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

% ***Reserved on: August 29, 2023***

Pronounced on: December 14, 2023

\+ MAT.APP.(F.C.) 93/2021

VISHNU DUTT SHARMA ..... Appellant

Through: Mr. Baldev Raj & Ms. Shikha Tyagi, Advocates

Versus

MANJU SHARMA .....Respondent

Through: Ms. Tanya Aggarwal, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. The present appeal under Section 19 of the Family Courts Act, 1984 has been filed against the judgment dated 28.01.2020, whereby the learned Principal Judge, Family Court has dismissed the petition filed by the appellant- husband under Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955 *(hereinafter referred to as "the Act, 1955")* seeking divorce from respondent-wife on the ground of cruelty.

2. The parties got married on 26.02.1993 at Delhi and a female child was born from their wedlock on 06.12.1993.

3. The appellant/husband has alleged that the behaviour of the respondent from the very first day of their marriage was improper and

uncooperative and she tried to perturb his and his family's life by filing lodging false and frivolous complaints against all of them.

4. The appellant has alleged that on 29.11.1994, the respondent left her matrimonial home taking away all her *istridhan* and went to her parent's house. In September, 1995, on the complaint of respondent FIR No. 18/1995, under Sections 406/498A/506/34 IPC was registered at police station Paharganj, New Delhi.

5. On 20.01.1995, appellant filed petition [HMA 332/1995] for divorce before learned District Judge, which was dismissed. Thereafter, he preferred an appeal before this Court [FAO No. 302/1996] which was also dismissed vide Judgment dated 07.05.2007, against which he filed a Special Leave Petition [SLP (Civil) No.13166/2007] before Hon'ble Supreme Court, which also stood dismissed vide order dated 27.02.2009.

6. On 09.109.2017, the appellant again preferred a petition under Section 13 (1) (ia) (ib) of the Hindu Marriage Act, 1955 [HMA 1133/2017] seeking divorce on the grounds of cruelty and desertion. The said petition was dismissed by the learned Family Court vide order dated 28.01.2020, which has been challenged by way of present appeal before this Court.

7. The appellant before the learned Family Court averred that since the day of their marriage, behaviour of respondent towards him and his family members was not proper and on 19.05.1993 she had left the matrimonial home by taking away all her *istridhan.* The appellant averred that parties have been living separately since November, 1994 and have not cohabited for the last 23 years and there is no possibility of revival of their relationship. Thus, the appellant sought divorce on the ground of cruelty and desertion under Section 13(1)(ia) and (ib) of the Act, 1955.

8. The respondent/ wife in her written statement took preliminary objection that the appellant had not come with clean hands and was not only concealing material facts but also making false submissions in the judicial proceedings. She asserted that within one month of their marriage, the appellant and his family started harassing her by pressurizing to bring Maruti Car, Rs.20,000/- in cash and jewellery of at least 10 Tolas. However, when the respondent could not fulfil the said demands, the appellant in connivance with his mother took all her jewellery without her consent and gifted it to the wife of appellant's brother on their engagement ceremony. Upon respondent questioning the same, she was criticised and beaten by the appellant and his family members to the extent that they even tried to burn her. She alleged that she could be saved only with the intervention of police.

9. The respondent also asserted that things turned worse after marriage of her brother-in-law, when appellant and his family wanted her to be out from her matrimonial home. Respondent lived at her matrimonial home till November, 1994 and on 29.11.1994, the appellant and his family members threw her out from the matrimonial home with minor child. Subsequently, parents and relatives of the respondent tried to reconcile their relationship but the appellant remained unmoved and was adamant to seek divorce. It was only then the respondent was forced to file a complaint before Crime Against Women Cell due to torture caused by the appellant and his family, which culminated into registration of FIR No. 18/1995, under Sections 406/498A/506/34 IPC at police station Paharganj, New Delhi against the appellant and his family members.

10. Respondent contended that the consent order of interim maintenance for a sum of Rs. 6000/- per month was obtained by appellant by fraudulent

means, as at the said time appellant was earning more than Rs.36,000/- per months as his salary. The respondent submitted that she continuously tried to reach out to the appellant on several occasions outside the court room to persuade him to save their marriage for the welfare of their daughter and was hopeful of reconciliation while contesting the petition.

11. The learned trial court on the pleading of the parties framed the following issues:-

> *"i. Whether the petitioner/husband has been subjected to cruelty by the respondent-wife, and if so, to what effect? OPP*
>
> *ii. Whether respondent/wife has deserted the petitioner/husband for continuous period of more than two years and has forsaken her marriage with him? OPP"*

12. To prove their case, appellant got himself examined as PW-1 and respondent got herself examined as RW-1 in evidence.

13. After considering the testimony of the witnesses recorded, the learned Family Court **on the first issue** observed that that no incident of cruelty or misbehaviour was brought forward by the appellant after the dismissal of the first petition seeking divorce. The learned Family Court, thus, held as under:-

> *"19. In the present petition though the petitioner has claimed relief of dissolution of marriage on the ground of cruelty but no incident of cruelty or any other incident of misbehaviour has been mentioned by the petitioner on the part of respondent after the dismissal of the first petition of divorce, as filed by the petitioner. Admittedly parties have not resided together since November, 1994, therefore, there*

cannot be a fresh cause of action for filing the petition for divorce on the ground of cruelty, as the parties have never lived together after 1994. In the present petition, petitioner has stated that he is not mentioning any ground of cruelty as the same were already mentioned in the first petition for divorce. This itself shows that there was no fresh cause of action against the respondent in favour of the petitioner, hence it cannot be considered that the petitioner was subjected with cruelty by the respondent-wife. No ground of fresh cruelty has been mentioned or proved by the petitioner in the present case and earlier case for divorce has been dismissed till Hon'ble Supreme Court. The issue is thus decided against the petitioner, as not proved."

14. Having held above, the learned Family Court decided the first issue against the appellant primarily holding that no fresh ground of cruelty was made out and that the Hon'ble Supreme Court has already dismissed appellant's earlier petition for divorce.

15. **On the second issue,** the learned Family Court has held as under:-

"22. Admittedly the parties are residing separately from November, 1994. Petitioner had stated in his petition that for last 23 years there is no cohabitation between the parties. Although the ground of desertion has been mentioned by the petitioner in the title of his petition for claiming divorce from the respondent but no averment has been made by the petitioner on this ground. It has nowhere been averred by the petitioner that the respondent had left the matrimonial home without any rhyme or reason or that the respondent had intentionally put an end to the cohabitation. On the other hand, respondent/wife in her written statement had specifically stated that she wanted to reside with the petitioner-husband and she is still ready and willing to resume the matrimonial life with the petitioner but it is

the petitioner who has put an end to the marital obligations.

*23. In view of the judgments mentioned above, it is the duty of the petitioner to prove the "**animus deserendi"** on the part of the respondent-wife, whereas the petitioner has neither stated any such fact in the petition nor has proved any intention on the part of respondent/wife, to put an end to the marital obligations. After multifarious rounds of litigations by the parties for dissolution of marriage petition and FIR u/s 498A/406 IPC, the parties have been residing separately since November, 1994, none of the parties have made any effort for residing together or for reconciliation. There is no evidence made by the parties to this effect. Therefore, I am of the opinion that the petitioner has failed to prove that it was the respondent who has deserted him for continuous period of two years before filing of the present petition. Hence, issue no.2 is also decided against the petitioner."*

16. Having held above, the petition preferred by the appellant under the provisions of Sections 13(1) (ia) and (ib) of The Hindu Marriage Act, 1955 was dismissed by the learned Family Court vide impugned judgment dated 28.01.2020, which has been assailed before this Court.

17. The learned counsel for the parties were heard at length and the impugned order and other material placed on record has been perused by this Court. On perusal of impugned judgment dated 28.01.2020 and testimony of the parties recorded before the learned Family Court, this Court finds that this is second round of litigation between the parties. The first round of litigation had reached upto Hon'ble Supreme Court against the judgment dated 06.08.1996 [in HMA 332/1995] passed by the learned Court

of Sessions, whereby appellant's petition seeking divorce under the similar provisions of law was dismissed.

18. It is relevant to note here that this Court vide order dated 07.05.2007 [in FAO 302/1996] upheld the judgment dated 06.08.1996 [in HMA 332/1995] passed by the learned District Court, dismissing appellant's petition seeking divorce from respondent-wife, against whereof the appellant had preferred Civil Appeal No. 1330/2009 (arising out of SLP (C) No. 13166 of 2007) [***Vishnu Dutt Sharma Vs. Manju Sharma*** **(2009) 6 SCC 379]** before the Hon'ble Supreme Court, wherein vide order dated 27.02.2009 it was observed and held as under:-

> *"We are not inclined to interfere with the findings of fact of both the courts below that it was the appellant who treated the respondent with cruelty, rather than the other way around."*

19. On the persuasion of learned counsel appearing for the appellant seeking dissolution of marriage on the ground of irretrievable breakdown, the Hon'ble Supreme Court further observed and held as under:-

> *"8. Learned counsel appearing for the appellant has strenuously argued that the marriage between the parties be dissolved on the ground of irretrievable breakdown. In this connection it may be noted that in Section 13 of the Hindu Marriage Act, 1955 (for short "the Act") there are several grounds for granting divorce e.g. cruelty, adultery, desertion, etc. but no such ground of irretrievable breakdown of the marriage has been mentioned for granting divorce.*
> *9. Section 13 of the Act reads as under:*
>
> > *"13. Divorce.—(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a*

petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(i-a) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or

(i-b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(ii) has ceased to be a Hindu by conversion to another religion; or

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

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(iv) has been suffering from a virulent and incurable form of leprosy; or

(v) has been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;"

10. On a bare reading of Section 13 of the Act, reproduced above, it is crystal clear that no such ground of irretrievable breakdown of the marriage is

provided by the legislature for granting a decree of divorce. This Court cannot add such a ground to Section 13 of the Act as that would be amending the Act, which is a function of the legislature.

11. Learned counsel for the appellant has stated that this Court in some cases has dissolved a marriage on the ground of irretrievable breakdown. In our opinion, those cases have not taken into consideration the legal position which we have mentioned above, and hence they are not precedents. A mere direction of the Court without considering the legal position is not a precedent.

12. If we grant divorce on the ground of irretrievable breakdown, then we shall by judicial verdict be adding a clause to Section 13 of the Act to the effect that irretrievable breakdown of the marriage is also a ground for divorce. In our opinion, this can only be done by the legislature and not by the Court. It is for Parliament to enact or amend the law and not for the courts. Hence, we do not find force in the submission of the learned counsel for the appellant.

13. Had both the parties been willing we could, of course, have granted a divorce by mutual consent as contemplated by Section 13-B of the Act, but in this case the respondent is not willing to agree to a divorce."

20. Having regard to the aforesaid settled position of law, when the appellant could not prove allegations of cruelty and desertion against the respondent amidst pendency of proceedings in FIR No. 18/1995, under Sections 406/498A/506/34 IPC, registered at police station Paharganj, New Delhi registered at the instance of respondent against him and his family members; the Hon'ble Supreme Court declined to grant relief to the appellant.

21. Recently, the Hon'ble Supreme Court while considering the issue as to whether it can grant divorce in exercise of power under Article 142(1) of the Constitution of India where there is complete and irretrievable breakdown of marriage in spite of the other spouse opposing the prayer, in ***Shilpa Sailesh Versus Varun Sreenivasan*** 2023 SCC OnLine SC 544 held that such power is exercised by only Supreme Court to do complete justice to both the sides and such a power is not vested in the High Courts, leave alone the Family Courts.

22. Conspicuously, the present appeal challenging the impugned judgment dated 28.01.2020 culminating in the second round of litigation (HMA 1133/2017) observes that no fresh ground of cruelty has been pointed out by the appellant against the respondent-wife and appellant himself has stated in his petition that the allegations of cruelty stood mentioned in the first round of litigation. The learned Family Court in the impugned judgment has held that *no ground of fresh cruelty been mentioned or proved by the appellant and earlier case for divorce has been dismissed till Hon'ble Supreme Court.* While holding so, the learned Family Court has lost sight of the fact that when the order dated 27.02.2009 was passed by the Hon'ble Supreme Court, the proceedings under Section under Sections 406/498A/506/34 IPC were pending against the appellant.

23. At this stage, it is worthy to note relevant portions of Paras-10 to 13 of the judgment dated 10.10.2012 passed by the learned Metropolitan Magistrate, whereby appellant and his family members have been acquitted of the offences charged with in FIR No. 18/1995, which read as under:-

> *"10. ... The testimony of complainant is not of such a cogent nature that it can be believed in*

entirety. An accused is presumed to be innocent till he is proved guilty beyond the pales of reasonable doubt. In given facts and circumstances, benefit of doubt goes in favour of accused Vimla Devi and she is acquitted for offence u/s 498A IPC.

11. .....Hence, in the absence of any specific allegation regarding the demand of dowry by accused Vishnu Dutt, he is also entitled for benefit of doubt and is acquitted for the offence U/s 498A IPC.

12. .....In the absence of any cogent evidence against any of the accused persons, all accused are acquitted of the offence U/s 406 IPC also.

13. The evidence on record in the present case does not disclose that the threat was with the intention to cause alarm. The allegations are general and vague in nature and does not lead to the inference that the complainant was intimidated by accused Anand Sharma that it caused fear in her mind that she would be killed. No specific date and time when she was intimidated by him or his associates finds mention in either her entire complaint or in her entire testimony. The evidence is not of such a clinching nature to convict the accused Anand Sharma for the offence U/s 506(II) IPC. He is accordingly acquitted for the offence U/s 506 (II) IPC.

24. The aforesaid decision of acquittal of appellant and his family members was challenged by the respondent by preferring appeal [CA No. 30/2014, Unique ID No. 02401R0043542013] before the learned Court of Sessions, which stood dismissed vide judgment dated 29.08.2014, holding as under:-

"16. From the testimony of PW2 and Ex.PW2/D, is also observed that only grievance of the complainant against respondent no.1/husband was

*that he used to remain absent from his house with his cousin brother Anand and thereby he used to mentally harass the complainant. As discussed above the meaning of cruelty for the purposes of the Section has to be gathered from the language as found in Section 498A IPC and as per that Section "**cruelty**" means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life etc. (Mental or physical) or harassment to coerce her or any other person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any other person related to her to meet such demand.*

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18. Testimonies of remaining PWs are not discussed herewith for the sake of brevity who are otherwise also witness to hearsay and possibility of their being interested witnesses cannot be rules out and in such like case versions of relatives cannot be fully relied upon just because they have corroborated the version of complainant. Otherwise also, every due care and caution has to be taken by the Trial Court in cases of this nature to check misuse of law under the heat of family disputes or to settle individual score.

19. So far as the allegations under Section 406 IPC is concerned, neither the testimony of PW2 nor any document on record specifies as to which articles of jewellery and valuables as alleged by PW2 were entrusted to respondent no.2 (mother in law of PW2 complainant). When such material particulars are missing, I am of the opinion that ingredients of Section 406 IPC are not attracted.

20. In view of the aforementioned discussion, this Court does not find any infirmity in the impugned judgment acquittal dated 10.10.2012

passed by the learned Trial Court. Same is accordingly upheld. Appeal sands dismissed."

25. Relevantly, dismissal of respondent's appeal vide judgment dated 29.08.2014 has remained unchallenged and thus, the judgment dated 10.10.2012 passed by the learned Metropolitan Magistrate, acquitting the appellant and his family members of the offences under Sections 498A/406 IPC, attained finality. Thereby, the respondent could not prove allegations of cruelty and dowry demand meted out at the hands of appellant and his family members.

26. On the failure to prove allegations of dowry demand, the Hon'ble Supreme Court in ***Kahkashan Kausar Vs. State of Bihar*, (2022) 6 SCC 599** has held as under:-

"21. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the appellant-accused, it would be unjust if the appellants are forced to go through the tribulations of a trial i.e. general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this Court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must, therefore, be discouraged."

27. Marriage is a sacrosanct bond which is based upon trust and respect of one spouse against the other and if a spouse raises unfounded and fallacious allegations against the other, it shakes the foundation of marriage. If a

spouse is made to suffer rigorous of criminal trial at the hands of the other, this not only causes irreparable damage to their relation but also amounts to committing cruelty.

28. The Hon'ble Supreme Court in ***Raj Talreja v. Kavita Talreja*** (2017) 14 SCC 194 has observed and held as under:-

> *"11. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act, 1955 (for short "the Act"). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false. Later, she filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self-inflicted by the wife. Thereafter, proceedings were launched against the wife under Section 182 IPC."*

29. The Hon'ble Supreme Court in ***K. Srinivas Vs. K. Sunita*** (2014) 16

SCC 34 has held that *if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce.*

30. Also, in ***K. Srinivas Rao v. D.A. Deepa*** (2013) 5 SCC 226 the Supreme Court has held that *making unfounded allegations against the spouse or his family in the pleadings or filing false complaints, which has an adverse impact, amounts to causing mental cruelty*.

31. The Supreme Court in the case of ***Ravi Kumar Vs. Julmidevi*** (2010) 4 SCC 476 has categorically held that *"reckless, false and defamatory allegations against the husband and family members would have an effect of lowering their reputation in the eyes of the society"* and it amounts to 'cruelty'.

32. Similar observations were made by the Coordinate Bench of this Court in the case of ***Rita Vs. Jai Solanki*** (2017) SCC OnLine Del 9078 and ***Nishi Vs. Jagdish Ram*** 233 (2016) DLT 50.

33. Significantly, to bring a marital dispute within the ambit of Section 13(1)(ia) of the Act for dissolution of marriage, cruelty has to be proved. The pertinent observations of the Hon'ble Supreme Court on the aspect of cruelty in ***Parveen Mehta Vs. Inderjit Mehta*** (2002) 5 SCC 706 are as under:-

> *"21. ....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."*

34. In the light of afore-noted decisions rendered by the Hon'ble Supreme Court, this Court is of the opinion that by making false and frivolous allegations against the appellant and making him suffer agony of long trial in proceedings arising out of FIR No. 18/1995, under Sections 406/498A/506/34 IPC, registered at police station Paharganj, New Delhi, wherein he has been acquitted; the respondent has committed cruelty upon him and appellant is thus entitled to get benefit of provision of Section 13(1) (ia) of the Hindu Marriage Act, 1955.

35. So far as prayer of appellant seeking divorce under the provisions of Section 13(1) (ib) of the Hindu Marriage Act, 1955 on the grounds of desertion is concerned, the pertinent observations of the Hon'ble Supreme Court in ***Bipinchandra Jaisinghbhai Shah Vs. Prabhavati*** 1956 SCC OnLine SC 15 are as under:-

> *"Thus the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two*

> *essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid."*

36. The Hon'ble Supreme Court in ***Bipinchandra Jaisinghbhai Shah(Supra)*** has further observed that *once it is found that one of the spouses has been in desertion, the presumption is that the desertion has continued and that is not necessary for the deserted spouse actually to take steps to bring the deserting spouse back to the matrimonial home.*

37. Also, the Hon'ble Supreme Court in ***Chetan Dass Vs. Kamla Devi*** (2001) 4 SCC 250 has observed that:-

> *"14. Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a*

straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case."

38. In the present case, the parties got married on 26.02.1993 and respondent left her matrimonial home in November, 1994. Meaning thereby, the marriage between the parties lasted only little above than two years and since then parties have been living separately. In the year 1995 the respondent filed criminal complaint against the appellant and his family members which resulted into registration of FIR No. 18/1995 against them. Even though appellant along with his family members has been acquitted of the offences charged with in the year 2012, but he has been made to face misery of extensive trial. The parties had lost faith and respect in each other. During all these years, no application under Section 9 of the Hindu Marriage Act, 1955 seeking Restitution of Conjugal Rights was made by the respondent nor there is iota of averment that any effort to amicably resolve the disputes was made by her. Meaning thereby, having left her matrimonial home in the year 1994, the respondent had chosen comfort for herself and the child in a different shell. This also shows her reluctance to join company of appellant-husband and it would not be misplaced to presume here that she had deliberately withdrawn herself from the company of her husband and there is denial of cohabitation and conjugal relationship.

39. In the light of afore-noted facts and circumstances of the present case, this Court is of the considered opinion that respondent has wilfully deserted the appellant and so, appellant is entitled to get benefit of provision of Section 13(1) (ib) of the Hindu Marriage Act, 1955.

40. With aforesaid observations, the impugned judgment dated 28.01.2020 is hereby set aside. The marriage between the parties is dissolved under the provisions of Section 13 (1)(ia) and (ib) of the Hindu Marriage Act, 1955. It is made clear that this Court has not touched upon the issue of payment of maintenance payable by the appellant.

41. The present appeal is accordingly allowed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 14, 2023
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