AMANDEEP GOYAL v. YOGESH RANI,(2022-1)205 PLR 479

punjab and haryana HIGH COURT

Before: Ms. Justice Ritu Bahri and Mrs. Justice Archana Puri.

AMANDEEP GOYAL – Appellant,

Versus

YOGESH RANI – Respondent.

FAO-M-101 of 2019

Hindu Marriage Act, 1955 (25 of 1955) Section 13 – Application filed by husband for divorce – Dismissed – Learned Counsel for the respondent-wife made a statement was not ready for mutual divorce – Husband has failed to prove on record with respect to cruelty committed by wife, however, the question for consideration would be that whether if the wife who is staying away from her husband for the last 10 years, is still not ready to give mutual divorce, then this behaviour in dead marriage or irretrievable broken down marriage, can be considered as act of mental cruelty towards husband – If the appeal filed by the appellant-husband is dismissed, he will face mental agony with his son, who is ill and requires repeated check ups and treatments from various hospitals – Divorce granted – Now the parents can plan shared parenting so both the children can meet with each other being real brothers and interact with each other.

Cases referred to:-

1. 1993(4) SCC 232, *Chandra Kala Trivedi v. Dr. S.P. Trivedi.*

2. (2005-1)139 PLR 710 (SC), *A Jayachandra v. Aneel Kaur.*

3. 2006(4) SCC 558*, Naveen Kohli v. Neetu Kohli.*

4. (2007-2)146 PLR 618 (SC), *Samar Ghosh v. Jaya Ghosh.*

5. (2013-3)171 PLR 149 (SC), *K. Srinivas Rao v. D.A. Deepa.*

6. 2020 PLRonline 5014, *Soumitra Kumar Nahar v. Parul Nahar.*

Ms. Neha Sonawane, for the appellant-husband. *Mr. Deepak Aggarwal,* for the respondent-wife.

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Ritu Bahri, J. – *(7th October, 2021)* – The appellant-husband has come up in appeal before this Court, seeking setting aside of judgment dated 10.01.2019 passed by Additional District Judge, Sangrur in HMA No. 320-2016, whereby the petition filed by him under Section 13 of the Hindu Marriage Act, 1955 (for short 'Act 1955'), for dissolution of marriage between the parties by decree of divorce on the grounds of cruelty and desertion, has been dismissed.

2. Brief facts of the case are that the marriage of the appellant was solemnized on 30.04.2005 with the

respondent-wife. Out of this wedlock, two sons were born namely Manav Goyal and Rooham Goyal. The appellant and the respondent are working as teachers with Punjab Government. Their elder son is/was suffering from Blood Cancer and is in the custody of the appellant-husband whereas the younger son i.e Rooham Goyal is in the custody of the respondent-wife.

3. The case of the appellant-husband was that the respondent-wife is a short tempered lady and was habitual to leave her matrimonial home. She used to quarrel with the appellant-husband as well as with his parents on petty matters. She refused to do any domestic work by saying that she was not meant for doing the household work. She used to treat him and his parents in a very derogatory manner. She treated Manav Goyal in a very cruel manner and refused to even cook food for him. She used to visit Dera Beas frequently without bothering about the ailment of the child. Various panchayats were convened to make the respondent-wife understand but all in vain.

4. On 19.07.2007, when a colleague of the appellant namely Hardev Singh and his wife visited the house of the appellant to meet the respondent, she did not come to meet them and even refused to prepare tea for them. She shouted loudly " I am not your servant, any person comes any time, I am not bound to attend them". The appeallant-husband informed his in-laws regarding the behaviour of the respondent-wife but in vain. They stood in support of their daughter (respondent) and threatened the appellant to get ready to face the consequences. The respondent-wife refused to do any household work and used to say that she is a permanent Government employee and earns equal salary to that of the appellant-husband.

5. The respondent-wife always created new demand of costly items. She used to raise hue and cry in the street before the general public with intention to lower down the image of the appellant-husband. The respondent-wife used to say that she thinks that the childManav Goyal will not survive and will certainly die and all her young life and money will be spoiled while looking after the child in hospitals.

6. In the month of October, 2010 and his treatement (Manav Goyal) was started at PGIMER, Chandigarh. The parties were asked by the doctors at PGI, Chandigarh to reside near hospital for some time in order to enable them to handle any emergency situations. Manav Goyal remained admitted in PGI, Chandigarh from time to time for chemotherapy and various other emergency situations. On 22.01.2011, when Manav Goyal was in PGI for chemothereapy, the respondent-wife threw the chips on the face of the appellant. On 20.02.2011, when the mother of the appellant came to see the grand-child Manav Goyal at village Sarangpur and Manav Goyal asked something to eat then the respondent refused to prepare meals as it was 10:30 P.M and also started abusing the appellant. On 13.03.2011, when Manav Goyal was lying in PGI, she went to Dera Beas. On 19.03.2011, the doctor permitted the appellant to take the child back to the home but the respondent refused to go with the appellant at Malerkotla and told the appellant that he along with Manav Goyal may go Malerkotla. On 17.06.2011, when the appellant-husband was returning home from PGI along with Manav Goyal, after his chemotherapy, then the respondent started beating the child when he asked something to eat. When the appellant tried to stop the respondent-wife from doing so, she ran away in the street and raised alarm to save her as the appellant-husband is going to burn her by pouring kerosene oil on her. On 27.07.2011, the respondentwife left her matrimonial home while saying that she cannot live with the child having deadly disease and cannot spoil her life.

7. On notice of the petition, the respondent-wife filed her written statement and admitted the factum of marriage between the parties and birth of two children. The respondent-wife submitted that she was turned out by the appellant-husband during the night on 26.07.2011 but she was allowed to stay in the matrimonial home by her mother-in-law. She informed her parents, who came on 27.07.2011 along with panchayat and the respondent was then turned out of matrimonial home by the appellant-husband in the presence of the Panchayat by stating that he does not want to keep the respondent as his wife. The respondent was pregnant at that time and the appellant refused to take the respondent to the doctor and turned her out from the matrimonial home. Thereafter, second child Roohan was born at the parental house of the respondent. She

further submitted that all the false allegations have been levelled by the appellant only to harass her. On 13.03.2011, the respondent-wife went to Dera Beas only to pay obeisance as Manav Goyal, son of the parties was feeling well. The appellant and the respondent stayed at Sarangpur with their son Manav Goyal only up to December, 2012 and after that, they took their son to PGI, Chandigarh only on the advise of the doctors.

8. From the pleadings of the parties, following issues were framed:-

1. Whether the respondent treated the petitioner with cruelty? OPP

2. Whether the respondent has deserted petitioner? OPP

3. Whether the petition is not maintainable? OPR

4. Relief.

9. In order to prove his case, the appellant-husband stepped into witness box as PW8 and examined witnesses

10. P.W.1 to P.W.7. P.W.1 Rajesh Watts, in his statement, has quoted instance dated 22.01.2011, when he had come to PGI for treatment of his daughter. The witness corroborated the statement of the appellant while saying that on the said date, Manav Goyal was in PGI and his mother was abusing the child as well as the father of the child very loudly, whereas the father of Manav Goyal was trying to passify her. He further deposed that he never saw the mother of Manav Goyal in PGI despite the fact that his condition was very serious and Manav Goyal was being taken care by his father only.

11. P.W.2 Hardev Singh corroborated the version of the appellant while saying that on 19.07.2007, he had visited the house of the appellant along with wife but the respondent had refused to come to meet them and had refused to serve water and tea to them and she was shouting loudly that she is not the servant of the appellant-husband and is not bound to attend any person whosever comes to meet the appellant.

12. P.W.3 Kiran Kansal corroborated the statement of the appellant qua the instance dated 23.01.2011 when she had gone to village Sarangpur to see the son of the appellant and the respondent used the words that why God has not given the disease to the appellant and also said that Manav Goyal should have died so that she would have been free.

13. P.W.4 Anil Kumar Goyal deposed that the respondent-wife refused to accompany the appellant-husband to his home at Malerkotla on 19.03.2011 when the doctor had permitted the appellant to take the child back to their house. He has further deposed that a Panchayat was convened by the appellant on 20.03.2011 and respondent-wife refused to live with the appellant and his child. The respondent left the house of the appellanthusband on 27.07.2011 in his presence from Malerkotla to Bathinda.

14. On the other hand, the respondent has taken the plea that she was turned out of her matrimonial home during night on 26.07.2011. Thereafter, she informed her parents, who came next date i.e on 27.07.2011 along with Panchayat, but the appellant-husband refused to keep the respondent as his wife.

15. To rebut the evidence of the appellant-husband, the respondentwife herself stepped into witness box as R.W.5 and has also examined R.W.1 to R.W.4.

16. The Family Court below has returned a finding against the appellant-husband and decided issued No. 1 and 2 together and observed that it stands proved on record that the respondent-wife has been turned out of her matrimonial home by the appellant-husband without any reasonable cause, despite the fact that she was in a family way and her son was suffering from deadly disease. The appellant-husband is an egoistic person and is not even able to cope up with his parents. The appellant-husband is also living separately even from his

parents whereas the respondent-wife was not living in her matrimonial home when the appellant-husband started living separately from his parents. The grounds of cruelty and desertion taken by the appellant-husband do not stand proved on record.

17. Heard learned counsel for the parties at length.

18. This Court on 10.04.2019 issued notice to the respondent and parties were directed to be present in the Court with a direction to the appellant to bring a demand draft of Rs.25,000/- in favour of the respondent-wife towards litigation expenses. Thereafter, matter was referred before the Mediation Centre of this Court. However, as per report of the Mediation Centre, the parties could not reach at any amicably settlement and the matter was sent to this Court. Then, this Court, vide order dated 28.07.2021 called the parties in the Court along with children, so that children can meet with each other. On 18.08.2021, this Court passed the following order:-

"Appellant-Amandeep Goyal is present alongwith his elder son namely Manav Goyal and respondent-Yogesh Rani is present alongwith her younger son-Rooham Goyal and father. Amandeep Goyal has brought gifts for his younger son and Yogesh Rani has brought gifts for her elder son. Both the parties have exchanged gifts which they have brought for their children.

Appellant-Amandeep Goyal has given an offer that if the parties get divorce through mutual consent, he will give Rs.5 lacs to Yogesh Rani as permanent alimony. Yogesh Rani seeks some time to think about this offer.

Adjourned to 23.08.2021.

Presence of the parties is exempted on the next date fixed.

It is being clarified that if both the parties get divorce after filing a petition under Section 13-B of Hindu Marriage Act, right of the children to communicate with each other will not be taken away.

19. Thereafter, on 23.08.2021, learned counsel for the respondent gave a statement that the respondent was not ready for mutual divorce under Section 13-B of the Hindu Marriage Act.

20. In the present case, it is not in dispute that both the appellant and respondent are working as teachers on regular basis in Government departments. Further they are living separately since 27.07.2011. The elder son (Manav Goyal), who is suffering from cancer, is living with appellant-husband and the younger son (Rooham) is staying with the mother. After living separately from her husband for more than 10 years, the respondentwife is still not ready to give divorce to him.

21. The issue for consideration in the present appeal would be whether the relationship of the husband and wife has come to an end and if the respondent-wife is not ready to give mutual divorce to the appellant-husband, whether this act of her, would amount to cruelty towards husband, keeping in view the fact that she is not staying with her husband for the last 10 years and there is no scope that they can cohabit as husband and wife again.

22. Even though before the Family Court, the husband has failed to prove on record with respect to cruelty committed by wife, however, the question for consideration would be that wehther if the wife who is staying away from her husband for the last 10 years, is still not ready to give mutual divorce, then this behaviour in dead marriage or irretrievable broken down marriage, can be considered as act of mental cruelty towards husband.

23. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of *Chandra Kala Trivedi v. Dr. S.P. Trivedi,* [1] 1993 (4) SCC 232 wherein Hon'ble the Supreme Court was

considering a case where marriage was irretrievably broken down and held that in these case, the decree of divorce can be granted where both the parties have levelled such allegations against each other that the marriage appears to be practically dead and the parties cannot live together. Reference at this stage can be made to a judgment of three Judge Bench of Hon'ble the Supreme Court of India in case of *A Jayachandra v. Aneel Kaur,* [2] (2005-1)139 PLR 710 (SC), wherein Hon'ble the Supreme Court was having an occasion to consider the case of divorce on the basis of cruelty including mental cruelty. While examing the pleadings and evidence brought on record, the Court emphasized that the allegation of cruelty is of such nature in which resumption of marriage is not possible, however, referring various decisions, the Court observed that irretrievable breaking down of marraige is not one of statutory grounds on which Court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in longdrawn legal battle, directed in those cases dissolution of marriage. In para 17, it has been observed as under:-

17. Several decisions, as noted above, were cited by learned counsel for the respondent to contend that even if marriage has broken down irretrievably decree of divorce cannot be passed. In all these cases it has been categorically held that in extreme cases the court can direct dissolution of marriage on the ground that the marriage had broken down irretrievably as is clear from para 9 of Shyam Sunder case. The factual position in each of the other cases is also distinguishable. It was held that long absence of physical company cannot be a ground for divorce if the same was on account of the husband's conduct. In Shyam Sunder case it was noted that the husband was leading adulterous life and he cannot take advantage of his wife shunning his company. Though the High Court held by the impugned judgment that the said case was similar, it unfortunately failed to notice the relevant factual difference in the two cases. It is true that irretrievable breaking of marriage is not one of the statutory grounds on which court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in long- drawn legal battle, directed in those cases dissolution of marriage. But as noted in the said cases themselves, those were exceptional cases.

24. Hon'ble the Supreme Court in a case of *Naveen Kohli v. Neetu Kohli,* [3] 2006 (4) SCC 558 was considering a case of irretirvable break down of marriage. In this case, wife living separately for long but did not want divorce by mutual consent only to make life of her husband miserable. Thus, the decree of divorce was granted and held it is a cruel treatment and showed that the marriage had broken irretrievably. In para 62, 67, 68 and it has been observed as under:-

“62. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again.

The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

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67. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

68. In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the Trial Court. In our opinion, wisdom lies in accepting the pragmatic reality of life and

take a decision which would ultimately be conducive in the interest of both the parties.

69. Consequently, we set aside the impugned judgment of the High Court and direct that the marriage between the parties should be dissolved according to the provisions of the Hindu Marriage Act, 1955. In the extra-ordinary facts and circumstances of the case, to resolve the problem in the interest of all concerned, while dissolving the marriage between the parties, we direct the appellant to pay Rs.25,00,000/- (Rupees Twenty five lacs) to the respondent towards permanent maintenance to be paid within eight weeks. This amount would include Rs.5,00,000/- (Rupees five lacs with interest) deposited by the appellant on the direction of the Trial Court. The respondent would be at liberty to withdraw this amount with interest. Therefore, now the appellant would pay only Rs.20,00,000/- (Rupees Twenty lacs) to the respondent within the stipulated period. In case the appellant fails to pay the amount as indicated above within the stipulated period, the direction given by us would be of no avail and the appeal shall stand dismissed. In awarding permanent maintenance we have taken into consideration the financial standing of the appellant.

25. Thus, divorce had been granted to the parties, as the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. Further, not to grant decree of divorce would be disastrous for the parties.

26. The three judges' Bench of Hon'ble the Supreme Court in a case of *Samar Ghosh v. Jaya Ghosh,* [4] (2007-2)146 PLR 618 (SC), passed the decree on the ground of mental cruelty but the concept of irretrievable breakdown of marriage has been discussed in detail referring the 71 st report of the Law Commission of India

27. Hon'ble the Supreme Court in a case of *K. Srinivas Rao v. D.A. Deepa,* [5] 2013 (5) SCC 266 has observed that though irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, however, marriage which is dead for all purposes, cannot be revived by Court's verdict, if parties are not willing since marriage involves human sentiments and emotions and if they have dried up, there is hardly any chance of their springing back to life on account of artificial reunion created by court decree.

28. In the present case, the appellant and the respondent are working as teacher in Punjab Government and are living separately since 27.07.2011 and ever since , the appellant-husband has not made any effort to meet his second child, who was born after the separation and is now in custody of the respondent-wife. At the same time, it has also come on record that when the appelant-husband filed the petition seeking decree of divorce, a petitioner i.e TA No. 496-2013 was filed before this Court by the respondent-wife for transfer of the divorce petition, which was allowed by this Court on 06.04.2015. This order was challenged by the appellanthusband before Hon'ble the Supreme Court by filing SLP (C) No. 15945- 2015 and the same was allowed on 29.08.2016, keeping in view the fact that the appellant-husband is taking care of the child, who is nine years old and is suffering from malignant disease. The case was transferred from Bathinda to Sangrur.

30. This Court thereafter made an attempt to settle the dispute amicably between the parties. The appellant-husband has informed the Court that despite the fact that Manav Goyal is suffering from cancer but he has done exceptionally well in studies by securing 94 per cent marks in 10+2 examination and he is proud of his son. This shows the dediction of the appellant-husband towards his son. However, after hearing the parties at length, this Court feels that the husband wife cannot stay together. The appellant has also made an offer of Rs.5 lacs to Yogesh Rani, if the parties get mutual divorce through mutual consent. However, on 23.08.2021, the Court was informed that the respondent-wife is not ready to give mutual divorce to the appellant-husband. The respondent-wife who is a Government teacher, could use the above money to secure the future of his child.

31. Now, once the respondent-wife who is not staying with the appellant for the last about 10 years and is not ready to give mutual divorce to the appellant-husband, reference at this stage can be made *Naveen Kohli's case* (supra), which was a case of cruelty (physical and mental) where Hon'ble the Supreme Court considered

the concept of irretrievable breakdown of marriage. In this case as well, the parties were living separately for the last 10 years and the wife was not ready to give divorce to the husband. Hon'ble the Supreme Court granted decree of divorce but directed the husband to pay a sum of Rs.25 lacs towards permanent maintenance. In para 58, it has been observed as under:-

"58. The High Court ought to have considered the repercussions, consequences, impact and ramifications of all the criminal and other proceedings initiated by the parties against each other in proper perspective. For illustration, the High Court has mentioned that so far as the publication of the news item is concerned, the status of husband in a registered company was only that of an employee and if any news item is published, in such a situation, it could not, by any stretch of imagination be taken to have lowered the prestige of the husband. In the next para 69 of the judgment that in one of the news item what has been indicated was that in the company, Nikhil Rubber (P) Ltd., the appellant was only a Director along with Mrs. Neelu Kohli whom held 94.5% share of Rs.100/- each in the company. The news item further indicated that Naveen Kohli was acting against the spirit of the Article of the Association of Nikhil Rubber (P) Ltd., had caused immense loss of business and goodwill. He has stealthily removed produce of the company, besides diverted orders of foreign buyers to his proprietorship firm M/s Navneet Elastomers. He had opened bank account with forged signatures of Mrs. Neelu Kohli and fabricated resolution of the Board of Directors of the company. Statutory authority-Companies Act had refused to register documents filed by Mr. Naveen Kolhi and had issued show cause notice. All business associates were cautioned to avoid dealing with him alone. Neither the company nor Mrs. Neelu Kohli shall be liable for the acts of Mr. Naveen Kohli. Despite the aforementioned finding that the news item was intended to caution business associates to avoid dealing with the appellant then to come to this finding in the next para that it will by no stretch of imagination result in mental cruelty is wholly untenable.

32. In the present case, the appellant-husband is looking after his son Manav Goyal since 27.07.2011 and has borne all the expenses incurred upon his son, who is suffering from Cancer. Thus, if the appeal filed by the appellant-husband is dismissed, he will face mental agony with his son, who is ill and requires repeated check ups and treatments from various hospitals. The appellant and the respondent are very sure that they cannot live together as husband and wife. The appellant-husband has shown that he also loves his second son i.e Rooham, as he brought gifts for him on 18.08.2021 and even respondent-wife also brought gifts for Manav Goyal. Both the appellant and the respondent are regular government teachers and are getting good salary and they are bringing up one child each. If the parents are not granted divorce, then both the children namely Manav Goyal and Rooham Goyal will not be able to meet each other in a positive environment. This will further result in cruelty because of the rigid attitude in giving divorce. Further when the appellant and the respondent came to this Court on 18.08.2021, they expressed their love and affection to child, who is not staying with them. The element of marriage which has become dead will result in further loss to both the children. It is a right time if both the children meet with each other in a positive environment as the parents are finally independent. The element of silence between the parties will result into mental cruelty to the children, as both the siblings cannot meet with each other. Mental cruelty will blend with irretrievable and dead marriage is a good ground to grant divorce to the parties.

33. The appeal deserves to be allowed and reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of *Soumitra Kumar Nahar v. Parul Nahar* [6] 2020 PLRonline 5014, decided on 18.02.2020, wherein Hon'ble the Supreme Court was dealing with a case of custody of child under Guardian and Wards Act, 1890. It has been held that while deciding the welfare of child, it is not view of one spouse alone, which has to be taken into consideration. The Courts should decide issued of custody on paramount consideration, which is in best interest of child, who is victim in custody battle. The breakdown of marriage does not signify end of parental responsibility. The child is entitled for love of both parents. In this case, the Court appointed Ms. Veena Ralli as Mediator to explore the possibility of negotiated settlement by mediation. The Court also took the assistance of Psychotherapist (Dr. Anchal Bhagat), who gave report in a sealed cover. The Court felts that the parties and the children need counselling and Dr. Bhagat was requested to ascertain some background facts regarding the relationship of the children with their father and grandparents before

they joined the sole custody of the mother. Exemplary efforts were made to settle the dispute amicably. In para 30, 31, 32, 33, 38 and 39, it has been observed as under:-

"30. It is indisputed that the rights of the child need to be respected as he/she is entitled to the love of both the parents. Even if there is a breakdown of marriage, it does not signify the end of parental responsibility. It is the child who suffers the most in a matrimonial dispute.

31. It is also well settled by the catena of judgments of this Court that while deciding the matters of custody of the child, primary and paramount consideration is always the welfare of the child. If the welfare of the child so demands, then technical objections cannot come in the way. However, while deciding the welfare of the child, it is not the view of one spouse alone which has to be taken into consideration. The Courts should decide the issue of custody on a paramount consideration which is in the best interest of the child who is the victim in the custody battle.

32. At the outset, it may be noticed that the present dispute is nowhere related to the Divorce Petition No. HMA 821 of 2011 which has been filed at the instance of the appellant-husband pending before the competent Court of jurisdiction and indeed may be decided without being influenced by the observations made in the present proceedings independently in accordance with law.

33. So far as the custody of the minor children is concerned, an endeavor was made by the High Court in the first instance to resolve the inter se dispute between the parents keeping in view the paramount interest of the children as they are entitled to the love and affection of both the parents but if the parents are bent upon to lead to a separation or divorce, it is always the children who pay the heaviest price and are the sufferers. If the parents fail to enable themselves to decide their inter se disputes particularly in reference to custody of minor children, the Court, after due scrutiny of the records of the case, reaches to any conclusion that always remain a guess work.

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38. The submission made by the learned counsel for the respondent-wife to put certain additional conditions over the school authorities and obtaining her consent for any educational/recreational trip of the children and the financial status of the appellant-husband which is spoiling the habits and upbringing of the children as they are leaving behind the basic etiquettes of life, there may be some substance in the submission made but that issue will have to be examined or tried in the custody proceedings as and when filed by the concerned party. It may not be advisable for this Court to record any finding in this regard which indeed may not be in the interest of the litigating parties. Hence, we leave it open. If such a grievance is raised before the appropriate forum under the law, certainly it may be looked into and may be decided independently without being influenced by the observations being made by this Court expeditiously in accordance with law.

39. To finally conclude, we would like to observe that the interim arrangement made by this Court regarding the custody/visitation rights of the parties vide order dated 7th September, 2017 and further subsequent orders shall continue until further orders with the liberty to the parties to take steps in filing of a custody/guardianship petition for the minor children before the competent Court of jurisdiction and taking note of the interest of the minor children as a paramount consideration being the sufferers of the matrimonial discord, if such an application is filed by either of the party, that may be decided by the Court independently without being influenced/inhibited by the observations made in the instant proceedings expeditiously in accordance with law. At the same time Divorce Petition HMA No. 821 of 2011 shall be decided expeditiously as possible but in no case later than 31st December, 2020."

34. In the present case, efforts were made firstly to resolve the matrimonial dispute through the process of mediation, which is one of the effective mode of alternative mechanism in resolving the personal dispute but

the mediation failed between the parties. Now, the parents can plan shared parenting so both the children can meet with each other being real brothers and interact with each other.

35. Applying the ratio of the above mentioned judgments to the facts of the present case and keeping in view the extra-ordinary facts and circumstances of the case, the appeal is allowed and judgment dated 10.01.2019 passed by Additional District Judge, Sangrur is set aside and the decree of divorce is granted to the parties. Decree-sheet be prepared accordingly. However, we direct the appellant-husband to make an F.D of Rs.5 lacs in the name of son -Rooham Goyal, to which respondent-wife can be guardian. This exercise shall be completed within a period of 30 days from the date of receipt of certified copy of this order.

Sd/- Archana Puri, J. *R.M.S.* – *Appeal allowed.*

Tags: (2022-1)205 PLR 479, 2022 PLRonline 8054, AMANDEEP GOYAL v. YOGESH RANI, HMA S. 13, Mental cruelty