SMT. GANGA
(CIVIL APPEAL No. 7567 of 2004)

JULY 10, 2008

[ALTAMAS KABIR AND AFTAB ALAM, JJ]

Constitution of India, 1950:

Articles 136 and 142 – Complete justice – Final settlement of matrimonial dispute – Marriage of parties having irretrievably broken down – All efforts of reconciliation having failed – Parties living separately for 14 years – HELD: Since the marriage between the parties is dead for all practical purposes and there is no chance of it being retrieved, continuance of such marriage would itself amount to cruelty – In exercise of powers under Article 142, directed that the marriage of appellant and respondent shall stand dissolved subject to the appellant paying to the respondent a sum of rupees two lakhs by way of permanent alimony besides cost of the appeal – Hindu Marriage Act, 1955 – ss.13(1)(ia) and (ib).

The parties were married on 22.5.1992. A male child was born out of the wedlock on 28.2.1993. On 21.8.1994 the respondent went to her parents and since then never returned to her matrimonial home. The parties took recourse to legal proceedings – the appellant tried to bring the respondent back to her matrimonial home whereas the latter filed a complaint against the appellant and his family members u/s 498-A IPC alleging dowry demand – but neither of them could succeed. Ultimately, the husband filed a matrimonial case u/ss 3(1)(ia) and (ib) of the Hindu Marriage Act, 1955 for dissolution of the marriage on the grounds of cruelty and desertion. The trial court passed a decree of judicial separation. The High Court allowed the appeal of the wife, dismissed the cross appeal of the husband and set aside the judgment and decree of the trial court.

In the instant appeal filed by the husband, it was

A **pleaded for the appellant that having regard to the irretrievable breakdown of the marriage, and the parties living separately for 14 years, the Court should, in exercise of its powers under Article 142 of the Constitution, pass appropriate orders to end the agony of both the parties.**

B **Disposing of the appeal, the Court**

HELD: 1.1 Despite the attempts at reconciliation the Gordian knot could not be untied and clearly the marriage has broken down irretrievably. [para 7] [771-C]

C **1.2 Since the marriage between the parties is dead for all practical purposes and there is no chance of it being retrieved, the continuance of such marriage would itself amount to cruelty and, accordingly, in exercise of powers under Article 142 of the Constitution, it is directed**
D **that the marriage of the appellant and the respondent shall stand dissolved, subject to the appellant paying to the respondent a sum of rupees two lakhs by way of permanent alimony. In addition, the appellant shall also pay the costs of the appeal to the respondent, assessed at**
E **Rs.25,000/-. [para 12] [772-E & F]**

Romesh Chander V. Savitri **(1995) 2 SCC 7;** *Anjana Kishore vs. Puneet Kishore* **(2002) 10 SCC 194;** *Swati Verma vs. Rajan Verma and ors.* **(2004) 1 SCC 123; and** *Durga Prasanna Tripathy vs. Arundhati Tripathy* **(2005) 7 SCC 352 –**
F **relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7567 of 2004

From the Judgment and Order dated 1.11.2003 of the High
G Court of M.P. Bench at Indore in F.A. No. 114/2002

Niraj Sharma, Vikrant Singh, Sadhna Sharma and Amit Singh for the Appellant.

Lily Isabel Thomas, Ashok Panigrahi, Shaju Francis and
H C.P. Sharma for the Respondents.

The Judgment of the Court was delivered by A

ALTAMAS KABIR,J. 1. As far back as on 13.1.1995 two Judges of this Court in the case of Romesh Chander V. Savitri (1995) 2 SCC 7) had occasion to pose the question as to whether a marriage which is otherwise dead emotionally and practically should be continued for name sake. In the instant B appeal, we are also faced with the same question.

2. Marriage between the appellant and the respondent was performed on 22.5.1992 according to Hindu rites and customs. On 21.8.1994 the respondent, for whatever reason, left her C matrimonial home and went back to her parents and the couple have been living separately ever since. Soon thereafter, the parties took recourse to the law when on 30.12.1994 the appellant sent a notice to the respondent asking her to return to her matrimonial home. On 20.10.1995 the respondent lodged a D complaint against the appellant and his family members under Section 498-A of the Indian Penal Code alleging demand of dowry and it is only on 2.2.2003 that they were finally acquitted after a full trial. The appellant also moved the Court of the Sub-Divisional Magistrate for issuance of a search warrant consequent upon which the respondent appeared before the Magis- E trates' Court and agreed to return to the appellant but she did not return as agreed.

3. Ultimately, on 28.9.1998 the appellant filed Matrimonial Case No.383/1998 before the Ninth Additional District Judge, F Indore, (MP), on grounds of cruelty and desertion under Section 13(1)(1a)(1b) of the Hindu Marriage Act for dissolution of the marriage. Despite holding that the respondent had proved his case on grounds of cruelty and desertion, the trial court did not grant a decree for divorce, but thought it appropriate to pass G a decree of judicial separation instead. On appeal preferred by the respondent against the decree of judicial separation passed by the trial court and the cross appeal filed by the appellant seeking dissolution of marriage, the High Court reversed the judgment and decree of the trial court upon holding that it was on H

A account of the conduct of the appellant that the respondent was compelled to leave her matrimonial home. The learned Single Judge of the High Court also held that he was not satisfied that the appellant had been treated with cruelty by the respondent-wife. On such finding the High Court dismissed the appeal filed B by the appellant and his prayer for dissolution of marriage and, on the other hand, allowed the appeal filed by the respondent-wife and set aside the judgment and decree of the trial court.

4. The respondent is in appeal against the said judgment of the High Court.

C

5. Having regard to the finding of the High Court that the respondent had not treated the appellant with cruelty and was, on the other hand, compelled to leave the matrimonial home on account of the conduct of the appellant, a different approach D was taken on behalf of the appellant at the time of hearing of the appeal. It was sought to be urged that even if the appellant had been unable to prove his case of cruelty and desertion as grounds for seeking dissolution of the marriage, having regard to the irretrievable breakdown of the marriage, technicalities should not stand in the way of this Court granting relief to the E appellant in exercise of its power under Article 142 of the Constitution. It was submitted that out of 16 years of marriage, the parties have lived separately for 14 years, most of which has been spent in acrimonious allegations against each other in the litigation embarked upon by both the parties. It was sub-F mitted that there was no possibility of retrieval of the marriage and appropriate orders should be passed to end the agony of both the parties.

6. Since, initially on behalf of the respondent-wife it was G made to appear that she was ready and willing to go back to the appellant, subject to certain terms and conditions, we explored the possibility of an amicable solution, but such an attempt ended in failure on account of the rigid stance taken on behalf of the respondent. On behalf of the wife it was submitted that certain orders had been passed by the Courts below for H

payment of alimony by the appellant to the respondent but that the same had not been complied with. At this stage it may also be mentioned that a male child (Chetan) had been born out of the wedlock on 28.2.1993 and we had hoped that the child would act as a catalyst to an amicable settlement, but even the existence of the child could not bring about a reconciliation between the parties.

7. Since despite the attempts at reconciliation the Gordian Knot could not be untied and clearly the marriage has broken down irretrievably, it was submitted on behalf of both the parties that it would perhaps be to the best interest of the parties to have the marriage tie dissolved with adequate provision by way of permanent alimony for the respondent.

8. It is in this background that we have to consider the appellant's prayer to set aside the judgment of the High Court as also that of the trial court and to grant a decree for dissolution of the marriage between the appellant and the respondents.

9. The prayer made on behalf of the appellant and endorsed by the respondent is neither novel nor new. At the very beginning of this Judgment we had referred to the decision of this Court in the case of Romesh Chander (supra), where it was held that when a marriage is dead emotionally and practically and there is no chance of its being retrieved, the continuance of such a marriage would amount to cruelty. Accordingly, in exercise of powers under Article 142 of the Constitution of India the marriage between the appellant and the respondent was directed to stand dissolved, subject to the condition that the appellant would transfer his house in the name of his wife.

10. The power vested in this Court under Article 142 of the Constitution was also exercised in – i)Anjana Kishore vs. Puneet Kishore, (2002) 10 SCC 194; (ii) Swati Verma vs. Rajan Verma and ors., (2004) 1 SCC 123; and (iii) Durga Prasanna Tripathy vs. Arundhati Tripathy, (2005) 7 SCC 352. Of the three aforesaid cases, in the first two cases orders passed were on Transfer Petitions where ultimately the parties agreed to divorce

A by mutual consent under Section 13-B of the Hindu Marriage Act, 1955. Resorting to the powers reserved to this Court under Article 142, decrees of divorce were granted to put a quietus to all litigations pending between the parties on the ground that their marriages had broken down irretrievably. In the last of the B three cases, while holding that the marriage had broken down irretrievably, this Court affirmed the decree of divorce passed by the Family Court, but directed payment of alimony to the extent of Rs.1,50,000.

11. Having dispassionately considered the materials be- C fore us and the fact that out of 16 years of marriage the appellant and the respondent had been living separately for 14 years, we are also convinced that any further attempt at reconciliation will be futile and it would be in the interest of both the parties to sever the matrimonial ties since the marriage has broken down D irretrievably.

12. In the said circumstances, following the decision of this Court in Romesh Chander's case (supra) we also are of the view that since the marriage between the parties is dead for all practical purposes and there is no chance of it being E retrieved, the continuance of such marriage would itself amount to cruelty, and, accordingly, in exercise of our powers under Article 142 of the Constitution we direct that the marriage of the appellant and the respondent shall stand dissolved, subject to the appellant paying to the respondent a sum of Rupees Two F lakhs by way of permanent alimony. In addition, the appellant shall also pay the costs of this appeal to the respondent, assessed at Rs.25,000/-. The appeal is disposed of accordingly.

R.P. Appeal disposed of.