

RESERVED ON : 16.02.2026
PRONOUNCED ON : 27.02.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

MISCELLANEOUS FIRST APPEAL NO. 7298 OF 2018 (MC)

BETWEEN:

SRI. MURALI MOHAN KRISHNA,
S/O SRI. K. LAKSHMANAGOWDA,
AGED ABOUT 42 YEARS,
PRESENTLY RESIDING AT:
H.KOTTANUR, & (PO),
KASABA HOBLI,
KANAKAPURA TALUK,
RAMANAGARAM DISTRICT - 562 217.

...APPELLANT

(BY SRI. GNANI LOHITH ANAND, ADVOCATE)

AND:

SMT. A.M. LAVANYA,
AGED ABOUT 33 YEARS,
W/O SRI. MURALI MOHAN KRISHNA,
D/O SRI. K. MARIGOWDA,
RESIDING AT: ARUVANHALLI,
SHRAVANABELAGOLA HOBLI,
CHANNARAYAPATNA TALUK,
HASSAN DISTRICT - 573 135.

...RESPONDENT

(BY SRI.VENKATESH R.BHAGAT, ADVOCATE)

THIS MFA IS FILED UNDER SECTION 28(1) OF THE HINDU MARRIAGE ACT, 1955, AGAINST THE JUDGMENT AND DECREE DATED 06.06.2018 PASSED IN MC NO.133/2013 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE & CJM, MANDYA,

DISMISSING THE PETITION FILED UNDER SECTION 13(1)(ia) OF THE HINDU MARRIAGE ACT, 1955.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT IS DELIVERED/ PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

Heard learned counsel for the appellant and learned counsel appearing for the respondent.

2. This appeal is filed challenging the judgment and decree dated 06.06.2018 passed by the Principal Senior Civil Judge and CJM, Mandya in MC.No.133/2013.

3. By means of the aforesaid judgment, the petition filed by the appellant-husband under section 13(1)(ia) of the Hindu Marriage Act, 1955, seeking dissolution of his marriage solemnized with the respondent on 18.08.2008, was dismissed. The contention of the learned counsel for the appellant is that the conduct of the respondent was one of cruelty inasmuch as she has admitted in her examination-in-chief that she had levelled

allegations against the petitioner and his family members, but, in her cross-examination, she has given a lame explanation.

4. It is further stated that the marriage between the parties is irretrievably broken down and they are residing separately for more than 10 years and therefore, a decree of divorce ought to be granted.

5. Learned counsel has referred to the judgment of the Supreme Court dated 15.12.2025, passed in Civil Appeal No.5167/2012 (**NAYAN BHAUMICK VS. APARNA CHAKRABORTY**).

6. Learned counsel for the respondent on the other hand has contended that the appellant is registered as an advocate and has used every means at his disposal to harass the respondent. It is stated that orders were made by the prescribed Authority under the Protection of Women from Domestic Violence Act, 2005 for payment of maintenance also in respect of the children of the parties, who are residing with the respondents. However, no

maintenance is being paid by the appellant who is absconding at present to avoid execution and the maintenance amount remains unpaid in terms of the order of the prescribed Authority. We have perused the record.

7. The petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955, filed by the appellant, states that their marriage took place on 18.08.2008 at Sri Magaji Dhondusa "*Karthik Kalyana Mantapa*" No.3/1 Rudraswamy Temple Street, behind Gavi Gangadeshwara swamy temple, Gavipuram, Bangalore-560019, as per Hindu rites and customs in the presence of family and well-wishers. From their wedlock, they have two children that is sons aged 3 years and 3 months and 1 year and 10 months. The appellant had set up a case that he is an agriculturist. All medical expenses during the pregnancy of the respondent were borne by the appellant. He used to take the respondent to the hospital during the pregnancy for routine check-up at his own expense. Initially they were leading a comfortable and happy married life, but a few days after the marriage, the relationship turned sour.

There were exchange of harsh words and non co-operation by the respondent in the matrimonial life and she was not doing any kind of household work like cooking and house maintenance and used to be relaxing all the time in her room. This led to bitter quarrels and the respondent used to abuse the petitioner and his parents using filthy language.

8. It is stated that due to the respondent's harassment and negligence towards the family of the appellant, he brought his cousins to his house to take care of his parents. The appellant had admitted his son to a good school after paying for admission and other incidental expenses.

9. On 25.08.2012, at the instigation of the brothers of the respondent, they along with other media persons unexpectedly came to the petitioner's house and started a quarrel and created a scene. Due to this incident, the reputation of the petitioner's family members and the petitioners was badly affected. Thereafter, the respondent left the matrimonial house without taking the petitioner's

permission along with the two children with all her belongings. It is stated that the children are suffering because of this incident. Though desertion by the petitioner is alleged to have taken place on 25.08.2012, but, as noted above, the petitioner only prayed for dissolution of the marriage on the ground of cruelty.

10. The respondent filed her written statement, in which the averments made in the petition were denied. Allegations have been made in the written statement against the appellant regarding his misbehaviour towards the respondent and the fact that the appellant's mother and sisters jointly would incite the appellant and forcefully take the appellant and make him sleep in different room in the night. The appellant would come home drunk every night and abuse the respondent, causing physical and mental cruelty. It is stated in the written statement that if the respondent starts to disclose the character of the appellant, his father, mother and his sisters, it would cause a lot of pain to the respondent. The fact of filing an

application under the Domestic Violence Act, was also referred to in the written statement.

11. Based on the pleadings, the following points were framed by the Trial Court for its consideration.

- i. Whether the petitioner has shown sufficient cause and has made out valid grounds for seeking dissolution of his marriage solemnized with the respondent on the ground of cruelty?*
- ii. What order?*

12. The petitioner examined himself as PW-1 and got marked the documents Ex.P1 to Ex.P19. Ex.P20 and Ex.P21 were marked through the RW1-respondent during her cross-examination. PW-1 to PW-5 were examined on behalf of the petitioner. PW-5 got marked Ex.P22. The respondent examined herself as RW-1 and got examined three witnesses as RW-2 to RW-4 and Ex.R1 to Ex.R19 were marked on her behalf. The first point was answered in the negative by the trial Court.

13. After noticing the rival contention of the parties, the trial Court noted that the parties had admittedly two

children. Therefore, their marital ties and cohabitation continued till the year 2010.

14. The statement of PW-1 was noted that he is a graduate of B.SC, L.L.B and was working in Airtel company as an Executive. But at present he is carrying on the avocation of an agriculturist. It was noted by the trial Court that the social and educational backgrounds of the spouses were sound and the social essentials to live together as husband and wife were present in both of them. It was noted that this was a case of alleged mental cruelty rather than physical cruelty. It was observed that what is relevant for consideration is to be based on the determination of the magnitude of the act of cruelty given the social status of the parties. The evidence of PW-1 was considered as well as that of RW-1. It was observed that there was some dispute between the spouses with regard to sale of the house of the family of the petitioner. There was no other cause or source of conflict between the spouses apart from the aforesaid dispute with regard to sale of the family house.

15. Regarding the specific allegation made by the petitioner about a particular incident that has alleged to have happened on 25.08.2012, it was held that it clearly reflected that the respondent had been forcibly ousted and not that she had voluntarily left the house on that day and deserted the appellant. Though the RW-1 admitted that on 25.08.2012 her brothers and relatives had come to her matrimonial house, but denied the suggestion that the said relatives picked up quarrel with the family of her husband and taken her to her parental house. The Court found that the large number of the family members of the respondent and her brothers who went to the house of the petitioner to meet the respondent indicates that all was not well among the respondents and her family members and there was some kind of 'venom', which the petitioner and his family members carried on against the respondent. It was therefore, held that no cruelty was perpetrated by the respondent on the appellant, but it was the other way round. That is to say it was the husband who behaved cruelly with his wife.

16. The Trial Court further noted so far as the documents produced during the cross-examination of RW.1 regarding the medical expenses during the pregnancy of the respondent and educational expenses of the children, stating that it is the legal duty of the husband towards the wife and children and he cannot take advantage of the said situation on the premise that he has spent expenses on the medical care of the wife and education of the children, since he owes a moral and legal duty being a husband and father towards the wife and children.

17. The Court further observed that though the petitioner has stated that he wanted to give his children good education, however since the wife as per him left the matrimonial home along with children, he has not made any efforts to bring the wife and children back to the matrimonial home and provide them education. Even, no material is placed to substantiate that he has spent amount on the maintenance of wife and children subsequent to the incident alleged to have been taken

place on 25.08.2012. The Court further observed that this made the wife to file application under the D.V Act, claiming maintenance for her and the children and the same shows that the petitioner has neglected to maintain the wife and children.

18. The Tribunal noted regarding evidence of PW.2 that he was brought by the petitioner to take care of his father who met with an accident when the respondent was pregnant with her second child. The said witness has stated in his examination-in-chief that the petitioner was not doing any household work and she was not cooperating with the petitioner, his parents and his sisters. In the cross-examination, the said witness has stated that the respondent was pregnant and pregnant woman should not exert too much.

19. The Trial Court noted about the evidence of PW.3 and PW.4 who were the persons visited the parental home of the respondent to advise her and tried to bring her back to the matrimonial home, but as per their say, the respondent was reluctant to return. However, in the

cross-examination they have given complete go-bye to their evidence in the examination-in-chief pleading ignorance regarding hostility which they have alleged against the respondent in their examination-in-chief.

20. Further the Trial Court has noted regarding evidence of PW.5 who is the father of the petitioner and father-in-law of the respondent. In the examination-in-chief, he has stated that they belong to very sophisticated and sober family and the respondent was not cooperating with them in the household work and abusing them in filthy language, and made outrageous statements against the character of PW.5, his wife and his daughters. The Trial Court has clearly observed that PW.5 being the grandparent, has not discharged his moral duty towards his daughter-in-law and grandchildren and even not attempted to visit the grandchildren and held that the evidence of these witnesses are of no assistance to the petitioner.

21. So far as the witnesses of respondent are concerned, the Trial Court noted that the witnesses have

supported the claim/contentions of the respondent and found that the petitioner has failed to elicitate anything worthwhile in their cross-examination to discredit the testimony of the respondent.

22. The Trial Court further noted that, as per the petitioner it is the respondent who has not shown any interest to join him. In that line, suggestions were made to the respondent who has been examined as RW.1 in her cross-examination by suggesting that whether she has filed any petition for restitution of conjugal rights, which is answered by respondent that she has not. For this, the Trial Court has observed that the respondent is an involuntary litigant forced to come before this Court due to the petition filed by her husband seeking relief of divorce and in the statement of objection, the respondent sought that the claim of divorce by her husband be dismissed and the Court direct the husband to take her back and lead the matrimonial life. Thus, the Trial Court observed that the respondent is clear in her intention that she is not only

seeking rejection of divorce petition rather expressed her inclination to join her matrimonial home.

23. The Court further observed that though an attempt was made to reconcile between the parties, but the same has not been materialized due to the reluctance of the petitioner. The Court further observed that notice sent by the petitioner shows that he has intended to seek separation rather than making an attempt for reconciliation and his attempt of examining the witnesses stating that he has sent those persons to the parental house of the respondent to advise her, does not appear to be bonafide attempt or endeavour. If at all the petitioner had bonafide intention to get his wife back to matrimonial home, he would not have issued the notice within few days his wife left to her parental house, rather he could have made an attempt through his relatives or family members or at least could have made use of the opportunity extended by the Court for reconciliation.

24. In these circumstances, the Court comes to a conclusion that the petitioner has failed to establish the cruelty alleged by him against the respondent.

25. So far as the decisions relied on by the petitioner is concerned, the Trial Court distinguished them on the facts of those cases with the facts of the case on hand and held that those decisions would not come to his aid. Further, the Trial Court comes to a conclusion that given the facts of the case, in view of the settled position of law, in a petition of present nature, it is not an isolated instance or numerical count of instances matters rather it is the cumulative effect of alleged cruel conduct of the spouse would matter. It is in this context, on appreciation of the materials, that the trial Court held that the present dispute is on the instance of the husband against the wife and the wife is an involuntary litigant to the dispute. It does not appear that the wife has committed any intentional act of cruelty against the husband and in-laws, which would give a cause for the husband to seek for divorce on the ground of cruelty. On these reasons, the

Trial Court dismissed the petition. It is this Judgment and decree passed by the Trial Court which is called in question by the husband in this appeal.

26. Sri.Gnani Lohith Anand, learned counsel submits that the Trial Court has failed to consider the contentions of the wife taken in her statement of objection, particularly the last three lines of Paragraph No.20, which reads as under:

"ಅರ್ಜಿದಾರನ ಮತ್ತು ಅವರ ತಂದೆ-ತಾಯಿಯ, ಆತನ ಸಹೋದರಿಯರ ಚಾರಿತ್ರ್ಯದ ಬಗ್ಗೆ ತಿಳಿಸುತ್ತ ಹೋದರೆ ಎದುರುದಾರಳಿಗೆ ಅದರಿಂದ ತುಂಬ ನೋವುಂಟಾಗುತ್ತದೆ.

"(Kannada version)

"If Respondent starts to disclose the character of the Applicant, his father, Mother and his Sisters it would cause lot of pain to the Respondent"

(English version as furnished by learned counsel for the appellant)

27. He further submits that when questions are put in cross-examination of RW.1 with respect to such statements, she has given outrageous statements which comes within the meaning of mental cruelty to the petitioner and his family members. The said statement

given by the respondent in her cross-examination as pointed out by the learned counsel for the appellant reads as under:

"ನನ್ನ ಮುಖ್ಯವಿಚಾರಣೆಯಲ್ಲಿ ನನ್ನ ಗಂಡನ, ಆತನ ಪೋಷಕರ, ಆತನ ಸಹೋದರಿಯರ ಚಾರಿತ್ರ್ಯ ತಿಳಿಸುತ್ತ ಹೋದರೆ ನನಗೆ ತುಂಬಾ ನೋವುಂಟಾಗುತ್ತದೆ ಎಂದು ನಾನು ಹೇಳಿದ್ದು ಸದರಿ ಹೇಳಿಕೆ ನೀಡಲು ಕಾರಣವೇನೆಂದರೆ ನನ್ನ ಅತ್ತೆ ಮಾವ ಮತ್ತು ನಾದಿನಿಯರ ಚಾರಿತ್ರ್ಯದ ಬಗ್ಗೆ ನನ್ನ ಗಂಡ ನನಗೆ ಹೇಳುತ್ತಿದ್ದ. ಅಂದರೆ ಆತನ ತಾಯಿಯ ನಡತೆ ಸರಿಯಿಲ್ಲ ಎಂದು ಆತ ನನಗೆ ಹೇಳುತ್ತಿದ್ದ. ಅದೇ ರೀತಿ ನನ್ನ ತಂದೆ ಮದ್ಯಪಾನ ಮಾಡಿಕೊಂಡು ಮನೆಗೆ ಬರುತ್ತಿದ್ದ ಎಂದು ನನಗೆ ಹೇಳುತ್ತಿದ್ದ. ಹಾಗೆ ಆತನ ಸಹೋದರಿಯರು ವಿದ್ಯಾರ್ಥಿಗಳಿದ್ದಾಗಲೇ ಇತರರೊಂದಿಗೆ ಸಂಬಂಧ ಇಟ್ಟುಕೊಂಡಿದ್ದರು ಎಂದು ಹೇಳುತ್ತಿದ್ದ. ನಾನು ನನ್ನ ಯಜಮಾನರು ಮತ್ತು ಕುಟುಂಬದ ಬಗ್ಗೆ ಸುಳ್ಳು ಆರೋಪ ಮಾಡುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ನನಗೆ ಯಜಮಾನರು ಹೇಳಿದ ಮಾಹಿತಿಯ ಮೇರೆಗೆ ನಾನು ಹೇಳಿರುತ್ತೇನೆ, ಹೊರತು ನಾನು ಸ್ವತಃ ಏನನ್ನು ನೋಡಿರುವುದಿಲ್ಲ ಎಂದು ಸಾಕ್ಷಿ ಹೇಳುತ್ತಾರೆ. ನನ್ನ ಗಂಡ ಸದರಿ ಚಾರಿತ್ರ್ಯದ ಬಗ್ಗೆ ನನಗೆ ಹೇಳುತ್ತಿದ್ದ ಎಂದು ನಾನು ಸುಳ್ಳು ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ."

(Kannada version)

"In my examination, I said that if I tell the character of my husband, his parents and his sisters, it will hurt me a lot. The reason for giving the said statement is that my husband used to tell me about the character of my mother-in-law and his Aunt. That is, he used to tell me that his mother's behaviour was not good. Similarly, he used to tell me that my father used to come home drunk. The

witness said that his sisters had affairs with others when they were students. I am making false allegations about my husband and his family,¹ I have told them based on the information given to me by my husband and I have not seen anything myself. It is not correct to say that my husband did not tell me about the character of the said person."

-(English version, as furnished by learned counsel for the appellant)

28. The learned counsel submits that on 25.08.2012, the brothers and other relatives of the respondent named in the petition as well as in evidence unexpectedly came to petitioner's house and quarrelled without any reason created a scene and abused the petitioner, his parents and his sisters in filthy/vulgar language and this incident had brought down their reputation in the locality. Thereafter, the respondent left the matrimonial home along with her children and all her

¹ Even though the English translation has been furnished, the same differs from the original Kannada version.

The corrected translation of underlined portion is, "The reason for such statement is, my husband used to tell me regarding the character of my father-in-law, mother-in-law and sister-in-law, that is he used to tell me that his mother's character is not good. Similarly, he used to state that his father was coming home drunk. Similarly, he used to state that both his sisters were having affairs with others when they were students. If asked that, I have leveled false allegation against my husband and family, the witness states that, I have told them based on the information given by my husband, however I have not seen anything on my own."

belongings with her brothers without any permission of the petitioner. This according to learned counsel clearly comes within the purview of the word 'Cruelty' stated in Section 13(1)(ia) of H.M Act.

29. He further submits that the incident happened on 25.08.2012 has been corroborated by PW.2 who is his cousin brother brought to his home for taking care of his father and to do household work since his father met with an accident and the respondent refused to take care of him and also reluctant to do the household work. Learned counsel further submits that the petitioner's version of respondent leaving the matrimonial home and residing with her parents ever since 2012 has been corroborated by PW.3 and PW.4, who are the persons sent by him to call the respondent back to the matrimonial home along with the children with an intention to reconcile and reunite the matrimonial life. He further submits that PW.5 - the father of the petitioner had clearly stated the incident happened in the matrimonial home as well as the cruel behaviour of the respondent with all the family members

and her insistence of separate living of petitioner along with her children apart from his parents and his other relatives. The Trial Court has failed to consider these aspects of the matter and dismissed the petition in haste without properly appreciating the evidence on record.

30. Further, he submits that the wife is residing separately since 2012 and there is no cohabitation between them. This desertion on her part clearly shows that there is nothing remained in the marriage life as the same has been irretrievably/irrevocably broken down. Relying on the Judgment of the Hon'ble Apex Court in **NAYAN BHOWMICK** supra, learned counsel submits that the long duration of time the parties have lived separately there is no sanctity left in the marriage and the same is only on the paper and in the best interest of the parties and the society if the ties are severed between the parties. Accordingly, sought to allow the appeal and grant divorce against the respondent.

31. Conversely, Sri.Venkesh R.Bhagat, supporting the Judgment of Trial Court submits that the petitioner in

his first extrajudicial statement, that is the notice, except the one incident alleged to have been taken place on 25.08.2012, has stated nothing either regarding the cruel behaviour of the respondent or her reluctance to do any household work now alleged against her in the petition as well as evidence. This clearly shows that the petitioner built his case after issuance of notice against the respondent to bring his case within the ambit of the word Cruelty, which he has failed. He further submits that the petitioner has stated that he has made several attempts to bring the respondent back to the matrimonial home requesting PW.3 and PW.4 to advise her by visiting her parental home. However, the dates which even according to the petitioner, that is the alleged unexpected visit of the brothers and relatives of the respondent on 25.08.2012 and the date of issuance of Notice 05.09.2012 clearly shows that this stand of the petitioner is a falsehood.

32. He further submits that a perusal of notice at Ex.P2 clearly shows that the notice was made ready on 01.09.2012, however it was sent on 05.09.2012 by

striking of the numerical 01 and writing 05, this clearly shows the intention of the petitioner to get rid of the respondent without there being any fault attributable to her. Neither the petitioner nor his parents have taken any step towards the children either by paying the maintenance or expenses on the education except the statement made in the petition. He further submits that PW.5 - the father of the petitioner has stated in his examination-in-chief that their family is a cultured family having high moral values. However in his cross-examination he has clearly stated that he has neither attended the funeral of his father nor attended any of ceremonial functions thereafter. The learned counsel submits that this shows the personality of the father of the petitioner, which is even against his statement in examination-in-chief.

33. The learned counsel further submits that even for a moment however without accepting the allegation made by the petitioner against the respondent with respect to the alleged incident on 25.08.2012 is

concerned, an isolated or solitary incident cannot be a stand alone ground to set at naught the sacred tie of marriage in the absence of any wilful cruelty attributable to the respondent. He further submits that this Court as well as the Hon'ble Apex Court in catena of cases has held that a solitary or isolated incident cannot be a bedrock to give a deathblow to a marital tie, as the institution of marriage is considered to be a sacred tie. The cruelty attributable to any spouse, by one spouse must be a wilful and unjustifiable conduct of such a nature or character, so as to cause danger to the life, limb and health, both bodily and mentally, which would give rise to a reasonable apprehension of such a danger in the mind of the opponent spouse. Except the single allegation which has been denied by the respondent and corroborated by her witnesses, which the Trial Court has clearly taken note of, the petitioner has failed to prove the ingredients of cruelty to seek for divorce on that ground. The reason for the wife to live separate is the danger which she has felt and witnessed in the matrimonial home. It is the petitioner

who is cruelly disposed towards the respondent. The further conduct of the petitioner and his parents, even in not providing any maintenance to the wife and children, shows the intention of the petitioner and his parents. The petitioner as well as PW.5 - the father of the petitioner, clearly refused to take back the respondent and the children to the matrimonial home, which could be gathered from the evidence of PW.1 and PW.5, which reads as under:

"ಈಗಲೂ ಕೂಡ ನನ್ನ ಪತ್ನಿ ನನ್ನ ಮಕ್ಕಳೊಂದಿಗೆ ಬಂದು ಸಂಸಾರ ಮಾಡಲು ತಯಾರಿದ್ದಾರೆ ಎಂದರೆ, ನಾನು ಎದುರುದಾರರನ್ನು ಕರೆದುಕೊಂಡು ಹೋಗಲು ಆಗುವುದಿಲ್ಲ ಎಂದು ಸಾಕ್ಷಿ ಹೇಳುತ್ತಾರೆ."

(Kannada version of Cross-examination of PW.1)

"If I am ready to take my wife and children back and start a family, but the other party is not willing to the same according to the witnesses²."

(English version as furnished by learned counsel for the appellant)

² Even though the English translation has been furnished, the same differs from the original Kannada version.

The corrected translation of underlined phrase is, "When the witness has been asked that, his wife along with children is ready to join and lead marital life even to this day, the witness states that, I cannot take back the opponent/respondent."

"ನಮ್ಮ ಸೊಸೆ ಮತ್ತು ಮೊಮ್ಮಕ್ಕಳನ್ನು ಕರೆದುಕೊಂಡು ಹೋಗುವಿರಾ ಎಂಬ ಪ್ರಶ್ನೆಗೆ ಅದು ಸಾಧ್ಯವಿಲ್ಲ ಎಂದು ಸಾಕ್ಷ್ಯ ನುಡಿಯುತ್ತಾರೆ."

"(Kannada version of Cross-examination of PW.5)

"When asked if he would take our daughter-in-law and grandchildren, the witness said that it was not possible³."

(English version as furnished by learned counsel for the appellant)

This has been considered by the Trial Court while rejecting the petition. As such, the same does not require any interference.

34. Having considered the entire material placed on record and the submissions, a perusal of notice as well as the petition and evidence of petitioner and their admission in the cross-examination, we find force in the arguments of learned counsel appearing for the respondent that it is the petitioner who is the reason for living apart and not the respondent. The allegation made against the

³ Even though the English translation has been furnished, the same differs from the original Kannada version. The corrected translation is, "To the question, 'are you ready to take back your daughter-in-law and grandchildren?', the witness states that, it is not possible."

respondent falls short of ingredients contained to the word Cruelty as per Section 13(1)(ia) of H.M Act. The word Cruelty as rightly contented by learned counsel for the respondent must be a wilful and unjustifiable conduct of such a nature so as to cause danger to life, limb or health, both bodily and mentally and would give rise to a reasonable apprehension of such danger. For a party could succeed in the petition on the ground of cruelty in all probabilities, even on the touchstone of preponderance of probabilities, he has to discharge his burden by proving the conduct on the part of the other spouse against whom the ground of cruelty is pressed by establishing the same in accordance with law which would legitimately draw an inference that the treatment of the spouse is such that it causes apprehension in the mind of the other spouse about his or her mental welfare, then such conduct amounts to cruelty. No such kind of cruelty has been established in the case on hand by the petitioner against the respondent. Though the English translation provided by the learned counsel for the appellant are not in

consonance with the Kannada version of evidence recorded by the Trial Court, we have relied on the Kannada version recorded by the Trial Court to come to the conclusion stated supra. The conduct of the petitioner disentitles him from any relief.

35. So far as the Judgment relied on by learned counsel appearing for the appellant in **NAYAN BHOWMICK** supra, the Hon'ble Apex Court exercising its plenary power under Article 142 of the Constitution of India, considering the facts in the said case wherein even the application was filed under Section 13(1)(ib) (ground of desertion) in order to do complete justice, taking into consideration of long gap of living separately, considered that the marriage has been irretrievably broken down and granted divorce. In the case on hand, the petition is filed under Section 13(1)(ia) that is Cruelty and not on Desertion. Even none of the allegations made against the respondent has been established by adequate evidence. We are in complete agreement with the view taken by the learned Judge of the Trial Court. No case has been made

by the applicant to take any contrary view by us. In these circumstances, this appeal fails and accordingly, is ***dismissed.***

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

TKN