justified;

MAINTENANCE PENDENTE LITE

23. Two Appeals, being MAT.APP.(F.C.) 102/2018 and MAT.APP.(F.C.) 20/2018, assail the same portion of the Order dated 06.12.2017 wherein maintenance was awarded to the Respondent under Section 24 of the HMA. The Respondent/Wife has sought enhancement of the maintenance amount, praying that it be fixed at 50% of the total income of the Appellant, which she claims exceeds Rs.1 crore per annum. In contrast, the Appellant has prayed for the setting aside of the maintenance order.

24. Section 24 of the HMA reads as under:

> ***"24. Maintenance pendente lite and expenses of proceedings.***— *Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.*
>
> *Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be."*

25. In the judgement of ***Manish Jain v. Akanksha Jain***[10], the Apex

[10] (2017) 15 SCC 801

Court considered the scope and application of Section 24 of the HMA. The relevant paragraphs are extracted hereinafter:

> *"12. The Court exercises a wide discretion in the matter of granting alimony pendente lite but the discretion is judicial and neither arbitrary nor capricious. It is to be guided on sound principles of matrimonial law and to be exercised within the ambit of the provisions of the Act and having regard to the object of the Act. The Court would not be in a position to judge the merits of the rival contentions of the parties when deciding an application for interim alimony and would not allow its discretion to be fettered by the nature of the allegations made by them and would not examine the merits of the case. Section 24 of the HM Act lays down that in arriving at the quantum of interim maintenance to be paid by one spouse to another, the Court must have regard to the appellant's own income and the income of the respondent.*
>
> *15. Section 24 of the HM Act empowers the court in any proceeding under the Act, if it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to also the income of both the applicant and the respondent. Heading of Section 24 of the Act is "Maintenance pendente lite and expenses of proceedings". The section, however, does not use the word "maintenance"; but the word "support" can be interpreted to mean as Section 24 is intended to provide for maintenance pendente lite.*
>
> *16. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the court."*

26. A perusal of the above indicates that maintenance under this Section was intended to be *pendente lite* in nature. It empowers either

spouse, if lacking sufficient independent income for support or for meeting necessary litigation expenses, to apply under this section. The Court considers both the income of the Petitioner and the Respondent to fix a reasonable amount. Once this Court reaches the conclusion that a spouse is unable to maintain herself, the determination of the quantum of maintenance rests within the discretion of the Court, to be exercised judiciously, having regard to the status of the parties, their respective needs, and the financial capacity of the other spouse. In the Impugned Order, the learned Family Court, after taking into account the incomes of the parties and other relevant factors, has determined the quantum of maintenance. We find no ground to interfere with this portion of the Impugned Order dated 06.12.2017.

27. It be further noted that the Respondent has been receiving maintenance of Rs. 2,00,000 per month under the proceedings of Section 125 of the Cr.P.C. Section 125(1) of the Cr.P.C empowers a Magistrate of the First Class to order a person with sufficient means, who neglects or refuses to maintain his wife, minor children (legitimate or illegitimate), adult children unable to maintain themselves due to physical or mental disability, or his father or mother, to pay a monthly allowance as the Magistrate deems fit. The parallel proceedings under Section 125 of the Cr.P.C. are independent in nature, and the maintenance awarded therein shall continue to operate for the sustenance and betterment of the wife.

28. The Court finds it appropriate to continue with the interim arrangement and directs to Appellant to continue paying Rs.2,00,000 per month to the Respondent during the pendency of the Divorce

Petition.

50% SHARE FROM THE SALE OF JOINTLY HELD PROPERTY

29. The question for consideration is whether the Respondent is entitled to a 50% share in the proceeds of the property held jointly by the parties. In the Order dated 17.01.2020, the Supreme Court made it clear that this question relating to 50% share of the wife will be taken up for consideration at the time of the MAT Appeal (FC) No. 38 of 2019.

30. Learned counsel for the Respondent had contended that the said proceeds have become part of the Respondent's *stridhan* under Section 14 of the HSA and therefore, she has the exclusive ownership over the same. However, a property jointly purchased at the time of marriage cannot be treated as the *stridhan* of the woman, as *stridhan* is confined to those properties which are gifted to her voluntarily by her parents, relatives, husband, or in-laws, either before or after the marriage, and which are intended for her exclusive ownership and enjoyment. A jointly acquired property, purchased in the name of both spouses, is by its very nature a joint asset and cannot fall within the ambit of *stridhan*, since it is not a gift exclusively made to the wife but rather an acquisition contributed to and held by both parties.

31. Normally, when a husband and wife acquire property during the subsistence of marriage, the presumption in law is that such acquisition is made from common family funds and that both spouses have contributed equally, irrespective of whether one of them is earning or not. In the present case, the subject property was purchased

in the joint names of the husband and wife, although it is an admitted position that the entire consideration, including the payment of EMIs, was borne solely by the Appellant/Husband. It is further a matter of record that the title of the subject property is held in the names of both spouses as joint owners, and even the account in HSBC Bank, in which the surplus amount was deposited, was maintained in the joint names of the parties.

32. In this regard, a reference may be made to Section 4 of the Prohibition of Benami Property Transactions Act, 1988 [hereinafter referred to as "Benami Act"], which sets out as follows:-

> ***"4. Prohibition of the right to recover property held benami.***—
>
> *(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.*
>
> *(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property."*

33. Section 4 creates an absolute bar against the enforcement of rights in respect of property held benami. It stipulates that no person claiming to be the real owner of such property can institute any suit, claim, or action to enforce rights against the benamidar or any other person in whose name the property stands. Equally, it prohibits the raising of any defence in a pending suit, claim, or action on the ground that the property, though standing in the name of another, actually belongs to the real owner. The combined effect of sub-Sections (1) and (2) is that the real owner is entirely disabled from seeking recognition of any right, title, or interest in the benami property, either

by way of initiating proceedings or by way of defence.

34. In this backdrop, once the property stands in the joint names of the spouses, the husband cannot be permitted to claim exclusive ownership merely on the ground that he alone provided the purchase consideration. Such a plea would contravene Section 4 of the Benami Act, which imposes an absolute bar against the enforcement of rights in respect of property held benami. The provision clearly stipulates that no person claiming to be the real owner of a property standing in another's name can either institute proceedings or raise a defence asserting such ownership. Thus, the combined effect of the presumption of equal ownership between spouses and the statutory prohibition under Section 4 is that the Appellant is prevented from contending that the amount from the sale of the joint property belongs to him alone.

35. Therefore, the Respondent is entitled to a 50% share in the proceeds of the property held jointly by the parties, and the money must be released to her.

DISSOLUTION OF MARRIAGE

36. At the outset, it is clarified that we are in consonance with the reasoning of the learned Family Court and agree that the Appellant was not able to prove the acts of cruelty and desertion. The relevant paragraphs of the Impugned Judgement are noted hereinbelow:-

> *"29. From the pleadings of the parties, the following issues were initially framed on 10.12.2015:*
>
> *i) Whether the petitioner husband has been subjected to cruelty as alleged in the petition?(OPP)*

ii) Whether the petitioner husband is entitled to divorce on the ground of cruelty? (OPP).

iii) Relief.

30. Subsequent to the amendment, an additional issue was framed vide order dated 16.09.2017:

iii) Whether the respondent wife has 'deserted' the petitioner husband as claimed in the amended petition? (OPP)

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64. The foregoing discussion coupled with the above quoted facts in the evidence which are beyond pleadings would go to suggest that the petitioner-husband has tried to improve upon the case at every stage of the trial. Not much can be read in the evidence of the PW-1 petitioner-husband that when he came to India in December, 2002 for treatment of his backbone, she left him unattended to see her brother in Amritsar who had met with an accident. This grudge ***espoused*** *by the petitioner husband is clearly an afterthought as the evidence on the record would suggest that both the parties acted in the ordinary course of human relation and the petitioner-husband falls short of proving such instance to be so "grave and weighty" that could be said to have inflicted any kind of unsustainable cruelty upon him. In fact, the evidence suggests that thereafter they went back to Saudi Arabia and came back in January, 2004 when the petitioner-husband took assignment with BGEPIL at Mumbai. Again, not much is revealed by the petitioner-husband about the mis-conduct or blemishes on the part of the respondent-wife during the time they resided in Mumbai except for racking up an insignificant issue about the respondent-wife selling of her mangalsutra or going over to Amritsar for a month contrary to his wishes about which the respondent-wife has given a plausible explanation and her version was not challenged in the cross-examination either. Likewise, the petitioner-husband fails to substantiate his assertion about any deviant behaviour of the respondent-wife on 23.04.2005 and later on 17.07.2005, and one could say that nothing more than some minor marital conflicts might have occurred probably due to temperamental differences, and no worthwhile incident appears to have happened so as to shake the foundation of the marriage.*

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67. Now, this Court could be sensitive enough to understand that the petitioner-husband was probably appalled by the allegations leveled by his wife about his fidelity or perhaps about her illusionary belief of any intimate or platonic closeness with the other lady, and in the process shattering his relationship with a colleague but the reaction by the petitioner-husband a highly educated and resourceful person, leaves much to be desired. The case of the petitioner husband that the respondent wife instead of shifting to the new accommodation in Flat-

no. 1902, Avalon, Hiranandani, Apartment, Powai, Mumbai, chose to return to Noida, UP on 25.03.2006 with ulterior motives false flat on his face since although the possession of the flat was taken on 12.03,2003, it is nowhere his case that he had provided the keys of such flat to the respondent wife. On the other hand, it appears that the respondent wife kept on living in the rented apartment no, 401 Sovereign-Apartment, Hiranandani Garden, Powai, Mumbai after petitioner husband left her 'high and dry' on 14.01.2006 and she was constrained to leave and move out of the rented accommodation since a notice had been issued by the landlord to vacate the said premise by the end of March 2006. The plea by the petitioner husband that his wife did not shift to the newly acquired Flat no. 1902 was falsely espoused by him in his affidavit in evidence filed in proceedings u/s 125 Cr.P.C. It is but a matter of common sense that had she been given the keys of the joint property at Flat no. 1902, she would not have stayed at the rented accommodation till 25.03.2006. It is pertinent to note that PW-1 petitioner husband in his cross-examination categorically stated that he had made up his mind to divorce the respondent wife on 17.02.2006. The petitioner husband further conceded in his cross-examination that the respondent wife made frantic calls to him on his mobile and his hotel numbers on 16.02.2003, and probably piqued by the fact that the respondent wife had been desperately following him to gain access to him, he shot a letter to the SP PS Powari Mumbai on 17.02.2006 complaining about the conduct of his wife ***inter alia*** *alleging that she had been threatening to commit suicide if he did not return home and also bringing to the notice of the police that she was threatening to come to the hotel, any moment and create scene, and he further sought to convey that he would not be responsible for any action or omission committed by his wife.*

68. The questionable manner in which the petitioner husband conducted himself is also brought out in his own evidence when he testified that after 17.02.2006 he met the respondent wife couple of times and they went to dinner and movies, and the purpose behind such meetings was to see if there had been any effect upon his wife to reconsider her acts of misconduct; and this version, smacks of his superior male ego signifying a patriarchal mind set since it bears repetition that he testified that he had already made up his mind to seek divorce on 17th February, 2006. The whole conduct of the petitioner husband shows that he acted in a manner to teach a lesson to his wife so that she dare not question his acts or omissions any further. The ulterior motives of the husband to seek divorce by hook or crook is also exemplified from the fact that despite knowing that the respondent wife had left Mumbai on 25.03.2006, he chose to file a petition in Bandra Family Court, Mumbai, sending the notices at the Mumbai address of the respondent wife i.e., rented accommodation at 401, Sovereign Apartment. It is borne but from the court that he had

booked the entire luggage from the rented accommodation for transportation to Noida on 21.05.2006. Indeed the respondent wife fails to substantiate that the petitioner husband was having any intimate relationship with the other lady Ms. Preeti Sodhi. At the same time, when the petitioner husband has failed to render any plausible reason as to why he left the wife on 14.01.2006, he places himself on a ***sticky wicket****. At the cost of repetition, the only plausible explanation of the events leading to break up is coming from the mouth of the respondent wife, which has not been assailed in her cross-examination.*

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72. It is also admitted fact that when she filed a suit for seeking injunction against the petitioner husband and his parents from forcible dispossession, the petitioner husband in order to defeat her right to seek residence, executed a gift deed dated 14th July 2006 in favour of his mother. The plea of the petitioner husband that the respondent wife had forced his parents to leave the premise at Noida also belied from the fact that while taking away his parents to Mumbai, he wrote a letter to SP Noida on 17.03.2008 inter alia pointing out that he had been taking his parents, to Mumbai so as to take care of them in their old age and also for their medical treatment, and at the same time intimating also that he was permitting the respondent wife to reside in the said premises on a condition that she would not try to raise any construction or do any alteration in the said house nor would try to change the locks and keys. The plea that the misconduct of the respondent wife resulted in the death of his father, is a long shot considering that his father died in December 2010 in Mumbai.

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74. Be that as it may, the pleaof the ld. counsel for the petitioner husband that filing of such complaints Ex. PW2/R-1 to R-3 has caused him mental cruelty is a far cry in the wilderness. Indeed all that had been alleged in the three letters was not a gospel truth and perhaps over exaggeration of her plight by the respondent wife but in a scenario where the there was complete disharmony and deep mistrust between the varying parties and the parties were resorting to unsavory tactics to out do each other, in the process locking horns in a litigation over the Noida House, we have to give the "benefit of doubt" to the respondent wife. At the cost of repetition, there was no complaint about harassment or ill treatment on account of dowry but primarily the skirmishes between the respondent wife and her mother in law. Assuming that a false charge of dowry harassment was levelled, mere filing of complaint, which did not fructify can not be said to have caused mental cruelty to the petitioner husband within the meaning of section 13(l)(ia) of the Act.

75. There is no end to story telling on the part of the petitioner husband as he is again caught on the wrong foot that the respondent

wife failed to conceive or that she did not want to have child. The testimony of RW-1 respondent-wife that she had conceived four times in February, 1999 and three times she had to go to Doctor's due to miscarriages has not been controverted in her cross-examination. The medical documents Ex. RW-l/5and Ex.RW-1/6 go to suggest that the first pregnancy was terminated on 03.12.1999, after six weeks of fetus as cardiac activity had stopped; and on 10.07.2001, the respondent-wife suffered a natural miscarriage and the 3rd time she had became pregnant in April, 2005. However, the respondent-wife fails to substantiate that each time the pregnancy resulted in mis-carriage owning to ill-treatment or torture at the hands of the petitioner-husband and his mother. The plea of the petitioner husband that the respondent-wife withdrew her petition under Section 12 of the PWDV, Act as soon as he filed an application to provide her alternative accommodation is also belied, from the record. The complaint bearing CC No. 39/01/14 was withdrawn on 05.01.2015 since an ad interim order was passed under Section 125 Cr.P.C. granting her maintenance @Rs.2,00,000/- per month and the Civil Suit bearing CS (OS) no. 2014/2007 titled Sangeeta Gera Vs. Sanjeev Gera filed by the respondent-wife seeking permanent injunction against her forcible dispossession from the premises at Noida had been decreed vide judgment dated dated 19.07.2010 by the High Court of Delhi. The petitioner-husband cannot re-agitate the said issue since he challenged the said order up to the Supreme Court resulting in dismissal of his Special Leave petition no. 2184/2016. Further, plea by the petitioner-husband that the respondent-wife caused him enormous financial loss by not agreeing to withdrawal or realization of amount-consequent to sale in auction of Flat No. 1902 is unable to impress this Court since it was the petitioner-husband who was not willing to split the said amount 50:50 and he has placed on the record no iota of evidence to suggest that he had to incur any heavy tax liability on capital gain or paid any tax on the same.

77. Without getting judgmental about the relationship between the petitioner husband and RW-5 Ms Abhilasha Wal, the respondent wife has succeeded in proving that there is more to their relationship than to meet the eyes. Although no proof of physical intimacy has come about on the record, the petitioner husband has made his case irreparably impeachable on account of his relationship and financial dealings with the other lady. First thing, PW-1 petitioner-husband in his searching cross-examination on this subject blew hot and cold in the same breath. He admitted that he knew Dr.Abhilasha Wal since 2008 and also admitted that he was in constant touch with her. However, there are parts of his testimony, where he deliberately did try to conceal than reveal the extent of his relationship with the other lady. PW-1 denied any knowledge that the said lady had a daughter namely, Himangi Khanna from her first husband namely, Mr. Mohit

Khanna, and he also denied having a house taken on joint lease bearing no.A-2202 and B-2802, Avalon Building, Pawai, Mumbai in 2008. While PW-1 denied that he was a co-lessee with Dr.Abhilasha Wal, she when examined as RW-5 conceded in her cross-examination that she was a co-lessee with petitioner Mr. Sanjeev Gera in respect of Flat No, 2602, Verona Co-operative Housing Society Powai, Mumbai taken on lease for one year @Rs.90,000/- per month from 12.01.2013 RW-5Dr.Abhilasha Wal also acknowledged the document Ex. RW-2/C (Colly) viz., the "Leave and Licence Agreement" and the police verification, in which it was mentioned that she had been residing earlier with Mr. Sanjeev Gera at 1302, Ambrosia Hiran Nandani Gardens, Powai, Mumbai. She also conceded that the documents of her daughter, namely Himani Khanna had been also appended along with the "Leave and Licence Agreement" to afford her daughter to avail club facilities as and when she was visiting them from London; RW-5 also conceded the fact that she had taken divorce from Mr. Mohit Khanna in the year 2007.

78. Interestingly, sensing the repercussion of her testimony and its adverse impact on the case of the petitioner, RW-5 Abhilasha Wal appears to have checked her statement and deposed that she had resided at Flat No.l302, Ambrosia HiranNandani Gardens, Powai, Mumbai from 2006 to 2008, which was an official residence provided by her employer; and then deposing that her employer was none other the petitioner husband. On being confronted with Ex. RW-4/B (Colly) which suggested that Flat No. A-2202, Avalon had been taken on rent by Mr. Sanjeev Gera on 20.05.2008 for a period for a period of one year and on being suggested that they were residing together, she was "all at sea". Another significant point of interest is that on being asked if Mr. Sanjeev Gera was her friend, she gave a categorical reply that he wasn't, and yet at the same time admitted that the petitioner had been sending her money through RTGS or otherwise to her as well as to her mother from the year 2007 till 2018 from time to time. She, however, attempted to cover up the said fact by deposing that the transfer of funds from the petitioner were "trust based loans". On being probed further, she was unable to give any details about the so called "trust based loans" except deposing that the loans were reflected in her tax returns in Norway. She further conceded that few loans had been advanced by the petitioner Mr. Sanjeev Gera for the medical treatment of her mother, and finally she revealed that she had taken a personal loan of 50,000/- Great Britain Pounds. She was also confronted with the fact that a Mercedes Car was purchased by her but it was the petitioner-husband Mr. Sanjeev Gera who had been paying the EMI's of Rs. 98,112/- per month from April, 2015 to April, 2016. Ultimately the lady witness deposed that the petitioner is an Non-Executive Director of Geodes AS, which is a Norway based company, and she deposed that it was the said company which had

taken the premises on rent for her in Mumbai, and it is on that basis that she had became a co-lessee. I am afraid that said version finds no mention in the testimony of PW-1 petitioner husband and it is a clear attempt to wriggle out of the mess that the petitioner husband and RW-5 have created.

79. To sum up, although there is no direct evidence of their being an adulterous relationship between the petitioner husband and RW-5, there is overwhelming evidence on the record to raise an irrefutable inference that the petitioner-husband has been having a close and healthy relationship with RW-5 Dr.Abhilasha Wal since 2007.

IRRETRIEVABLE BREAKDOWN OF MARRIAGE

80. Without further ado, indeed, the parties are residing separately since 14th January, 2006. All efforts to bring a reconciliation between the parties have failed and it is dead marriage beyond any repair. However, this Court can not dissolve the marriage on the said ground alone……

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CONCLUSION ON ISSUE NO. 1

82. In view of the foregoing discussion, I find that the petitioner-husband miserable fails to bring home that he has been a victim of a sustained course of misconduct on the part of the respondent-wife. The petitioner-husband further fails to demonstrate that the respondent-wife has been guilty of such mis-conduct that could be termed as studied neglect, indifference or total departure from the normal standard of conjugal relationship. No doubt there have been few blemishes on the part of the respondent wife too about unsubstantiated claims of miscarriages on account of harassment at the hands of the petitioner husband, and not allowing the petitioner husband to reap the benefits of his own funds by withholding her consent for withdrawal or realisation of money lying in a joint bank account. However, none of the instances espoused by the petitioner husband could qualify as "grave"and "weighty". The petitioner-husband is miserably failing to prove that his wife has been guilty of such unworthy conduct that it is not possible for him to reside with her any further. The case of the petitioner-husband that he has a reasonable belief that it would be prejudicial or harmful to reside with the respondent-wife is not made out either. On the contrary, the relationship of the petitioner husband with RW-5 isa decisive factor in widening the gulf between the parties, and it must beheld that the petitioner husband cannot take advantage of his own wrong.

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ISSUE NO. 3

DISSOLUTION OF MARRIAGE ON THE GROUND OF DESERTION

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87. In view of the said proposition of law, reverting back to the instant case, I have no hesitation in holding that the petitioner-husband is failing to prove that the respondent-wife had any animus deserendi to abandon or forsake her marital relationship with him. Although there has been a continuous separation of more than twelve years between the parties, at the cost of repetition, it is the petitioner-husband who withdrew himself from the company of the respondent wife on 14.01.2006 and thereafter has not attempted to resume cohabitation with her. It would also bear a repetition that PW-1 in his cross-examination on 26.10.2017, testified that he had made up his mind to seek divorce from the respondent-wife on 17.02.2006. This Court in the foregoing discussion has already dealt with the manner in which the petitioner-husband forced the respondent-wife to leave Mumbai. Indeed, the impasse in their relationship has resulted in an irretrievable breakdown of marriage, but the petitioner-husband has none other than himself to blame. It is the petitioner-husband who has contributed to the widening cracks in his marriage due to his relationship with the other lady brought home in the foregoing discussion. Again, the petitioner husband cannot take advantage of his own wrong.

88. Therefore, issue no. 3 is decided against the petitioner-husband and in favour of the respondent-wife.

RELIEF

89. Accordingly, the petition filed by the petitioner-husband seeking dissolution of marriage on the ground of "cruelty" and "desertion" under Section 13(1)(ia) and (ib) respectively of the Act is from the respondent wife is dismissed. Decree sheet be prepared accordingly. In the circumstances of the case the parties are left to bear their own costs"

37. The Appellant has vehemently argued that cruelty must only be proved in 'preponderance of probabilities'. In the present case, the Appellant has sought to take advantage of his own wrong. In view of Section 23(1) of the HMA, the Court is duty-bound to ensure that the party seeking relief is not taking advantage of his or her own wrong or disability. Section 23(1)(a) of the HMA is set out as follows:

*"**23. Decree in proceedings.—***

(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that

(a) any of the grounds for granting relief exists and the petitioner except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5 is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and

(c) the petition (not being a petition presented under section 11) is not presented or prosecuted in collusion with the respondent, and (d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly."

(Emphasis Supplied)

38. It is settled law that the 'wrong' mentioned in Section 23 (1)(a) of the HMA must be a serious misconduct, and mere refusal to cohabit with the spouse would not be considered a wrong. A Co-ordinate Bench of this High Court in the judgment of ***Chetan Dass v. Kamla Devi***[11], observed as follows:

"19. In the present case, the allegations of adulterous conduct of the appellant have been found to be correct and the courts below have recorded a finding to the same effect. In such circumstances, in our view, the provisions contained under Section 23 of the Hindu Marriage Act would be attracted and the appellant would not be allowed to take advantage of his own wrong. Let the things be not misunderstood nor any permissiveness under the law be inferred, allowing an erring party who has been found to be so by recording of a finding of fact in judicial proceedings, that it would be quite easy to push and drive the spouse to a corner and then brazenly take a plea of desertion on the part of the party suffering so long at the hands of the wrongdoer and walk away out of the matrimonial alliance on the ground that the marriage has broken down. Lest the institution of marriage and the matrimonial bonds get fragile easily to be broken

[11](2001) 4 SCC 250

which may serve the purpose most welcome to the wrongdoer who, by heart, wished such an outcome by passing on the burden of his wrongdoing to the other party alleging her to be the deserter leading to the breaking point."

(Emphasis Supplied)

39. All the contentions raised by the Appellant herein have been answered by the learned Family Court in the Impugned Judgment, wherein the Court has weighed the evidence led by the parties to come to the said conclusion. The Court cannot turn a blind eye to the Appellant's conduct as far as it pertains to his being allegedly involved in extramarital affairs with two women. Although the Respondent may have committed her own share of alleged wrongdoing, the Appellant has equally contributed to the widening of the gaps between them.

40. The Appellant has failed to demonstrate that the acts attributed to the Respondent constituted cruelty towards him within the definition of cruelty in law. On the contrary, even if it is assumed that certain incidents of cruelty may have occurred during their cohabitation, the Appellant himself has admitted that the parties continued to meet and go out together even after 20.02.2006 [the date of filing of the divorce petition], which clearly indicates that the alleged acts were either condoned or not of such gravity as to cause mental or physical cruelty warranting dissolution of marriage. In this context, a reference may be made to ***N.G. Dastane (Dr) v. S. Dastane***[12], wherein the Court explained the principle of condonation, holding that where the aggrieved spouse continues to live and associate with the other in a normal marital relationship despite the

[12](1975) 2 SCC 326

alleged acts, such conduct amounts to condonation. The relevant portion of the judgment has been extracted hereinbelow:

> ***"54.*** *Before us, the question of condonation was argued by both the sides. It is urged on behalf of the appellant that there is no evidence of condonation while the argument of the respondent is that condonation is implicit in the act of cohabitation and is proved by the fact that on February 27, 1961 when the spouses parted, the respondent was about 3 months pregnant. Even though condonation was not pleaded as a defence by the respondent it is our duty, in view of the provisions of Section 23(1)(b), to find whether the cruelty was condoned by the appellant. That section casts an obligation on the court to consider the question of condonation, an obligation which has to be discharged even in undefended cases. The relief prayed for can be decreed only if we are satisfied "but not otherwise", that the petitioner has not in any manner condoned the cruelty. It is, of course, necessary that there should be evidence on the record of the case to show that the appellant had condoned the cruelty.*
>
> ***55.****Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation there must be, therefore, two things: forgiveness and restoration. [The Law and Practice of Divorce and Matrimonial Causes by D. Tolstoy, 6th Edn., p. 75] The evidence of condonation in this case is, in our opinion, as strong and satisfactory as the evidence of cruelty. But that evidence does not consist in the mere fact that the spouses continued to share a common home during or for some time after the spell of cruelty. Cruelty, generally, does not consist of a single, isolated act but consists in most cases of a series of acts spread over a period of time. Law does not require that at the first appearance of a cruel act, the other spouse must leave the matrimonial home lest the continued cohabitation be construed as condonation. Such a construction will hinderreconciliation and thereby frustrate the benign purpose of marriage laws.*
>
> ***56.****The evidence of condonation consists here in the fact that the spouses led a normal sexual life despite the respondent's acts of cruelty. This is not a case where the spouses, after separation, indulged in a stray act of sexual intercourse, in which case the necessary intent to forgive and restore may be said to be lacking. Such stray acts may bear more than one explanation. But if during cohabitation the spouses, uninfluenced by the conduct of the offending spouse, lead a life of intimacy which characterises normal matrimonial relationship, the intent to forgive and restore the offending spouse to the original status may reasonably be inferred. There is then no scope for imagining that the conception of the child could be the result of a single act of sexual intercourse and that such*

an act could be a stark animal act unaccompanied by the nobler graces of marital life. One might then as well imagine that the sexual act was undertaken just in order to kill boredom or even in a spirit of revenge. Such speculation is impermissible. Sex plays an important role in marital life and cannot be separated from other factors which lend to matrimony a sense of fruition and fulfilment. Therefore, evidence showing that the spouses led a normal sexual life even after a series of acts of cruelty by one spouse is proof that the other spouse condoned that cruelty. Intercourse, of course, is not a necessary ingredient of condonation because there may be evidence otherwise to show that the offending spouse has been forgiven and has been received back into the position previously occupied in the home. But intercourse in circumstances as obtain here would raise a strong inference of condonation with its dual requirement, forgiveness and restoration. That inference stands uncontradicted, the appellant not having explained the circumstances in which he came to lead and live a normal sexual life with the respondent, even after a series of acts of cruelty on her part.

57.*But condonation of a matrimonial offence is not to be likened to a full Presidential pardon under Article 72 of the Constitution which, once granted, wipes out the guilt beyond the possibility of revival. Condonation is always subject to the implied condition that the offending spouse will not commit a fresh matrimonial offence, either of the same variety as the one condoned or of any other variety. "No matrimonial offence is erased by condonation. It is obscured but not obliterated" [See Words and Phrases : Legally Defined (Butterworths) 1969 Edn., Vol. 1, p. 305 ("Condonation")] . Since the condition of .forgiveness is that no further matrimonial offence shall occur, it is not necessary that the fresh offence should be ejusdem generis with the original offence. [See Halsbury's Laws of England, 3rd Edn., Vol 12, p. 306] Condoned cruelty can therefore be revived, say, by desertion or adultery.*

58. *Section 23(1)(b) of the Act, it may be urged, speaks of condonation but not of its revival and therefore the English doctrine of revival should not be imported into matters arising under the Act. Apparently, this argument may seem to receive some support from me circumstance that under the English law, until the passing of the Divorce Reform Act, 1969 which while abolishing the traditional bars to relief introduces defences in the nature of bars, at least one matrimonial offence, namely, adultery could not be revived if once condoned. [See Rayden on Divorce, 11th Edn., (1971) pp. 11, 12, 2368, 2403] But a closer examination of such an argument would reveal its weakness. The doctrine of condonation was established by the old ecclesiastical courts in Great Britain and was adopted by the English courts from the canon law. "Condonation" is a technical word which means and implies a conditional waiver of the right of the*

injured spouse to take matrimonial proceedings. It is not "forgiveness" as commonly understood. [See Words and Phrases : Legally Defined (Butterworths) 1969 Edn., p. 306 and the cases cited therein] In England condoned adultery could not be revived because of the express provision contained in Section 3 of the Matrimonial Causes Act, 1963 which was later incorporated into Section 42(3) of the Matrimonial Causes Act, 1965. In the absence of any such provision in the Act governing the charge of cruelty, the word "condonation" must receive the meaning which it has borne for centuries in the world of law. [See Ferrers v. Ferrers, (1791) 1 Hag Con 130, 131] "Condonation" under Section 23(1)(b) therefore means conditional forgiveness, the implied condition being that no further matrimonial offence shall be committed."

(Emphasis supplied)

41. Moving on to desertion, as per Section 13(1)(ib) of the HMA, a marriage may be dissolved if either spouse establishes that the other has deserted them continuously for a period of at least two years immediately preceding the filing of the divorce petition. The Explanation to Section 13(1) of the HMA defines 'desertion' as the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of the petitioner, and includes the wilful neglect of the petitioner by the other party to the marriage. The expression also extends to its grammatical variations and cognate expressions. In the Judgment of ***Savitri Pandey v. Prem Chandra Pandey***[13], the Supreme Court discussed in detail what desertion would entail, as noted hereinbelow:-

> ***"8.*** *"Desertion", for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations i.e. not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the*

[13](2002) 2 SCC 73

concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. After referring to a host of authorities and the views of various authors, this Court in BipinchandraJaisinghbai Shah v. Prabhavati [AIR 1957 SC 176] held that if a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion. It further held: (AIR pp. 183-84, para 10)

> *"For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively. Here a difference between the English law and the law as enacted by the Bombay Legislature may be pointed out. Whereas under the English law those essential conditions must continue throughout the course of the three years immediately preceding the institution of the suit for divorce, under the Act, the period is four years without specifying that it should immediately precede the commencement of proceedings for divorce. Whether the omission of the last clause has any practical result need not detain us, as it does not call for decision in the present case. Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an animus deserendi. The offence of desertion commences when the fact of separation and the animus deserendi coexist. But it is not necessary that they should commence at the same time. The de facto*

separation may have commenced without the necessary animus or it may be that the separation and the animus deserendi coincide in point of time; for example, when the separating spouse abandons the marital home with the intention, express or implied, of bringing cohabitation permanently to a close. The law in England has prescribed a three years' period and the Bombay Act prescribed a period of four years as a continuous period during which the two elements must subsist. Hence, if a deserting spouse takes advantage of the locus poenitentiae thus provided by law and decide to come back to the deserted spouse by a bona fide offer of resuming the matrimonial home with all the implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for divorce have been commenced, desertion comes to an end and if the deserted spouse unreasonably refuses the offer, the latter may be in desertion and not the former. Hence it is necessary that during all the period that there has been a desertion, the deserted spouse must affirm the marriage and be ready and willing to resume married life on such conditions as may be reasonable. It is also well settled that in proceedings for divorce the plaintiff must prove the offence of desertion, like and other matrimonial offence, beyond all reasonable doubt. Hence, though corroboration is not required as an absolute rule of law the courts insist upon corroborative evidence, unless its absence is accounted for to the satisfaction of the court."

9. *Following the decision in Bipinchandra case [AIR 1957 SC 176] this Court again reiterated the legal position in Lachman UtamchandKirpalani v. Meena [AIR 1964 SC 40] by holding that in its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.*

10.*To prove desertion in matrimonial matter it is not always necessary that one of the spouses should have left the company of the other as desertion could be proved while living under the same roof. Desertion cannot be equated with separate living by the parties to the marriage. Desertion may also be constructive which can be inferred from the attending circumstances. It has always to be kept in mind that the question of desertion is a matter of inference to be drawn from the facts and circumstances of each case.*

11. *There is another aspect of the matter which disentitles the appellant from seeking the relief of divorce on the ground of desertion in this case. As desertion in matrimonial cases means the withdrawal of one party from a state of things i.e. the marital status of the party, no party to the marriage can be permitted to allege desertion unless he or she admits that after the formal ceremonies of the marriage, the parties had recognised and discharged the common obligation of the married life which essentially requires the cohabitation between the parties for the purpose of consummating the marriage. Cohabitation by the parties is an essential of a valid marriage as the object of the marriage is to further the perpetuation of the race by permitting lawful indulgence in passions for procreation of children. In other words, there can be no desertion without previous cohabitation by the parties. The basis for this theory is built upon the recognised position of law in matrimonial matters that no one can desert who does not actively or wilfully bring to an end the existing state of cohabitation. However, such a rule is subject to just exceptions which may be found in a case on the ground of mental or physical incapacity or other peculiar circumstances of the case. However, the party seeking divorce on the ground of desertion is required to show that he or she was not taking the advantage of his or her own wrong. In the instant case the appellant herself pleaded that there had not been cohabitation between the parties after the marriage. She neither assigned any reason nor attributed the non-resumption of cohabitation to the respondent. From the pleadings and evidence led in the case, it is apparent that the appellant did not permit the respondent to have cohabitation for consummating the marriage. In the absence of cohabitation between the parties, a particular state of matrimonial position was never permitted by the appellant to come into existence. In the present case, in the absence of cohabitation and consummation of marriage, the appellant was disentitled to claim divorce on the ground of desertion."*

(Emphasis supplied)

42. In the present case, while the exact date of separation is disputed, it is undisputed that the parties continued to cohabit until 14.01.2006. It is also a matter of record that the divorce petition was

filed on 20.02.2006 before the Bandra Court, Maharashtra; however, the ground of desertion was added later, on 16.09.2017, pursuant to an application made by the Appellant. Although the plea of desertion was not raised when the divorce petition was initially filed on 20.02.2006, this does not take away from the fact that, even at that stage, when the petition was filed solely on the ground of cruelty, the Appellant had already made up his mind to sever the marital ties with the Respondent. Once the petition for divorce was first filed, it could not reasonably have been expected of the Respondent to continue residing with the Appellant.

43. Notably, it was the Appellant who deserted the matrimonial home in Mumbai by leaving for a hotel, abandoning the Respondent on 14.01.2006. The Respondent, being financially dependent on the Appellant, was unable to sustain herself without his monetary support. Due to a lack of such support, she was compelled to return to Noida on 25.03.2006 and started residing in the apartment with his mother, which was in the name of the Appellant at that point of time. Such a return cannot, by any stretch, be construed as desertion, not even constructive desertion, since the Respondent did not abscond or sever ties but, in fact, returned to the residence of the Appellant's mother on 25.03.2006. This act clearly negates any intention of *animus deserendi* on her part.

CONCLUSION & DIRECTIONS:

44. In view of the foregoing discussion, we summarise our findings on the issues arising for determination as follows:

i. **MAT.APP.(F.C.) 217/2017:** The Registrar General is directed to release the money kept in the fixed deposit with the UCO Bank *vide* Order dated 26.03.2019 of this Court to the Respondent within a period of two months.

ii. **MAT.APP.(F.C.) 102/2018** and **MAT.APP.(F.C.) 20/2018**: The Appellant will continue to pay Rs. 2,00,000 per month to the Respondent during the pendency of the Divorce Petition.

iii. **MAT.APP.(F.C.) 38/2019**: The Impugned Judgment of the learned Family Court is upheld, and the present Appeal is dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

SEPTEMBER 22, 2025
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