

(2011) 09 MAD CK 0229**Madras High Court****Case No:** C.M.A. No"s. 1656 and 1657 of 2010 and M.P. No"s. 1 and 1 of 2010

U. Sree APPELLANT

Vs

U. Srinivas RESPONDENT

Date of Decision: Sept. 26, 2011**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 2
- Constitution of India, 1950 - Article 142
- Evidence Act, 1872 - Section 63
- Family Courts Act, 1984 - Section 7
- Hindu Marriage Act, 1955 - Section 10, 13(1), 26, 27, 9

Hon'ble Judges: M. Venugopal, J; Elipe Dharma Rao, J**Bench:** Division Bench**Advocate:** R. Swaminathan, for the Appellant; V. Lakshmi Narayanan, for the Respondent**Final Decision:** Dismissed**Judgement**

M.Venugopal, J.

The Appellant/Wife has preferred these two Civil Miscellaneous Appeals as against the Common Order dated 22.12.2009 in F.C.O.P.Nos.568/1997 and 805/1998 on the file of the Principal Family Court, Chennai.

2. The Appellant/Wife has filed F.C.O.P.No.568 of 1997 [under Section 9 of the Hindu Marriage Act, 1955] on the file of Principal Family Court, Chennai praying for restitution of conjugal rights.

3. The Respondent/Husband has filed F.C.O.P.No.805 of 1998 [under Section 13(1)(i-a), Sections 26 and 27 of the Hindu Marriage Act, 1955, read with Section 7 of the Family Courts Act, 1984] on the file of Principal Family Court, Chennai praying for dissolution of marriage that took place between him and the Appellant/Wife on 27.05.1994 at Thirupathi.

4. Before the trial Court, O.P.Nos.568/1997 and 805/1998 were tried jointly and common evidence was recorded. On the side of the Appellant/Wife, witness P.W.1 was examined and Exs.P.1 to P.14 were marked. On the side of Respondent/Husband, witness R.W.1 was examined and Exs.R.1 to R.11 were marked.

5. The trial Court, on an appreciation of oral and documentary evidence on record and after scrutinising the same, had resultantly dismissed the relief of restitution of conjugal rights in F.C.O.P.No.568 of 1997 filed by the Appellant/Wife without costs and allowed F.C.O.P.No.805 of 1998 filed by the Respondent/Husband, by dissolving the marriage between the parties that took place on 27.05.1994 at Thirupathi.

6. Being dissatisfied against the Common Order dated 22.12.2009 in F.C.O.P.Nos.568/1997 and 805/1998, the Appellant/ Wife had preferred the present Civil Miscellaneous Appeals before this Court as an aggrieved person.

7. Facts in O.P.No.568 of 1997:

(a) The Appellant/Wife in her Petition for restitution of conjugal rights u/s 9 of the Hindu Marriage Act had averred that her marriage with the Respondent/Husband took place on 27.05.1994 in accordance with the customary rites and ceremonies prevalent in Telugu communities living in Andra Pradesh and that the marriage was an arranged one. After marriage, the parties lived together at Maruthi Nilayam, 12-A, Venkateswara Street, Dhanalakshmi Colony, Vadapalani, Chennai ? 600 026 till 03.01.1996, the date on which she was taken by her father-in-law to her parents house. They lived in the aforesaid address along with her husband's parents, married sister with her husband and younger unmarried brother and sister in a joint family after marriage. On 19.11.1994 she was sent to her parents house for medical check up and treatment. Again she was brought back by her mother-in-law on 26.01.1995 from her parents house to Chennai and she lived in Chennai with the Respondent upto 12.03.1995, when she was sent back for delivery to her parents house. The Respondent/Husband visiting the Appellant/Wife on 27.05.1995 to celebrate their first wedding anniversary. Again, the Respondent/Husband visited on 30.05.1995, when she delivered a male child. After delivery, on 13th day, Respondent/Husband came with his family members to the Appellant/Wife's parents house where she was staying after delivery. The Respondent/Husband visited the Appellant in August and September 1995 at her house at Hyderabad. She came back to Chennai on 04.10.1995 after her delivery and from then onwards she was living with the Respondent/Husband till 03.01.1996 together with the child.

(b).The Appellant/Wife was always quite accommodative, adjusting and gave respect to Respondent/Husband's family members, fellow musicians and senior members of her husband's profession. She never detested the visitors nor troubled the nest for any matters. She was taken by her father-in-law on 03.01.1996 to her parents house without her consent and thereafter, the Respondent/Husband had not visited

her. From 03.01.1996, the Respondent/Husband without any reasonable excuse and with a view to leave the matrimonial home, withdrew from the society of the Appellant/Wife. Her parents move to contact the Respondent/Husband and the family members to find a solution had not yielded any fruitful result. Even the common relatives and friends tried to bring about solution, but it ended in vain. Hence, she filed the petition praying for restitution of conjugal rights.

8. Counter Pleas:

(a) The Respondent/Husband, in his counter, had stated that there was a total mental incompatibility between him and the Appellant /Wife. According to him, within a few weeks of marriage, the Appellant /Wife started finding fault with his life style, his daily routine, his likes and dislikes and constantly picked up quarrels on some pretext or other and throw tantrum when she did not had her way. His daily routine began in learning music lessons from his father and the Appellant/ Wife by interrupting them by hurling, abuses and screaming and shouting followed invariably by arguments and quarrels between the Appellant/Wife and the Respondent/Husband. The rehearsals would end abruptly. Occasionally, he would like the Appellant/Wife jointly in paying respects to the senior members of his profession, who either visit him or whom he visit or meet in public. The seeking of blessings from such elders was customary in music circles. But, the Appellant/ Wife started hurling abuses at him on such occasions and walked away from the scene much to his acute embarrassment. The Appellant/Wife behaved in a hard headed, arrogant, merciless, thoughtless and unbalanced manner, devoid of affection or any sense of respect or duty and subjecting the Respondent/Husband to a lot of embarrassment in private as well as in public and gave a beating to his reputation and image all of which constituted mental cruelty. He was conservative by nature and was an introvert who prefers to spend his leisure time quietly in the company of the Appellant/Wife and the child.

(b) The Appellant/Wife called her parents to go over frequently to Madras and threatened him with proceedings under Indian Penal Code. The Appellant's father was an I.A.S. Officer in Vigilance Department in Government of Andhra Pradesh. At the instigation of Appellant/Wife, her father started threatening him that he would use the official machinery at his disposal to initiate several criminal proceedings against him for an alleged offence under the Indian Penal Code and Dowry Prohibition Act, if he had not towed the line of his wife.

(c) The Appellant/Wife with her father's support became abnormally aggressive with the Respondent/Husband and never allowed him to go near her or their son. He was prevented from playing or feeding his son or accompanying her and her son on outdoor trips. Each day passed with the threat of the Appellant/Wife's father looming large over the Respondent/Husband. He was unable to take on the cruel behaviour of the Appellant/Wife and had not stopped her on 03.01.1996, when she expressed her desire to visit her parents for a couple of months. He had not stood in

the way, when she packed her belongings and took away with some of the costly gifts presented to him in India and abroad in appreciation of his music and left the matrimonial home on 03.01.1996. Fearing for the physical safety of the Appellant/Wife and his child, the Respondent /Husband requested his father to escort the Appellant/Wife and the son to Hyderabad and entrusted both of them to the care and custody of her parents. Even while at her parents house in Andhra Pradesh, the Appellant/Wife through remote control continued to indulge in every sort of harassment and mental cruelty on the Respondent/Husband by threatening him through her father and other relatives and friends who began spreading rumours in India and abroad on his fidelity and character and besmirched his hard earned reputation.

(d) The Appellant/Wife filed a Petition u/s 9 of the Hindu Marriage Act, 1955 to forestall the proceedings in India initiated by the Respondent/Husband in O.P.No.208 of 1997 u/s 10 of the Hindu Marriage Act, 1955 for judicial separation from him. The present petition u/s 9 of the Hindu Marriage Act was filed on 21.04.1997 and a counter in O.P.No.208 of 1997 was filed on by the Appellant/Wife.

(e) The averments made by the Appellant/Wife in the counter to O.P.No.208 of 1997 that she was ready and willing to join the Respondent/Husband, was made for the sake of making an averment. Since the Respondent/Husband was subjected to mental cruelty by harassing her as narrated by him in O.P.No.208 of 1997 as well as in the present counter, no decree can be passed forcing either of the parties to live with the other in such attitude of mind.

9. Factual Matrix in O.P.No.805 of 1998 (filed by the Respondent /Husband):

(a) The Respondent/Husband in his petition filed u/s 13(1)(1-a), Sections 26 and 27 of the Hindu Marriage Act read with Section 7 of the Family Courts Act, 1984 had averred that the marriage between him and the Appellant/Wife was solemnised at Thirupathi on 27.05.1994 in accordance with customary rites and ceremonies prevalent in Telugu Communities living in Andhra Pradesh. According to him, the marriage was consummated at Chennai sometime thereafter. As a result of wedlock, a son was born to him at Vijayawada on 30.05.1995.

(b) It is the case of the Respondent/Husband that serene atmosphere is a sine qua non for the pursuit of music, which has become a rare entity. Further, the time and concentration required for sadhana could not be compromised at the alter of other interests. He had given up formal education and devoted himself totally to the pursuit of music in the belief that it was a form of "Bhakthi" a faith and commitment to something he loves.

(c) Each day the Respondent/Husband's life begins with "Sadhana and Sadhakam". His daily practices helped increase his repertoire under the guidance of his father who was his guru since childhood and to whom he looked upon for his sadhana, in the true guru sishya relationship that existed between them. The details were

invariably followed by a steady stream of visitors to the Respondent/ Husband's house. He exchanged his views and ideas on the nuances of music with the fellow musicians. Senior members of his profession is impart knowledge and share their own experiences with him. Also, his other friends and members of the public will come over to invite him to participate in musical or cultural programmes.

(d) Immediately, on arrival to the matrimonial house, the Appellant/Wife started finding fault with his lifestyle, his daily routine and his likes and dislikes, and also constantly picked up quarrel with him on some pretext or other. According to him, the Appellant/Wife's grand-father has been a famous violinist and she knew that his father has no guru but only claimed to be one. The early morning music sessions between him and his father were interrupted by the Appellant/Wife's abuses hurled at him for considering his father as his guru. This culminate in arguments and quarrels between the parties and the sadhakams would end abruptly with the Appellant/Wife striking discordant notes in his mind and spoiled the surrounding atmosphere.

(e) The Respondent/Husband also averred that he occasionally asked the Appellant/Wife to join with him in offering respects to the senior members of his profession who either visit him or when he visits or meets in public. In music circles, seeking the blessings from elders was a customary one. However, the Appellant/Wife turned stony glares at him on occasions and walked from the scene much to his acute embarrassment. The hard headed, arrogant, merciless, thoughtless and unbalanced behaviour of the Appellant/Wife, devoid of any affection or a sense of respect or duty put him in a very unenviable position, giving a beating to his reputation and public image. If he refused to sail along with the Appellant/Wife, she went berserk and flung things at him.

(f) The Appellant/Wife solely started inviting her parents to go over frequently to Madras and threaten him with proceedings under the Indian Penal Code. At the instigation of the Appellant/Wife, his father-in-law started threatening him that he would use the official machinery at his disposal to initiate several criminal proceedings against him for alleged offences under the Indian Penal Code and Dowry Prohibition Act, if he was not towing the line of the Appellant/ Wife, change his guru and his conservative life style. The Appellant/ Wife's father was an officer in the Vigilance Department, Government of Andhra Pradesh and encouraged by his support, the Appellant/Wife was abnormally aggressive in a relationship with him and never allowed him to come anywhere near the Appellant/Wife or their son. He was deprived of his conjugal rights and also physically prevented from playing with or feeding his son or accompanying the Appellant/ Wife and son on outdoor trips. He started realising gradually that the Appellant/Wife's want of civil attention of his needs, her petulance of manners, rudeness of language and outbursts of temper were not ordinary wear and tear of married life to be suffered in silence. The outbursts of temper made by the Appellant/Wife with its degree, frequency and

regularity became a menace to the peace and well being of the petitioner, affecting his career as a musician, as also affecting his mental and physical and emotional well being.

(g) Inspite of many sacrifices and adjustments made by him the Appellant/Wife adamantly refused to adapt herself to the Guru Sishya Parampara Pani way of life in the house of a traditional performing musician. He was not stopped the Appellant/Wife on 03.01.1996 when she decided to spend a couple of months in her parents house, she packed with her belongings viz., the ancestral jewellery presented to her by her mother-in-law at the time of their marriage and left the matrimonial home. He remained as a mute spectator when she took away with her some of the costly and cherished gifts and mementoes presented to him by connoisseurs of his music in India and abroad. He requested his father to escort his wife and their son to Hyderabad and entrust both of them to the care of his wife's parents.

(h) The Respondent/Husband filed O.P.No.208 of 1997 on the file of the Principal Judge, Family Court seeking the relief of judicial separation. But the Appellant/Wife filed O.P.No.568 of 1997 praying for restitution of conjugal rights and contested the O.P.No.208 of 1997 filed by him.

(i) In the counter statement to O.P.No.208 of 1997, the Appellant/Wife stated that she was ready and willing to join him and these averments were made with no intention of pursuing the matter in real earnest. She filed applications before the Hon'ble Supreme Court of India seeking transfer of the matrimonial proceedings pending before the Family Court, Chennai to the Courts in Hyderabad. After the dismissal of the applications for transfer before the Hon'ble Supreme Court of India, the Appellant/Wife was started humiliating him in public by levelling baseless, false and scandalous allegations and charges to the effect that he was indulging in sexy conversations or having illicit affairs with his lady fans. These accusations were made by the Appellant/Wife during the course of counselling proceedings in the chambers of the trial Court as well as before the Lok Adalat. The counsellors because of the reprehensible conduct of the Appellant/Wife terminated the session after one sitting based on the reason that a reconciliation between the parties was an impossibility.

(j) It is the case of the Respondent/Husband that the Appellant / Wife went to the extent of communicating to his common friends and relatives that she would derive the utmost pleasure he would put behind bars if only for a day as in the case of Dr.Ambadi and his family. She expected to succeed in her plans through her petition in O.P.No.568 of 1997 for restitution of conjugal rights she further stated that once the petition was allowed, she proposed to return to his house for a short while only to shout for help alleging dowry harassment. Moreover, the Appellant/Wife stated that her husband entered the city of Hyderabad for giving music concerts, she would with the help of her parents and his henchmen kidnap him for life. When the

news of these threats reached him, he started travelling to Hyderabad and returned in fear, humiliation and shame amidst private security against the threats posed by his wife. He also contemplated simultaneously initiating divorce proceedings. He was awarded with the Padmashree title in recognition of the contributions of the music.

(k) The Appellant/Wife filed O.P.No.86 of 1998 and I.A.No.141 of 1998 in O.P.No.86 of 1998 before the Family Court at Hyderabad for maintenance and separate residence under the Hindu Adoption and Maintenance Act, 1956, during the pendency of matrimonial proceedings in Chennai Courts and after the dismissal of her transfer applications before the Supreme Court.

(l) The Appellant/Wife did not bring any kind of Shridhana, be it jewellery or anything else to the matrimonial home. However, in January 1996 when she left for her home at Hyderabad, she took away with her all the following items of jewellery which formed part of the Shridhana of his mother and which were gifted to her by his parents at the time of her marriage.

	Description of the jewel	Approximate weight in grams
1	1 Gold Oddiyam	144
2	1 Gold Haaram	80
3	1 Gold chain for Mangala Sutra	40
4	1 Gold chain with black beads	36
	2 Gold bangles studded with	
5	Semi Precious stones	24
6	6 Gold Bangles plain	48
7	1 Gold Strap for wrist watch	16
8	4 Gold ear studs	32

(m) Apart from the above, the Appellant/Wife was in possession of the following gold ornaments, silver ware and cash gifts aggregating to a sum of Rs.10,000/-presented to him by his parents and his family friends on the occasion of the child's first birthday and the said details are hereunder:

	Description of the jewel	Approximate weight in grams
1	1 Gold chain with dollar	24
2	4 Gold chain plain	32
3	1 Gold Bracelet	8

4	4 Gold rings	8
5	1 Silver Kancham	850
6	8 Silver tumblers	1200
7	6 Silver cups	600

(n) The intense hatred and animosity displayed by the Appellant/ Wife towards him, followed by her cruel treatment, was caused so much mental anguish and pain that it is not possible for him to live with her any more. The wounds inflicted upon him by the Appellant/ Wife will never heal and even if they did, the scars would be for there ever. As a matter of fact, any rapprochement between the parties was therefore in the realm of impossibility. The marriage was failed totally. A lonely house devoid of people other than the mother would rob his son of the warmth and security guaranteed in a large family and could lead to mental aberrations. His little more than 3 years child was at the right age when such change of surroundings would not also have adverse psychological impact on him etc. If the custody of the child was made over to him rather than few years later, it would certainly be in the interests of the child. He was vitally interested in the future of his minor son. His father trained him. He would like to continue to Guru-Sishya lineage in the family by becoming his son's guru. The welfare of the child was of paramount importance to him and therefore, he may be given the custody and guardianship of his minor son.

10. Counter Averments:

(a) The Appellant/Wife denied that she went to her parents house on 03.01.1996 and instead she was sent back by the Respondent/ Husband and his parents-in-law. She was also from a music family and knew the importance of music. The devotion and dedication to a profession was very important. At the same time, dedication to build up a strong matrimonial home was equally necessary for peace, happiness and bliss. She was a Veena player and aware of the efficacy and efficiency of music. It was because of her sacrifice, devotion and dedication towards the Respondent/Husband, he started touching the heights of music, gaining reputation and also popularity apart from increase in financial status. The Respondent/Husband was negligent and careless in performing his duties as husband. Hence, he was no manner of right to take the plea of cruelty nor he was entitled to seek any relief on the basis of cruelty.

(b) The Respondent/Husband used to give public performances only by charging huge amounts which ranging from Rs.30,000/-to Rs.40,000/-per show depending upon the venue of performance. Her family background and their lifestyle daily routine was one and the same which the Respondent/Husband and his family members possess. The allegations that early morning music sessions were interrupted by her abuses, for his father to be accepted as guru or allegations with regard to arguments, quarrels etc. are all denied by her. He never cared to provide love and affection either to her or to the child. She was always ready and willing to

join the company of the Respondent/Husband and to preserve the matrimonial home from being wretched. Her husband was directly under the strong influence of his parents, sister and brother in law.

(c) The Appellant/Wife was married at the age of 18 years to the Respondent/Husband and blessed with the son at the age of 20 years. She was no moral support in her husband's family and the husband's family members used to harass her for one reason or other. Her husband and his parents sent her to her parents house on the pretext of temporary short visit and it was only on the basis of her husband's assurance that he would take her back she would leave the matrimonial home. However, he failed to bring her back from her parents house. He filed O.P.No.208 of 1997 before the Family Court. Her father was always keen in her welfare and her husband. Her husband having gained reputation and name in the field of music, his rich parents were making attempts to have an alliance with her husband and also offering huge amounts of dowry to which the parents of her husband, sister and brother-in-law are playing a very key role in instigating him to go for a second marriage and for such purposes, the parents, sister and brother-in-law of her husband were not only influencing him but also putting so many ways of pressure to attain their goal. Her husband trapped under the influence, was compelled to file the present petition and only for this reason, had narrated the events for the purpose of constituting the grounds for divorce on the basis of cruelty.

(d) Her husband's family members were already threatened her by dire consequences if he reached Chennai and in those circumstances, it was difficult to prosecute the pending case before the Chennai Court. Moreover, she was compelled to file the transfer petition before the Hon'ble Supreme Court, as it was very difficult to conduct the case in Chennai and to produce witnesses and to meet the travelling expenses, lodging charges etc.

(e) The Appellant/Wife never indulged in scandalous accusations during counselling proceedings either before the Court or before the Lok Adalat. The conciliation proceedings terminated the case of her husband's refusal to accept the restitution of conjugal rights. She was in fact proud of her husband's accomplishments and also when he was awarded Padmasri by the Government of India. She exercised her rights rightfully in filing the petition for maintenance at Hyderabad, since the cause of action arose at Hyderabad Court, which had also got the jurisdiction to entertain the petition. Being a stranger to Chennai city, except to her husband and his family, it was difficult for her to stay alone in Chennai. Hence, she filed a petition before the Competent Court having the concurrent jurisdiction.

(f) According to the Appellant/Wife, whatever type of gifts, the wife got at the time of marriage either from her parents or relatives or from her in-laws side or their relatives it became the property of the wife and it was her shridhana property. The Respondent/Husband was only the custodian of the shridhana property. Shridhana

property absolutely belongs to her. It was false to state that the jewellery given to her by her husband's mother at the time of marriage belongs to her mother-in-law. Even otherwise, a shridhana property could not be returned nor her husband can claim the relief. The Appellant/Wife was capable of providing all love, affection, care, security and protection to the child, as the attachment between the child and herself is so strong, but the Respondent/Husband was careless and negligent insofar as the care, custody and welfare of the child. The child was attending to the school in which he was admitted and she had taken proper care of the child. Hence, the Respondent/Husband could not claim custody of the child and the relief of custody of the child was unsustainable.

(g) The Appellant/Wife never caused any cruelty to the Respondent/Husband at any time nor caused any embarrassing situation at any point of time. She is an obedient wife and always respecting not only the sentiments of her husband, but also respecting the family members and very dutiful to her husband. The grounds mentioned in the divorce petition were vexatious, frivolous and bald one, therefore, the Respondent/Husband was not entitled to seek any relief.

11. In the present case, useful reference could be made to the evidence of P.W.1 (Appellant/Wife) and the evidence of R.W.1 (Respondent/ Husband) for proper and fuller appreciation of the case.

12. Evidence of P.W.1 (Wife):

(a) P.W.1, in her Proof Affidavit, averred that her first contact with the Respondent/Husband was on 20.11.1986 when he was given a Mandolin recital in connection with "Nada Sudharanva Sanmana Mahorchavam" of her grand-father Annavarpu Ramaswamy Garu, a renowned Violin Vidwan, who attained international fame. Further, she was attending her husband's Mandolin concerts in Hyderabad from her 7th class student days onwards and she adored his concerts. Since then, they liked each other because of the music bond between their families.

(b) It is the further evidence of P.W.1 that before their marriage, both the families were visiting each other and moving very closely and her husband, only after seeing her dedication and devotion towards music and their music "Parambara" and also the like-minded nature, married her. Further, the Betrothal ceremony was celebrated on 18.02.1993 at Hyderabad. The marriage between herself and the Respondent/Husband took place on 27.05.1994 at Thirumala, Andhra Pradesh, as per Hindu Customary rites and ceremonies prevalent in Telugu Communities living in Andhra Pradesh. Within few months of marriage, she conceived and on 12.03.1995 she was sent to her parents house for delivery. Her husband visited them for the first wedding anniversary on 27.05.1995. As a result of wedlock, a male child was born on 30.05.1995 and her husband visited at Hyderabad to see the child and the child was named as "Swaminath Sai Krishna". After 13 days of the birth of her child, her husband with his parents came and saw the child. Again, in August

and September 1995 he visited them at Hyderabad.

(c) The evidence of P.W.1 was to the effect that she always respected Guru-Sishya bond between her husband and his father and at no time criticised the Bond. Added further, P.W.1, in her evidence, deposed that she knew that it was a sin to bring disrespect to Guru and ending "Sadhakams" and further, she learnt Veena from her mother only on Guru-Sishya bond. Moreover, she was quite familiar and aware of the life style and daily routine of the Musicians at home. The "Sadhana" paying respect to elders etc. were all part of the Hindu culture, especially those from the field of music and therefore, every lover of music also follows the same system.

(d) Continuing further, P.W.1 stated that her husband could not totally avoid the role of a husband, as though he was wedded only to music and further that the concentration required for "Sadhana" could not be at the sacrifice of other interests viz., his marriage life. As a matter of fact, one of the reasons for his reaching the heights in music field was her devotion to her husband, her maximum help and co-operation.

(e) According to P.W.1, her parents were at Hyderabad in Andhra Pradesh and her father was a Government Servant and he could not often get leave to proceed to Madras to give threats to his son-in-law and also that she was the only daughter of her parents. Indeed, all her family members and her husband's parents and his family members enjoyed her husband playing with their son. There was no necessity for her to humiliate her husband at any time levelling scandalous allegations like her husband indulging in sexy conversations or having illicit affairs with his lady fans.

(f) P.W.1 proceeds to state, in her evidence, that she did not know who Ambadi was and what criminal offence he committed. She did not dream of cruel acts happening to her beloved husband. When her husband neglected to maintain her and the child, she sought the legal remedy of filing O.P.No.86 of 1998 for maintenance against her husband in Hyderabad Court. For want of jurisdiction, on technical grounds, the petition was returned from the Court at Hyderabad, which could not be termed as an act of cruelty. As a dutiful, devoted Hindu wife, she was anxious, ready and willing to live with her husband and lead a happy married life for ever. Her husband could not be permitted under law to divorce her at his whims and fancies, to suit his convenience purpose on the alleged flimsy acts of cruelty.

(g) P.W.1 deposed that she fully believed her husband and went to Hyderabad with the tender child and to her utter surprise and inspite of repeated requests, her husband (Respondent) had not taken care to come and take her back to the matrimonial home at Chennai. Also, she received summons in O.P.No.208 of 1997 on the file of the Family Court, Chennai filed by her husband praying for judicial separation on the very same false grounds now set up against her. Since her husband did not take steps to take her back as promised, she filed O.P.No.568 of 1997 seeking the relief of restitution of conjugal rights.

(h) The Respondent/Wife was taken to her parents house at Hyderabad by her father-in-law with a promise by her husband that he would come to Hyderabad and take her back after Sankaranthi (Pongal) festival and that there was no necessity to take any jewel except Mangalya Suthra, she was wearing. At the time of marriage, her parents presented her 40 Thulams of Gold Jewellery, 2 kilograms of Silver articles, 12 costly silk Sarees and other articles for marriage. All the jewels listed in the petition, costly sarees and other valuables and gifts were given at the time of her marriage are in the custody of her husband and his parents at the matrimonial home and not with her and that her husband was bound to return the jewels and other items to her.

(i) In her evidence, the Appellant/Wife as P.W.1 deposed that the Respondent/Husband was only interested in his Mandolin music profession and due to the number of programmes and different places, both in India and through out the world due to very very busy schedule, he hardly stayed at home and therefore, it was misnomer to state that he would take care of his son. Even the past conduct of the Respondent/Husband towards his son, his status as a person fully devoted only to Carnatic music and had not cared for his wife and son. Also, his busy schedule through out the world and other circumstance would speak volumes of the fact that her husband was only an unfit person to protect the interests of his son. She needed the wants, likes and dislikes of her son, she took care of his education, dress, medical care etc. and she was the fit and proper person to continue to have the custody of her son. He was studying in 7th standard, standing first in the class and secured many prizes in education and extra curricular activities due to her untiring efforts. There was no justification to put her son in hell from heaven. Further, the Respondent/Husband had to pay arrears of maintenance amounting to Rs.69,000/-from July 2005 to May 2007 at the rate of Rs.3,000/-per month.

(j).P.W.1 (in her cross examination) deposed that to the astiyapoorthi function of her grand-father the Respondent/Husband during the year 1986 gave the Mandolin performance and that she did not treat her husband cruelly at any time and that she had not taken the articles when she left the matrimonial home.

(k) It is the further evidence of P.W.1 that in Ex.R.2-Xerox copy of the petition in O.P.No.86 of 1998, in paragraph 5, she stated that her husband left her company from living together and that he treated her cruelly. She further stated, in Ex.R.3-Certified copy of petition O.P.No.86 of 1998 and in her cross examination, that she was treated cruelly by her husband and the family and it was also correct to state that she had stated, in her cross examination, at page 5, that her husband would not talk more and even though at the time when she left Chennai, at that time there was good relationship and every now and then, he used to behave like the Sadist and also that he has treated her cruelly, mentally and further, her husband was a Spectator for her crying, but she never informed about this to her father-in-law and mother-in-law because she was afraid of them. Subsequently,

while deposing, she stated that what she stated in her cross examination in that case were not true.

(l) P.W.1, in her cross examination, also stated that when she came from Vadapalani, Chennai on 03.01.1996 and after coming to her parents house till date her husband had not come to her house and that she was residing with her parents. She also categorically denied that she scolded her mother-in-law in filthy language.

(m) Apart from the above, it is the evidence of P.W.1 that the Telugu Letter dated 18.10.1995 and later translated, was not written by her and to the summons issued to her father to produce the letter, her father stated that he does not remember to have received the same.

(n) Also, it is her evidence that her husband had no avocation except playing the Mandolin instrument and for 5 or 6 days her husband used to go out side for playing Mandolin and would also go for playing Violin for the whole year.

13. Evidence in R.W.1 (Husband):

(a) R.W.1, in his evidence, stated that his wife (P.W.1) started finding fault with even the "Guru-Sishya" relationship that existed between him and his father, who was also a Mandolin Artist and the morning practice session between himself and his father were interrupted by his wife, who used to hurl abuses for considering the father as Guru resulting in quarrels and abrupt ending of the practice sessions. Further, his wife cultivated the habit of interfering in the middle of the practice demanding him to carry out or look after the trivial matters.

(b) It is the evidence of R.W.1 that his father-in-law, (officer of the Vigilance Department, Government of India, Andhra Pradesh) also at the instigation of his wife started threatening him that he would use his official machinery to initiate criminal proceedings against him under the Indian Penal Code and the Dowry Prohibition Act. Moreover, she became aggressive and never allowed him to come either near her or his son thus deprived of his conjugal rights and the rights to be with his son. She further harassed him in public by levelling baseless, false, scandalous allegations and charges that he was indulging in sexy conversations/having illicit affairs with lady fans.

(c) The evidence of R.W.1 is to the effect that the Appellant/Wife left the company on 03.01.1996 and she was not interested in keeping the marriage bond intact and wanted to put an end by seeking divorce from him as evidenced by the photocopy of letter Ex.R.8 dated 18.10.1995. In the said letter, she made unpleasant comments about the conduct of other family members which resulted in mental agony and the contents of the letter amount to acts of cruelties.

(d) Further, it is the evidence of R.W.1 that the evidence given by the Appellant/Wife in O.P.No.86 of 1998 before the Family Court, Hyderabad was mutually destructive of the stand taken by her insofar as the acts of cruelty raised by him in his petition

for divorce. There was total mental incompatibility between him and the Appellant/Wife leading to irretrievable breakdown of marriage. Moreover, even during the Appellant/Wife's staying at the matrimonial home, he was deprived of the marital happiness. She took away with her all the Jewellery items which formed part of shridhana on his mother and which were gifted to her by his parents at the time of marriage (as already mentioned in the Petition in O.P.No.805 of 1998).

(e) Even when a meeting with the Appellant/Wife and her family members was arranged at Hyderabad in the presence of J.Venugopal Rao, retired District Judge, she refused to join him and in the Mediation, she admitted her misdeeds and expressed regret and on the advise of the Mediators, she and her parents expressed regret and has given an assurance that she would behave properly and expressed her readiness and willingness to join his company, but has not done so.

(f) In his evidence, R.W.1 added that a notice has been issued to the Appellant/Wife on 01.03.2000 as per Order XII Rule 2 of CPC calling upon her to admit within 15 days from the date of service of that notice, the fact of writing the letter dated 18.10.1995 to her parents residing at Hyderabad, enclosing a photocopy of the same. For that notice, no reply was received by him.

(g) R.W.1, in his evidence, stated that his wife often asked him to take her to see the Chennai around and the news item was come to the effect that Dr.Ammarini was sent to jail for dowry harassment and based on that his wife informed him that she will sent him to prison and his father-in-law's brother Sathiyarayanan, Vijayawada, was served in Police Department, who threatened him. But, he had not given any police complaint and further that he went to Hyderabad on numerous occasions for giving performances and even after he was threatened during January 1997, he went to Hyderabad on numerous occasions for the purpose of giving performances.

(h) R.W.1, in his cross examination, deposed that it was not correct to state that R.8-Letter was not written by the Appellant/Wife and after 03.01.1996 he could not see his child.

14. The Point that arises for consideration in C.M.A.No.1656 of 2010 is:

Whether the trial Court is correct in dismissing the restitution of conjugal rights petition in F.C.O.P.No.568 of 1997 dated 22.12.2009?

The Point that arises for consideration in C.M.A.No.1657 of 2010 is:

Whether the trial Court's Order in F.C.O.P.No.805 of 1998 granting the relief of Divorce dated 22.12.2009 is a valid and justifiable one in the eye of law?

The Contentions, Discussions and Findings on Points in both CMAs:

15. The Learned Counsel for the Appellant/Wife urges before this Court that the trial Court had passed the impugned common order in favour of the

Respondent/Husband on assumptions and presumptions.

16. It is the contention of the Learned Counsel for the Appellant/ Wife that the Appellant/Wife inspite of all humiliations and hardships, she suffered in the hands of family members of the Respondent/ Husband had never shown any dissent and withstood the same because of her love for the Respondent/Husband and also with a view to lead a peaceful life with the Husband. But, these were not appreciated by the trial Court in a proper perspective which had occasioned in an erroneous order being passed against the Appellant/ Wife.

17. According to the Learned Counsel for the Appellant/Wife, the Appellant took initiatives by contacting the Respondent/Husband and his family members personally through common friends and relatives. But, he did not bring any solution and finally approached the trial Court for the relief of restitution of conjugal rights. But, the trial Court committed an error in coming to the wrong conclusion that the Appellant/Wife had not taken any steps for reunion and deserted the Respondent/Husband for the past 13 years.

18. Advancing his arguments, it is the submission of the Learned Counsel for the Appellant/Wife that the Respondent/Husband drew the Appellant/Wife out of the matrimonial home with oblique motives and intention. But the trial Court failed to appreciate the same.

19. Proceeding further, the Learned Counsel for the Appellant/ Wife contends that the Respondent/Husband left the Appellant/Wife in her parents place on 03.01.2006 for no reason and had not even care to take back the Appellant and the child to the matrimonial home and instead of filed O.P.No.208 of 1997 before the Principal Family Court, Chennai seeking the relief of judicial separation.

20. Expiating his submissions, the Learned Counsel for the Appellant/Wife raises a legal plea that the trial Court erroneously placed reliance on Ex.R.8-Xerox Copy of Letter dated 18.10.1995 [written by the Appellant/Wife to her parents in Telugu] and in fact, in law, marking of a xerox copy of the Letter Ex.R.8, in the absence of its original, was against law.

21. The Learned Counsel for the Appellant/Wife projects an argument that the trial Court's basis in relying upon Ex.R.8-Xerox Copy of Letter and granting divorce to the Respondent/Husband was really an unacceptable one.

22. That apart, the Learned Counsel for the Appellant/Wife submits that the Appellant/Wife hailed from a musical family and was quite conversant with playing of classical instrument Veena and in fact, both the Appellant/Wife and the Respondent/Husband were made for each other and they could lead a normal and happy life. But, these vital facts were not taken into account by the trial Court.

23. Yet another submission of the Learned Counsel for the Appellant/Wife is that there were no proper pleadings with regard to cruelty and no case was made out by

the Respondent/Husband for the relief of divorce and only with a view to get rid of the Appellant/Wife, the Respondent/Husband had filed the Original Petition with false allegations.

24. It is the stand of the Appellant/Wife that the trial Court had erred in not taking into consideration the important documents filed on her side and also failed to pass a reasoned order and also not discussed the facts as stated by the Appellant/Wife in her pleadings.

25. It is the case of the Appellant/Wife that the Respondent/ Husband had not denied the facts as stated by Appellant/Wife amounting to admission and based on admission, the trial Court should have allowed the petition filed by the Appellant/Wife praying for restitution of conjugal rights and consequently should have dismissed the petition filed by the Respondent/Husband praying for the relief of divorce.

26. In conclusion, the Learned Counsel for the Appellant/Wife contends that the trial Court had committed an error in granting permanent alimony of Rs.5,00,000/-each to the Appellant/Wife and her son.

27. In response, the Learned Counsel for the Respondent/ Husband submits that the trial Court had considered the entire oral and documentary evidence available on record in a proper perspective and had come to a fair, just and correct conclusion in dismissing the O.P. filed by the Appellant/Wife praying for the relief of restitution of conjugal rights and in allowing O.P. filed by the Respondent/Husband seeking the relief of divorce.

28. The Learned Counsel for the Respondent/Husband cites the decision in Smt. Shanti Devi Vs. Raghav Prakash, at paragraph 32, wherein it is held as follows:

32. In the result, this appeal is partly allowed and the cross-objections filed by the respondent are dismissed. The impugned judgment and decree dt. the 17th Dec., 1981, passed by the District Judge, Jaipur, District Jaipur so far as it relates to the passing of decree of divorce u/s 13(1)(1a) of the Hindu Marriage Act, 1955, against the appellant, is upheld. So far as it relates to the grant of permanent alimony in favour of the wife-appellant, the impugned judgment and decree is modified and it is directed that the amount of maintenance and permanent alimony would be Rs. 350/- (Rupees three hundred fifty) per month from today. This amount would be paid by the husband Raghav Prakash to Shanti Devi directly by demand draft every month in her favour and every month this would be sent to her at the address care of her father where she is living unless the same is changed. This amount would be payable till Shanti Devi conducts any remarriage. In addition to the above amount every month, the respondent Raghav Prakash would pay Rs. 5,000/- as lump sum to Smt. Shanti Devi within one month from today by a bank draft in the name of Shanti Devi and, this bank draft would be deposited by Raghav Prakash in the name of Shanti Devi at a scheduled bank having branch at Bassi where Shanti Devi is residing

by opening an appropriate account. Then this amount of Rs. 5,000/-would be kept in a fixed deposit by the bank for 6 years, to be renewed after 6 years and the interest would be paid to Shanti Devi only. The amount as a whole would be paid to Smt, Shanti Devi after obtaining the orders of the trial Court in case Shanti wanted to withdraw it finally.

29. A Petition praying for Restitution of Conjugal Rights is to be based on the withdrawal of the society of the Petitioner by the Respondent without any reasonable or justifiable cause. Admittedly, the terms "reasonable excuse" have not been defined under the Hindu Marriage Act, 1955. If the Petitioner is guilty of misconduct, the Respondent has a reasonable excuse to withdraw from the society of the Petitioner and that the petition may be dismissed as per the decision in Anna Saheb V. Tarabai, [AIR 1970 Ministry of Personnel 36 (DB)]. The aspect of "reasonable excuse" is a question of fact and each case is to be considered independently with reference to the facts and circumstances as per the decision in Krishnamurthy V. Symanthakamani [ILR (1977) 1 Kant 246].

30. In a Petition u/s 9 of the Hindu Marriage Act, the Court has to determine in case of dispute whether the relationship of husband and wife exists between the parties and then to proceed to find out if the case is fit for granting a decree of restitution of conjugal rights as per the decision in Gurdial Kaur Vs. Mukand Singh . A Court of Law has to the discretion based on the facts and circumstances of a given case to pass a decree for restitution of conjugal rights. The said discretion, however, must be exercised with caution and after due deliberation.

31. As a matter of fact, in view of explanation to Section 9 of the Hindu Marriage Act, the early onus is on the Petitioner to prove the pleading in a petition u/s 9 of the Act. As per Section 9 of the Act, the Petitioner will have to establish (a) that the Respondent has withdrawn from the society of himself/herself (b) that such withdrawal has been made without reasonable excuse. The term "excuse" is something more than a mere whim, fad or brain-wave of the Respondent. Proving the aforesaid two conditions in Section 9 of the Act squarely falls on the Petitioner. The Petitioner has to succeed on the strength of his/her own case. The object of a decree for restitution of conjugal rights is to compel through judicial process and unwilling party to have cohabitation.

32. According to Hindu Law, marriage is a holy union for the performance of religious duties. It is not a contract. It is a Sanskara or Sacrament. It is the last of the ten sacraments enjoined by the Hindu religion for purifying the body from inherited taint etc. as per the decision Joyita Saga V. Rajesh Kumar Pandey [AIR 2000 Cal 109 (DB)].

33. Indeed, the wording of Section 9(1) of the Hindu Marriage Act clearly point out that even if the ingredients mentioned in the provision are fulfilled, yet, it is the discretion of a Court of Law whether or not to pass a decree for restitution of

conjugal rights.

34. The expression u/s 9 of the Hindu Marriage Act "withdrawn from the society of the other spouse" is similar in its connotation and legal effect with the term "desertion" as per Section 13(1)(i-b) of the Act. The term "restitution of conjugal rights" in ordinary sense mean restoration of conjugal rights which have been enjoyed by the parties earlier. The remedy mentioned in Section 9 of the Hindu Marriage Act is something more than mere reinstatement of something which was already enjoyed, and it would mean compelling one of the spouses to fulfil the matrimonial obligations which arose because of the marital bond.

35. Interestingly, in the case of restitution of conjugal rights as per Section 9 of the Hindu Marriage Act, the term "withdrawal from the society of the other" is employed. But, in the case of judicial separation u/s 10 read with Section 13 of the Act "desertion has to be proved". As a matter of fact, the term "Desertion" is not used in Section 9 of the Act.

36. The term "Society" mentioned in Section 9 of the Act ought to be understood as marital cohabitation. In Halsbury's Law of England, 4th Edition, Volume 13, para 623, it is stated as follows:

Choice of matrimonial home ? it is a husband's duty to provide his wife with a home according to his circumstances. There is no absolute rule whereby either party is entitled to dictate to the other where the matrimonial home shall be; the matter is to be settled by agreement between the parties, by a process of give and take and by reasonable accommodation.

37. The term "reasonable excuse" is not defined under the Hindu Marriage act, 1955. At this stage, it is to be pointed out that the "reasonable excuse" cannot be equated with a matrimonial offence nor it can be said that a reasonable excuse cannot exist except in the form of a ground recognised by the Act as valid for judicial separation or for nullity of marriage or for divorce. Something less than such a ground or a matrimonial offence may, as such, amount to a "reasonable excuse" within the meaning of Section 9(1) of the Act.

38. Coming to the aspect of cruelty, it is to be pertinently point out that the Shorter Oxford Dictionary defines "Cruelty" as "the quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness".

39. We aptly point out that the term "mental cruelty" according to Black's Law Dictionary [8th Edition, 2004] is defined as follows:

Mental Cruelty -As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse.

40. In Halsbury's Laws of England [Vol.13, 4th Edition, Para 1269], the concept of cruelty is stated thus:

The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse. Malevolent intention is not essential to cruelty but it is an important element where it exists.

41. The expression "mental cruelty" in 24 American Jurisprudence 2d, has been described hereunder:

Mental Cruelty as a course of unprovoked conduct toward one's spouse which causes embarrassment, humiliation, and anguish so as to render the spouse's life miserable and unendurable. The plaintiff must show a course of conduct on the part of the defendant which so endangers the physical or mental health of the plaintiff as to render continued cohabitation unsafe or improper, although the plaintiff need not establish actual instances of physical abuse.

43. In the instant case, our main endeavour would be to define broad parameters of the concept of "mental cruelty". Thereafter, we would strive to determine whether the instances of mental cruelty enumerated in this case by the appellant would cumulatively be adequate to grant a decree of divorce on the ground of mental cruelty according to the settled legal position as crystallized by a number of cases of this Court and other Courts.

42. We worth recall the decision of the Hon'ble Supreme Court in Dr. N.G. Dastane Vs. Mrs. S. Dastane, wherein it is laid down as follows:

The enquiry therefore has to be whether the conduct charges as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent.

43. In Rajani Vs. Subramonian, it is observed that "the concept of cruelty depends upon the type of life the parties are accustomed to or their economic and social conditions, their culture and human values to which they attach importance, judged by standard of modern civilization in the background of the cultural heritage and traditions of our society."

44. In Praveen Mehta Vs. Inderjit Mehta, at page 716-17 (para 21)], the Hon"ble Supreme Court has laid down as follows:

21. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.

45. Moreover, the Hon"ble Supreme Court, in Gananath Pattnaik Vs. State of Orissa, , has held hereunder:

The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. "Cruelty" for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case.

46. It cannot be gainsaid that the Hon"ble Supreme Court in Shobha Rani v. Madhukar Reddi (Cri 60), has observed thus:

This Court had an occasion to examine the concept of cruelty. The word "cruelty" has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(i)(a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the

impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and *per se* unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.

47. Added further, in the aforesaid decision, at Page 546 and 547 in Paragraph 101, the Hon'ble Supreme Court has enumerated some instances of human behaviour, which may be relevant in dealing with the cases "mental cruelty" etc. and the same runs as follows:

- (i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.
- (ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.
- (iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.
- (iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.
- (v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.
- (vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave substantial and weighty.
- (vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

48. In *Manisha Tyagi -vs-Deepak Kumar* [I (2010) DMC 451 (SC)], the Hon"ble Supreme Court has held that "even the continued ill-treatment, cessation of marital intercourse, studied neglect, indifference of one spouse to other may lead to inference of cruelty".

49. In *Wilde, J.O. in Power v. Power* [(1865) 4 SW & Tr. 173: 12 LT 824], it is observed that "cruelty lies in the cumulative ill conduct which the history of marriage discloses."

50. Continuing further, the term "mental cruelty" ought to be of such a nature that the parties cannot reasonably be expected to live together. A fact situation must be such that the wronged party cannot reasonably be required to put up with the other side. It is a well settled proposition in law that in the absence of a positive act of cruelty, an individual is not entitled to secure a decree of divorce.

51. In Smt. Priti Parihar Vs. Kailash Singh, it is held that "Cruelty includes action or omission which injures the susceptibilities of the affected spouse and causes him or her mental agony to which the sufferer alone can state".

52. In Gangadharan Vs. T.K. Thankam, it is held that "Physical violence is not absolutely essential to constitute cruelty. A consistent course of conduct inflicting immeasurable mental agony and torture will constitute cruelty".

53. In Gopal Krishan Sharma Vs. Dr. Mithilesh Kumari Sharma, it is held that "Cruelty is frequently a term of relative meaning. It includes "every wilful act, omission or negligence whereby unjustifiable physical pain, suffering or death is caused or permitted"."

54. In Sukumar Mukherjee Vs. Tripti Mukherjee, it is held that "The question whether a particular act or behaviour will amount to cruelty or not depends upon the character, way of the life of the parties, their social and economic conditions, their status, customs and traditions".

55. In the decision of the Hon'ble Supreme Court in Sujata Uday Patil V. Uday Madhukar Patil [2007 (3) SCJ 454 at page 459], it is held that "neither actual nor presumed intention to hurt the other spouse is a necessary element in cruelty".

56. Under the Indian Evidence Act, the standard of proof in matrimonial proceedings is not essential one. It is enough if the Judge trying the case is satisfied that a matrimonial offence had been committed as per the decision Popuri Sunita Lakshmi Vs. Popuri Srinivas, at page 287 (Appellant/Plaintiff)].

57. In Smt. Bhagwanti Vs. Laxmandas Panjwani, it is held that "What conduct will amount to cruelty is a matter of fact and it is to be decided on various considerations of each particular case."

58. The term "Cruelty" may be concerned with complaints, accusations, taunts, etc. It is difficult to establish mental cruelty by means of a direct evidence as per the decision in Victor Sebastain v. Thorulatha [2006 (4) RCR [Civ] 577 at page 579 (Karnataka)(DB)].

59. In Simpson V. Simpson, 1951 P 320, the Court has observed as follows:-

When the legal conception of cruelty is described as being conduct of such a character as to cause danger to life, limb or health, bodily or mental, or to give rise to a reasonable apprehension of such danger, it is vital to bear in mind that it comprises two distinct elements: first, the ill-treatment complained of, and, secondly, the resultant danger or the apprehension thereof. Thus, it is inaccurate, and liable to lead to confusion, if the word ?cruelty? is used as descriptive only of the conduct complained of, apart from its effect on the victim.

60. In Sirajmohmedkhan Janmohamadkhan Vs. Hafizunnisa Yasinkhan and Another, the Hon'ble Supreme Court has laid down thus:

... The concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition, that a second marriage is a sufficient ground for separate residence and maintenance. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used. Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which lead to mental or legal cruelty.

61. The term "mental cruelty" may encompass all verbal abuses and and insults by using filthy and abusive language resulting in persistent disturbance of mental peace of the other individual. No wonder, the term "mental cruelty" is a problem of human behaviour.

62. In Richardson V. Richardson, [1949 2 All E.R. 330 at page 332] Bucknill L.J. has opined that "A matrimonial offence, seems to mean an offence against the vows of marriage. The vows of marriage are well known. Desertion is certainly one offence, and cruelty as defined by the law is another".

63. In [Chanderkala Trivedi \(Smt\) Vs. Dr. S.P. Trivedi](#), the Hon"ble Supreme Court has held that "If a marriage was dead and there was no chance of its being retrieved it was better to bring it to an end."

64. In the decision of the Hon"ble Supreme Court in [Pranay Majumdar Vs. Bina Majumdar](#), at paragraph 7, the Hon"ble Supreme Court has observed as follows:

It is now represented by the learned counsel for the appellant that pursuant to the joint Memorandum of Settlement, a sum of Rs.3,00,000/-(three lacs) in full and final settlement of all the claims of the respondent-wife as a permanent alimony was paid to him by way of a demand draft. The learned counsel for the respondent-wife has also stated that he has received the demand draft for a sum of Rs.3,00,000/-(three lacs). The respondent, as per Memorandum of Settlement, shall not claim any future claim for her and her daughter who is residing with her first husband. In view of the settlement now reached between the parties, the order of the High Court impugned in this appeal is set aside and there will be a decree of divorce as ordered by the trial court in respect of the appellant and the respondent. The appeal stands disposed of accordingly. No costs.

65. When a party seeks the relief of divorce on the ground of "Desertion" under the Hindu Marriage Act, 1955, there must be an element of wilful permanent forsaking and abandonment of one"s spouse by the other without that person"s consent and without an acceptable cause. Desertion is not a solo act complete in itself. Per contra, it is a continuous course of conduct to be determined based on the facts and circumstances of each case.

66. In Vinita Saxena Vs. Pankaj Pandit, it is held that "It must be proved that one partner in the marriage, however, mindless of the consequences has behaved in a way which the other spouse could not in the circumstances be called upon to endure, and that misconduct has caused injury to health or a reasonable apprehension of such injury."

67. In Asoka Mitra V. S.K.Mitra [2008 (63) A.I.C. 612 at p. 616 (Cal.)], it is held that "For ordering a decree for divorce on the ground of cruelty, the acts complained of should be so grave and weighty so as to come to the conclusion that the husband cannot reasonably be expected to live with the wife."

68. As per the scheme of the Hindu Marriage Act, 1955, dissolution of a marriage is generally the last option which the Court should resort to. However, if a situation crops up, where living together for both parties is no longer either practical or possible, directing them to live together as husband and wife, would be totally meaningless.

69. The aspect of cruelty may be mental or physical. It may be intentional or unintentional also. In case, it is physical, it is an issue of degree which is relevant. If it is mental, an enquiry should commence as regards the nature of cruel treatment and then as to the impact of such treatment on the mind of the other spouse whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Finally, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining party.

70. In Suman Kapur Vs. Sudhir Kapur, it is held that "There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal."

71. In Smt. Vimla Mehra Vs. Shri K.S. Mehra, it is held that "it is not necessary to establish that the mental cruelty is such as to cause injury to the health of the Petitioner."

72. In Smt. Heema Devi Vs. Shri Arvind Kumar, it is observed that "A wife who denies conjugal bliss to the husband, would be accountable on a charge of having caused mental cruelty to him".

73. In C.R. Chenthil Kumar V. K.Sutha [II (2008) D.M.C. 286 (Madras)], it is held that "Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other".

74. Even some casual acts would be a grave act of cruelty to others. It depends on the facts of a particular case whether these acts were "cruel" to the subject person, and such person has to prove as to how he suffered due to said acts which were to him or her, acts of mental cruelty as per the decision in Nitin Bhaurao Tidke Vs.

Sujata . The mental cruelty differs from individual to individual based in intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. The impact of taunts, accusations and complaints on a person amounting to cruelty will depend on diverse factors like the sensitivity of the victim concerned, the environment, education and social background.

75. To put it differently, each case has to be determined based on its own facts and circumstances, as per the decision of the Hon"ble Supreme Court in Mohd. Hoshan and Another Vs. State of A.P., .

76. In Rosenbaum v. Rosenbaum [(1976) 38 111 App 3d 1], the Appellate Court of Illinois has held hereunder:-

To prove a case entitling a spouse to divorce on the ground of mental cruelty, the evidence must show that the conduct of the offending spouse is unprovoked and constitutes a course of abusive and humiliating treatment that actually affects the physical or mental health of the other spouse, making the life of the complaining spouse miserable, or endangering his or her life, person or health.

77. The Hon"ble Supreme Court of Hawli, in Jem v. Jem [33 reported [(1937) 34 Haw 312] has held that "cruel treatment not amounting to physical cruelty is mental cruelty."

78. In the decision in Manisha Tyagi v. Deepak Kumar [I (2010) DMC 451 (SC)], the Honourable Supreme Court, in paragraph 24, has laid down as follows:

24. This is no longer the required standard. Now it would be sufficient to show that the conduct of one of the spouses is so abnormal and below the accepted norm that the other spouse could not reasonably be expected to put up with it. The conduct is no longer required to be so atrociously abominable which would cause a reasonable apprehension that it would be harmful or injurious to continue the cohabitation with the other spouse. Therefore to establish cruelty it is not necessary that physical violence should be used. However, continued ill-treatment, cessation of marital intercourse, studied neglect, indifference of one spouse to the other may lead to an inference of cruelty. However, in this case even with aforesaid standard both the trial court and the appellate court had accepted that the conduct of the wife did not amount to cruelty of such a nature to enable the husband to obtain a decree of divorce.

79. As far as the present case is concerned, the marriage has taken place on 27.05.1994 at Thirupati as per Customary rites and ceremonies prevalent in Telugu communities living in Andra Pradesh. It is also admitted that as a result of wedlock, a male child has been born on 30.05.1995. It is the case of the Appellant/Wife that on 03.01.1996 she has been taken away by her father-in-law to her parents house without her consent and that the Respondent/Husband has not visited her. Hence, the Respondent/Husband, without any just excuse, has withdrawn from her society.

Therefore, she has prayed for restitution of conjugal rights in O.P.No.568 of 1997 on the file of the Family Court, Chennai.

80. According to the Respondent/Husband, it is only the Appellant /Wife with her child has gone to her parents place along with his father and has not returned back to the matrimonial house. It is also the case of the Respondent/Husband that his morning regular life begins with "Sadhana and Sadhakam" under the guidance of his father who happens to be his Guru and this session has been interrupted by the Appellant/Wife by hurling abuses at him and this resulted in arguments and quarrels between him and the Appellant/Wife and the entire atmosphere would get spoiled and the morning session would end abruptly. Further, various such instances has marred his daily life because of the intolerable behaviour and attitude of the Appellant/ Wife.

81. The Appellant/Wife has denied the allegations made by the Respondent/Husband against her. She denied the allegation that the morning music sessions of her husband have been interrupted by her abuses hurled for considering his father as his Guru. It is also her case that the Respondent/Husband and his parents sent her to her parents house on the pretext of temporary short visit and only on the basis of her husband"s assurance that he would take her back, she left the matrimonial house.

82. In the present case, each party has levelled allegations and counter allegations against the other party. The Appellant/Wife has not examined any witness on her side either than herself to be examined as P.W.1 before the trial Court. Equally, the Respondent/Husband has not examined any independent witness other than himself being examined as R.W.1. The Appellant/Wife has not made any endeavour to examine the Respondent/Husband"s father. Though the Appellant/ Wife, in her counter to O.P.No.805 of 1998, has, *inter alia*, averred that her husband"s parents, sister and brother-in-law are playing a very key role in instigating him to go in for a second marriage and they are not only influencing him but also putting so may ways of pressure to reach their goal, she has not proved the said allegation before the trial Court.

83. It is not in dispute that the Appellant/Wife"s Husband (Respondent) is a world reputed Mandolin Instrument Player. According to the Appellant/Wife, as per Proof Affidavit, the Respondent /Husband is interested only in Mandolin Instrument Profession and since he has programmes both in India and abroad, he has a very busy schedule and he hardly stays at home, therefore, she is the fit and proper person to have the custody of her son.

84. The Appellant/Wife after going to her parents house on 03.01.1996 and thereafter has not made any efforts to get herself reunited with the Respondent/Husband. Even as per the decision taken in the Panchayat, the Hanmanth Rao was directed to take the Appellant/Wife to Madras, but he has not

taken her. The Appellant/ Wife, in her cross examination, as P.W.1 and also in O.P.No.86 of 1998, has categorically stated that she has been treated cruelly by the Respondent/Husband and his family members. But, in O.P.No.568 of 1995 she has stated that the relationship between her and the Respondent/Husband has been cordial, till she left the matrimonial home on 03.01.1996. Thus, it is candidly clear that the Appellant/Wife has taken a divergent position and a contradictory stand which circumstance clearly goes against the Appellant/Wife.

85. Though the Appellant/Wife has denied that she has written the original letter of Ex.R.8 dated 18.10.1995 in Telugu to her parents and even when the said original letter has been sought to be summoned from her father, he has stated that there is no such letter. The main objection to the marking of Ex.R.8-Xerox copy of letter is that there is no corresponding original letter and therefore, Ex.R.8-Letter cannot be marked. It is to be pointed out that if the primary evidence is not obtainable, the secondary evidence becomes the best which a Court of law can procure and consequently satisfies the rule envisaged u/s 63 of the Indian Evidence Act. As a rule, the secondary evidence is not admissible until the non-production of primary evidence is satisfactorily accounted for. The secondary evidence is more often than not admitted by a Court of law than secondary oral evidence. A party desiring to let in a secondary evidence should do so before the Judge recording the evidence. It is the Judge recording evidence who should decide, if any objection as raised, whether or not to admit the secondary evidence in law.

86. In view of the fact that the Appellant/Wife's father has stated that there is no original letter of Ex.R.8 dated 18.10.1995, in the absence of the said original letter of Ex.R.8 dated 18.10.1995, the secondary evidence is permissible in law by marking Ex.R.9-English Translation Copy of Ex.R.8-Telugu Letter dated 18.10.1995. In Ex.R.9-English Translation copy of Letter written by the Appellant/Wife dated 18.10.1995 addressed to her parents, the Appellant/Wife has spoken ill of her mother-in-law etc. and has prayed for saving her from these devils. She has also desired to take divorce, since she cannot stay in this Kompa any longer and has asked her father to apply divorce.

87. The English Translation of Ex.R.9-Letter dated 18.10.1995, as referred to supra, clearly spells out the attitude and conduct of the Appellant/Wife and to obtain divorce. In short, the contents of Ex.R.9-Letter dated 18.10.1995 has caused mental cruelty to the Respondent/ Husband and in the instant case, the distance between the parties as widened so deeply that it is impossible for the Appellant/Wife and the Respondent/Husband to live together in an harmonious condition. The marriage between the parties have irretrievably broken down. Each party has a feeling of anguish, disappointment and frustration over the other, as seen from the attendant facts and circumstances of the present case.

88. In short, it would be difficult for the parties to bury the past and to begin a new relationship of Husband and Wife. For the past 15 years both parties have remained

separately. During these years, they developed their own life style, remained in isolation and grown in their own thoughts. Marriage tie between the parties has become emotionally dead and the same is beyond repair because of the emotionally dead relationship which is a positive act of oppressive mental cruelty, in our considered opinion. There is no chance for both parties to live together in future. In such a context, the decree of Divorce is the only remedy to be passed, so that the parties may choose their life of their own way, when there has been no scope for their reunion.

89. The very fact that the Appellant/Wife has left the matrimonial house on 03.01.1996 and has not returned till date shows that there is animus deserendi on her part which is clearly established. Her course of conduct clearly establishes her desertion also. In the instant case, the marriage tie between the parties has damaged beyond any salvation. Merely to keep the marriage as a sham one is not a desirable one.

90. When the parties cannot live in peace, no purpose will be served in keeping the parties tied by the bond of marital relationship. While granting the relief, a Court of Law should not shy away from the realities. In the present case, the stage has reached between the parties that it is impossible for them to live together in view of the allegations and counter allegations made by each of the parties mentally and psychologically affecting them and the same has gone to such an extent that each party has developed repulsion to the other. This Court opines that no useful purpose will be served in keeping the marriage intact and make the party suffered, in fact, the marital tie has broken down. A marriage which is dead practically and emotionally, the continuance of the same will prolong the mental agony and affliction and it is cruelty. The relationship between the parties has strained a lot and it has reached a stage of point of no return. The Ex.R.9-Letter dated 18.10.1995 contents has caused mental cruelty to the Respondent/Husband, as a result of which, the parties cannot be expected to live together.

91. In the present case on hand, taking note of the social status of the parties, the society they move in and since there is no possibility for the parties to come together and to lead a new leaf of life and all other relevant facts and circumstances, this Court comes to an escapable conclusion that the Appellant/Wife has caused mental cruelty to the Respondent/Husband and he has proved the same before the trial Court, which rightly granted the dissolution of marriage that took place between the parties on 27.05.1994 at Thirupati. Consequently, it also rightly rejected the relief of restitution of conjugal rights as prayed for by the Appellant/Wife in O.P.No.568 of 1997. Resultantly, both the Civil Miscellaneous Appeals fail.

92. Coming to the plea of the Appellant/Wife that the trial Court committed an error in awarding a sum of Rs.5,00,000/-each towards permanent alimony to her and her minor son, aggregating in all a sum of Rs.10,00,000/-, it is to be pointed out that the trial Court, while granting main relief in the Original Petition, has inherent powers to

award permanent alimony to the concerned parties to prevent an aberration of justice, in the considered opinion of this Court.

93. At this stage, we aptly point out the decision of the Hon"ble Supreme Court in Satish Sitole Vs. Smt. Ganga, wherein the Hon"ble Supreme Court following the precedent in Romesh Chander Vs. Smt. Savitri, while invoking Article 142 of the Constitution of India, dissolved the marriage subject to the husband paying permanent alimony of Rs. Two lakhs and cost of the appeal assessed at Rs.25,000/-.

94. Admittedly, R.W.1 (Husband), in his cross examination, deposed that as per Order of Hyderabad Court, he is paying a maintenance of Rs.12,500/-to the Appellant/Wife and his son. Considering the interest and welfare of the Appellant/Wife and her son, their status, bearing in mind the rise in prices of essential commodities and the cost of inflation, this Court, on the basis of Equity, Fair Play and even as a matter of prudence, directs the Respondent/Husband to pay the maintenance amount of Rs.12,500/-to the Appellant/Wife and her son from the date of order of Hyderabad Court till date and further, he is directed to pay a sum of Rs.5,00,000/-each to the Appellant/Wife and her son towards permanent maintenance in full and final settlement within a period of one month from the date of receipt of a copy of this Judgment.

95. Further, the trial Court has dismissed the relief of return of jewels and custody of minor child as prayed for by the Respondent/ Husband based on the reason that the Respondent/Husband has not proved by way of documents that the jewels are with the Appellant/ Wife and further, it is also held that the custody of the child cannot be given to him, because of the fact that he has failed to maintain the child, till date of filing of the maintenance petition by the wife and in this regard, we confirm the finding of the trial Court.

In the result, both the Civil Miscellaneous Appeals are dismissed, leaving the parties to bear their own costs. Connected Miscellaneous Petitions are also dismissed.