

AIR 2014 SC (Supp) 626**SUPREME COURT**

(From : Andhra Pradesh)*

G. S. SINGHAVI, J. and V. GOPALA GOWDA, J.Civil Appeal No. 8264 of 2013 (arising out of S. L. P. (C) No. 3544 of 2007), **D/-17-9-2013****Kollam Chandra Sekhar v. Kollam Padma Latha.**

Hindu Marriage Act (25 of 1955), S.13(1)(iii)- Divorce - Ground of incurable unsound mind - Essential attributed of such disease is inability to manage his/her affairs - Respondent wife suffering from illness of schizophrenia type - Medical report however showing that respondent did not show symptoms of psychotic illness at present and has responded well to the treatment - Report further stating that with treatment coupled with proper family support schizophrenic patient can continue marital life - Facts also showing that respondent had not only completed MBBS but also did a post graduate diploma in Medicine and was continuously working as a Government Medical Officer which was impossible had she been suffering from any serious kind of mental disorder - Considering improved health of wife and welfare of their child husband held not entitled to divorce. (Paras 18,19,20,23)

Cases Referred	Chronological Paras
AIR 2006 SC 1662:2006 AIR SCW 1585 (Disting.)	15
AIR 1991 Cal 123	18
AIR 1988 SC 2260	14,17,20
AIR 1986 P and H 379	11
(1982) 2 All ER 298:(1983) 1 AC 410:(1982) 2 WLR 982	14
(1959) 3 All ER 389	18
AIR 1934 All 273	18

Ms. Tatini Basu, for Appellant; Y. Raja Gopala Rao, for Respondent.

*CMA Nos. 2858-2859 of 2002, D/- 28-9-2006, (reported in AIR 2007 (NOC) 482 : 2007 (1) Andh LT 177)

Judgement**1.V. Gopala Gowda, J. :-**Leave granted.

2.This appeal is directed against the common judgment and order dated 28.09.2006 passed in CMA No. 2858 of 2002 and CMA No. 2859 of 2002 (Reported in AIR 2007 (NOC) 482) of the High Court of Andhra Pradesh as it has set aside the judgment and decree of divorce granted in favour of the appellant-husband dissolving the marriage between the appellant and respondent by dismissing the Original Petition No. 203 of 2000 filed by the appellant for dissolution of their marriage under Section 13 (1)(iii) of the Hindu Marriage Act, 1955 (in short 'the Act') and allowing the Original Petition No. 1 of 1999 filed

@page-SC627

by the respondent-wife against the appellant by granting restitution of conjugal rights urging various facts and legal contentions.

3.The factual and rival legal contentions urged on behalf of the parties are adverted to in this judgment with a view to examine the tenability of the appellant's submissions. The relevant facts are stated as hereunder:

The marriage between the appellant and the respondent was solemnized on 31.05.1995 at Kakinada (Andhra Pradesh) as per Hindu rites and customs and their marriage was consummated. It is the case of the appellant that at the time of marriage, he was working as Senior Resident at the All India Institute of Medical Sciences in New Delhi. After marriage, the respondent-wife joined the appellant at New Delhi and secured employment in the said Institute.

4.It is the case of both the parties that when they were living at New Delhi, the brother of the appellant died in an accident. At that point of time, the appellant herein came to Yanam (Andhra Pradesh) leaving the respondent at Delhi, who gave birth to a female child on 07.07.1997.

It is contended by the learned senior counsel for the appellant, Mr. Jaideep Gupta, in the pleadings that dispute arose between the appellant and his parents on the one hand and the in-laws of the deceased brother of the appellant on the other. There were threats to kill the appellant. During that period, respondent's father stayed in the company of the appellant and his parents at Yanam. At that time, both the appellant and the respondent suffered tensions and they were restless on account of the situation created by the in-laws of the appellant's deceased brother. Both of them received medical treatment and due to depression, appellant submitted his resignation and the respondent also resigned from her job at AIIMS. The appellant then joined as Assistant Professor in Gandhi Hospital at Secunderabad. The respondent and the child also joined him at Hyderabad. It is their further case that while they were in Hyderabad, the appellant used to receive threatening calls from the in-laws of his deceased brother which used to create tension in their family. The respondent was treated for hypothyroidism problem.

5. In the counter statement filed by the respondent, she contended that after one year of their marriage, the appellant and his parents started harassing her by demanding colour television, refrigerator etc. In May, 1998, after the death of the father of the respondent, the appellant went on insisting that the respondent gets the house situated at Rajahmundry registered in his name and when she refused, he started to torture her. The respondent applied for post-graduate entrance examination, which was scheduled to be held on 13.08.1998, and the appellant was making arrangements to go to Madras on 12.08.1998 in connection with FRCS admission. On 11.08.1998, the appellant picked up a quarrel with the respondent insisting that she must get the house at Rajahmundry registered in his name to which she did not agree. The respondent also requested him not to go to Madras as she has to appear for the Post-Graduate entrance examination on 13.08.1998 for which the respondent alleged that the appellant badly tortured her both physically and mentally. A telegram was sent to her mother with false allegations of her mental illness with a view to create evidence as he could have as well conveyed the message through telephone as there was telephone facility at the house of her parents. As the appellant was preparing to appear for FRCS examination and would spend most of his time in the libraries and the respondent and their child would be left alone without help, he suggested that the appellant (respondent) should go to Rajahmundry and stay with her parents to which she agreed and went to Rajahmundry and joined Chaitanya Nursing Home and Bhavani Nursing Home to work as a doctor. In the second week of November, 1998,

@page-SC628

the appellant came to Rajahmundry and asked the respondent to go to Yanam and stay with his parents saying that she can have the company of his parents and she can carry on the medical profession along with his father who was also a doctor to which she agreed. Thereafter, the appellant got issued a notice dated 25.11.1998 to the respondent making certain false allegations saying that she was suffering from schizophrenia and she had suicidal tendencies etc., with the object of marrying again for fat dowry. The respondent has denied that she suffered from schizophrenia or suicidal tendencies and further stated that during her delivery days and subsequently on account of the threats received from in-laws of the appellant's deceased brother, there was some depression for which the respondent was treated and the appellant never allowed her to go through the prescriptions of her treatment at anytime and she was also not allowed to see the medicines given to her as part of treatment for her depression. It is stated by her that she believes that as part of the ill motive of the appellant, he might have administered some medicines to build up a false case against her with a view to file petition for dissolution of marriage. The respondent got issued a reply notice to the lawyer of the appellant mentioning the above facts on 18.12.1998.

6. It is further contended by the learned senior counsel for the respondent, Mr. Pallav Sisodia, that the appellant never cared for her and encouraged his parents to dislodge her from the family house. She filed O.S. No.53 of 1998 on the file of District Munsif's Court, Yanam for permanent injunction against the parents of the appellant and filed Interlocutory Application No. 237 of 1998 for temporary injunction against them not to evict her from the residential house where she was staying. It is further stated that the appellant has no right to withdraw from her society and demand for divorce and that she is entitled for restitution of conjugal rights. It is contended by the respondent that the impugned judgment is a well-considered judgment both on facts and in law and the Division Bench of the High Court rightly allowed the appeals filed by the respondent refusing to grant a decree of divorce in favour of the appellant and granting a decree for restitution of conjugal rights in favour of the respondent. Therefore, the respondent has prayed for dismissal of the petition filed by the appellant praying for grant of decree of divorce against her.

7. The appellant filed the counter statement to the petition for restitution of conjugal rights denying the allegations made in the petition. He contended that the behaviour of the respondent even when they were staying at New Delhi was marked by emotional disturbances and she also received treatment from a psychiatrist there. He has further stated that he underwent severe mental stress due to irrational behavioural pattern of the respondent. Her erratic behaviour started increasing as time passed by. She started manifesting symptoms of schizophrenia like violent or aggressive behaviour and a tendency to be harsh and hostile towards other members of the family without any reason whatsoever which were not visible earlier. For that reason, she was kept with her parents' family so that she can develop a sense of security which is required for patients suffering from schizophrenia. He has further stated that she also started developing the symptoms like sudden withdrawal and being silent for long periods without any communication.

8. Further, he has stated that after the death of his brother, he brought his wife and child to Hyderabad where he had secured a job as Assistant Professor of Orthopaedics in Gandhi Medical College. He further contended that on account of the death of his brother, tension developed in his family and that neither he nor his family members harassed the respondent demanding goods etc. He also stated that at the time of marriage, mental status of the respondent was not known to him. Further,

@page-SC629

the respondent tried to evict his parents from their house at Yanam and when she failed in her attempt, she filed O.S. No. 53 of 1998 at District Munsif's Court, Yanam which shows her erratic attitude towards the parents of the appellant.

9. The respondent fell seriously ill due to which the appellant sent her mother a telegram to come and take care of her. She went to live with her mother at Rajahmundry as she consulted some psychiatrists who advised her to live with her mother. The appellant visited her after two weeks and found that her mental condition had aggravated to such a point that it would be impossible for him to live with her as her husband. He contended that she was showing all the classical symptoms of schizophrenia including violence, psychotic behaviour, suicidal tendencies, withdrawal symptoms and abnormal and irrational behaviour including in the matter of her speech and her conversation. She also used to say that she would like to commit suicide and he was, thus, worried about her and the child. The respondent was continuously on psychiatric treatment. The above facts were narrated by the appellant in his divorce petition filed before the trial court. He has further contended that under the circumstances narrated above, it was impossible for him to resume cohabitation with the respondent as he was afraid of danger to his life and that of his daughter and therefore, he requested the Court for grant of a decree of divorce and that the respondent's petition for restitution of conjugal rights be dismissed as she is not entitled to the relief prayed for by her.

10. The learned trial Judge in his judgment held that the appellant is entitled to a decree of divorce if not annulment of marriage and that since the disease of the respondent was not disclosed to the appellant before marriage, she is not entitled to a decree of restitution of conjugal rights. As a result, O.P. 1/99 filed by the respondent for restitution of conjugal rights was dismissed and O.P.203/2000 filed by the appellant for grant of divorce was allowed by dissolving the marriage between the appellant and the respondent and decree of divorce was granted.

11. The trial court relied on the certified copy of report from Institute of Mental Health, Government Hospital for Mental Care, Sanjeeva Reddy Nagar, Hyderabad, bearing Nos. A and D/402/99 submitted to the Registrar (Judicial) High Court of Andhra Pradesh, Hyderabad, marked as Exh. B-10, given as per procedure and by conducting chemical examination etc. It is stated that the report clearly showed that the respondent is suffering from schizophrenia. The trial court relied on the case of Tarlochan Singh v. Jit Kaur,¹ where it was held that since the fact of the wife being a patient of schizophrenia was not disclosed to the husband before marriage, it would amount to **matrimonial** fraud and therefore it was held the husband was entitled to decree of divorce if not annulment of marriage.

12. Being aggrieved by the common judgment and decree of the trial court passed in O.P. Nos. 1/99 and 203/2000 the respondent filed appeals before the High Court of Andhra Pradesh questioning the correctness of the same urging various grounds. The High Court on re-appreciation of pleadings and evidence held that there is no positive evidence to show that the respondent has suffered schizophrenia and even in the case that she suffered from schizophrenia, it cannot be said that she was suffering from such a serious form of the disease that it would attract the requirements of Section 13 (1) (iii) of the Act for grant of decree for dissolution of marriage between the parties.

13. On perusal of the facts and legal evidence on record and hearing rival legal contentions urged by both the parties, the points that would arise for consideration of this Court are:

(1) Whether the respondent is suffering

1. AIR 1986 P and H 379

@page-SC630

from a serious mental disorder i.e. schizophrenia or incurable unsoundness of mind, and can this be considered as a ground for divorce under Section 13 (1) (iii) of the Hindu Marriage Act, 1955?

(2) Whether the High Court has correctly reappreciated the facts pleaded and evidence on record while dismissing the divorce petition of the appellant and allowing the petition for restitution of conjugal rights of the respondent?

(3) Whether the appeal filed by the appellant has to be allowed and we must restore the judgment and decree of trial court and dismiss the petition for conjugal rights filed by the respondent?

(4) What order?

14. Answer to point Nos.1 to 3:

These points are answered together as they are interrelated. On careful scrutiny of the pleadings and evidence on record and the decision of this Court referred to above, the provision of Section 13(1) (iii) of the Act is interpreted and the meanings of 'unsound mind' and 'mental disorder' as occurring in the above provisions of the Act are examined and referred to in the impugned judgment. The High Court, while examining the correctness of the findings recorded in the common judgment of the trial court, has placed reliance on *Ram Narain Gupta v. Rameshwari Gupta*², wherein this Court has interpreted the provision of Section 13(1)(iii) of the Act and laid down the law regarding mental disorder or unsound mind as a ground available to a party to get dissolution of the marriage. The relevant portions with regard to 'unsoundness of mind' and 'mental disorder' from the case referred to supra are extracted hereunder:

"20. The context in which the ideas of unsoundness of "mind" and "mental disorder" occur in the Section as grounds for dissolution of a marriage, require the assessment of the degree of the "mental disorder". Its degree must be such that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree. If the mere existence of any degree of mental abnormality could justify dissolution of a marriage few marriages would, indeed, survive in law.

21. The answer to the (sic) apparently simple - and perhaps misleading - question as to "who is normal?" runs inevitably into philosophical thickets of the concept of mental normalcy and as involved therein, of the 'mind' itself. These concepts of "mind", "mental phenomena" etc., are more known than understood and the theories of "mind" and "mentation" do not indicate any internal consistency, let alone validity, of their basic ideas. Theories of "mind" with cognate ideas of "perception" and "consciousness" encompass a wide range of thoughts, more ontological than epistemological. Theories of mental phenomena are diverse and include the dualist concept - shared by Descartes and Sigmund Freud - of the separateness of the existence of the physical or the material world as distinguished from the non-material mental world with its existence only spatially and not temporally. There is, again, the theory which stresses the neurological basis of the "mental phenomenon" by asserting the functional correlation of the neuronal arrangements of the brain with mental phenomena. The "behaviourist" tradition, on the other hand, interprets all reference to mind as "constructs" out of behaviour. "Functionalism", however, seems to assert that mind is the logical or functional state of physical systems. But all theories seem to recognise, in varying degrees, that the psychometric control over the mind operates at a level not yet fully taught to science. When a person is oppressed by intense and seemingly insoluble moral dilemmas, or when grief of loss of dear ones etch away all the bright colours of life, or where a broken marriage brings with it the loss of emotional security, what

2. (1988) 5 SCC 247 : (AIR 1988 SC 2260)

@page-SC631

standards of normalcy of behaviour could be formulated and applied? The arcane infallibility of science has not fully pervaded the study of the non-material dimensions of "being".

22. Speaking of the indisposition of science towards this study, a learned Author says:

"...we have inherited cultural resistance to treating the conscious mind as a biological phenomenon like any other. This goes back to Descartes in the seventeenth century. Descartes divided the world into two kinds of substances: mental substances and physical substances. Physical substances were the proper domain of science and mental substances were the property of religion. Something of an acceptance of this division exists even to the present day. So, for example, consciousness and subjectivity are often regarded as unsuitable topics for science. And this reluctance to deal with consciousness and subjectivity is part of a persistent objectifying tendency. People think science must be about objectively observable phenomena. On occasions when I have lectured to audiences of biologists and neurophysiologists, I have found many of them very reluctant to treat the mind in general and consciousness in particular as a proper domain of scientific investigation.

...the use of the noun "mind" is dangerously inhabited by the ghosts of old philosophical theories. It is very difficult to resist the idea that the mind is a kind of a thing, or at least an arena, or at least some kind of black box in which all of these mental processes occur.

23. Lord Wilberforce, referring to the psychological basis of physical illness said that the area of ignorance of the body-mind relation seems to expand with that of knowledge. In *McLoughlin v. O' Brian*, the learned Lord said, though in a different context: (All ER p. 301)

"Whatever is unknown about the mind-body relationship (and the area of ignorance seems to expand with that of knowledge), it is now accepted by medical science that recognisable and severe physical damage to the human body and system may be caused by the impact, through the senses, of external events on the

mind. There may thus be produced what is as identifiable an illness as any that may be caused by direct physical impact. It is safe to say that this, in general terms, is understood by the ordinary man or woman who is hypothesised by the courts..."

24. But the illnesses that are called "mental" are kept distinguished from those that ail the "body" in a fundamental way. In "Philosophy and Medicine", Vol. 5 at page X the learned Editor refers to what distinguishes the two qualitatively:

"Undoubtedly, mental illness is so disvalued because it strikes at the very roots of our personhood. It visits us with uncontrollable fears, obsessions, compulsions, and anxieties...."

... This is captured in part by the language we use in describing the mentally ill. One is an hysteric, is a neurotic, is an obsessive, is a schizophrenic, is a manic-depressive. On the other hand, one has heart disease, has cancer, has the flu, has malaria, has smallpox..."

The principle laid down by this Court in the aforesaid case with all fours is applicable to the fact situation on hand wherein this Court has rightly referred to Section 13 (1) (iii) of the Act and explanation to the said clause and made certain pertinent observations regarding "unsound mind" or "mental disorder" and the application of the same as grounds for dissolution of marriage. This Court cautioned that Section 13 (1) (iii) of the Act does not make a mere existence of a mental disorder of any degree sufficient in law to justify the dissolution of marriage. The High Court in the present case stated that a husband cannot simply abandon his wife because she is suffering from sickness and relied on the evidence of RW-2, Dr. Krishna Murthy, Superintendent, Institute of Mental Health,

@page-SC632

Hyderabad, wherein it is stated by him that schizophrenia can be put on par with diseases like hypertension and diabetes on the question of treatability meaning that constant medication is required in which event the disease would be under control. The High Court also relied on the evidence of PW-4, Dr. Ravi S. Pandey, Professor and Head of Department of Psychiatry at NIMHANS, Bangalore, who had examined the respondent and stated that the team could not find any evidence suggesting that she has been suffering from schizophrenia at the time of examining her and also stated in his cross-examination that no treatment including drugs were given to her at NIMHANS as they did not find any abnormality in her behaviour. He also stated that it is true that psychiatrically there is no contra-indication in leading a normal conjugal life. Thus, they gave her a certificate, which is marked as Exh. B-11, based on clinical examination and in the absence of any abnormal behaviour including psychiatric features in the past history of respondent. The High Court has not accepted the finding of fact recorded by the trial court on the contentious issue and further stated that "schizophrenia" does not appear to be such a dangerous disease and it can be controlled by drugs and in the present case, this finding is supported by evidence of RW-2, who has stated in his examination-in-chief that the appellant herein has not made any reference to any of the acts of the respondent that can constitute "schizophrenia" ailment. It is further held by the High Court that there is no positive evidence to show that the respondent has suffered from schizophrenia and even in the case she has suffered from some form of schizophrenia, it cannot be said that she was suffering from such a serious form of the disease that would attract the requirement as provided under Section 13 (1) (iii) of the Act and that it is of such a nature that it would make life of the appellant so miserable that he cannot lead a marital life with her.

15. We are of the opinion that the High Court has rightly examined the entire evidence on record and correctly found fault with the findings of fact recorded by the trial court with regard to the ailment attributed to the respondent for seeking dissolution of marriage under the ground of 'unsound mind' which is a non-existent fact. In the case of *Vinita Saxena v. Pankaj Pandit*³, this Court has examined in detail the issue of schizophrenia wherein the facts are different and the facts and evidence on record are not similar to the case on hand. Therefore, the observations made in the judgment for grant of decree for dissolution of marriage under Section 13 (1) (ia) and Section 13(1) (iii) of the Act cannot be applied to the fact situation of the case on hand. But, we would like to examine what was said in that case on the issue of this disease, schizophrenia :

"What is the disease and what one should know?"

*A psychotic lacks insight, has the whole of his personality distorted by illness, and constructs a false environment out of his subjective experiences.

*It is customary to define 'delusion' more or less in the following way. A delusion is a false unshakeable belief, which is out of keeping with the patient's social and cultural background. German psychiatrists tend to stress the morbid origin of the delusion, and quite rightly so. A delusion is the product of internal morbid processes and this is what makes it unamenable to external influences.

*Apophanous experiences which occur in acute schizophrenia and form the basis of delusions of persecution, but these delusions are also the result of auditory hallucinations, bodily hallucinations and

experiences of passivity. Delusions of persecution can take many forms. In delusions of reference, the patient feels that people are talking about him, slandering him or

3. (2006) 3 SCC 778 : (AIR 2006 SC 1662 : 2006 AIR SCW 1585)

@page-SC633

spying on him. It may be difficult to be certain if the patient has delusions of self-reference or if he has self-reference hallucinosis. Ideas of delusions or reference are not confined to schizophrenia, but can occur in depressive illness and psychogenic reactions.

Causes

The causes of schizophrenia are still under debate. A chemical imbalance in the brain seems to play a role, but the reason for the imbalance remains unclear. One is a bit more likely to become schizophrenic if he has a family member with the illness. Stress does not cause schizophrenia, but can make the symptoms worse.

Risks

Without medication and therapy, most paranoid schizophrenics are unable to function in the real world. If they fall victim to severe hallucinations and delusions, they can be a danger to themselves and those around them.

What is schizophrenia?

Schizophrenia is a chronic, disabling mental illness characterised by:

*Psychotic symptoms

*Disordered thinking

*Emotional blunting

How does schizophrenia develop?

Schizophrenia generally develops in late adolescence or early adulthood, most often:

*In the late teens or early twenties in men

*In the twenties to early thirties in women

What are the symptoms of schizophrenia?

Although schizophrenia is chronic, symptoms may improve at times (periods of remission) and worsen at other times (acute episodes, or period of relapse).

Initial symptoms appear gradually and can include:

*Feeling tense

*Difficulty in concentrating

*Difficulty in sleeping

*Social withdrawal

What are psychotic symptoms?

*Psychotic symptoms include:

*Hallucinations: hearing voices or seeing things.

*Delusions: bizarre beliefs with no basis in reality (for example delusions of persecution or delusions of grandeur).

These symptoms occur during acute or psychotic phases of the illness, but may improve during periods of remission.

A patient may experience:

*A single psychotic episode during the course of the illness

*Multiple psychotic episodes over a lifetime..."

16. As per evidence of RW-2, schizophrenia is a treatable, manageable disease, which can be put on par with hypertension and diabetes. So also, PW-4, who had examined the respondent at NIMHANS, Bangalore stated that the team could not find any evidence suggesting schizophrenia at the time of their examining the respondent and he had stated in his cross-examination that no treatment including drugs was given to her at NIMHANS as they did not find any abnormality in her. They thus gave her a certificate of normal mental status, based on the absence of any abnormal findings in her medical report including psychiatric features in the past history and normal psychological test. We have carefully perused the Report marked as Exh. B-10 dated 24.4.1999 given by the Doctors of Institute of Mental Health, Hyderabad before the trial court. The learned trial Judge has misread the contents of the said report and also wrongly interpreted the same and recorded the finding that the respondent is suffering from the ailment of 'schizophrenia' and therefore he has accepted the case of the appellant who has made out a ground under Section 13(1) (iii) of the Act wherein it is stated that a spouse suffering from schizophrenia or incurably unsound mind

@page-SC634

is a ground for dissolution of the marriage between the parties.

17. The High Court has thus rightly set aside the decree of dissolution of marriage granted in favour of the appellant and dismissed his petition and granted a decree of restitution of conjugal rights in favour of the respondent by allowing her petition. The High Court has recorded the finding of fact on re-appreciation of material evidence on record and has rightly held that the trial court has erroneously come to the conclusion that the respondent was suffering from schizophrenia by relying on the evidence of PW-1, who is the appellant herein and as per the opinion given by the Committee of Doctors in Ex.B-10. In the deposition by witness RW-2, Dr. K. Krishna Murthy, he has stated in his examination-in-chief that Schizophrenia has become eminently treatable with the advent of many new psychiatric drugs. He further stated that many patients with schizophrenia are able to lead a near normal life with medication. The trial court has erroneously relied on certain cases referred to and applied the principle laid down in those cases to the facts of this case even though they are not applicable to the case on hand either on facts or in law as the appellant has not proved the allegations made in the petition against the respondent by adducing positive and substantive evidence on record to substantiate the same and that the alleged ailment of the respondent would fall within the provision of Section 13(1)(iii) of the Act. Therefore, he has not made out a case for grant of decree for dissolution of marriage. We have carefully examined Ex. Nos. X-6 to X-11, which are the prescriptions of medicine prescribed to her by Dr. Mallikarjuna Rao, Dr. Pramod Kumar and Dr.M.Kumari Devi. The above prescriptions mention the symptoms of the ailment of the respondent, which were in the nature of delusions, suspicious apprehensions and fears, altered behaviours, suicidal tendency and past history of depression. Reliance is placed by PW 1 on the above documentary evidence to prove that the respondent was suffering from the mental disorder of schizophrenia and therefore it squarely falls within the provision of Section 13(1)(iii) of the Act for grant of decree of dissolution of marriage in his favour. The High Court has rightly held that the trial court has erroneously accepted the same and recorded its finding of fact on the contentious issues to pass decree of divorce in favour of the appellant, which is contrary to the decision of this Court in the case of Ram Narain Gupta v. Rameshwari Gupta (AIR 1988 SC 2260) (supra). The same decision has been relied upon by the respondent before the High Court, wherein the said decision was correctly accepted by it to set aside the erroneous finding of fact recorded by the trial court on the contentious issue.

18. The legal question that arises for our consideration is whether the marriage between the parties can be dissolved by granting a decree of divorce on the basis of one spouse's mental illness which includes schizophrenia under Section 13 (1) (iii) of the Act. In the English case of *Whysall v. Whysall*⁴, it was held that a spouse is 'incurably of unsound mind' if he or she is of such mental incapacity as to make normal married life impossible and there is no prospect of any improvement in mental health, which would make this possible in future. The High Court of Judicature at Calcutta, in *Pramatha Kumar Maity v. Ashima Maity*⁵ has held that mental disorder of the wife, even if proved, cannot, by itself, warrant a decree of divorce and it must be further proved that it is of such a nature as the husband could not be expected to live with the wife. The Allahabad High Court, in *Mt. Tilti v. Alfred Rebert Jones*⁶ has held that where it has come on record that the wife has improved her educational qualifications and has been looking after her children, the

4. (1959) 3 All ER 389

5. AIR 1991 Cal 123

6. AIR 1934 All 273

@page-SC635

apprehension of the husband that there is danger to his life or to his children is not borne out is the finding recorded in the said case. Inability to manage his or her affairs is an essential attribute of an "incurably

unsound mind". The facts pleaded and the evidence placed on record produced by the appellant in this case does not establish such inability as a ground on which dissolution of marriage was sought for by him before the trial court.

19. The High Court has rightly set aside the said finding and allowed the appeal of the respondent after careful scrutiny of Exh.B-10. The correctness of the finding of the High Court in the impugned judgment is seriously challenged by the learned senior counsel on behalf of the appellant in this appeal. We have examined this contention, after careful perusal of the contents of Exh.B-10. In our considered view, the contents of the report as stated by the team of doctors do not support the case of the appellant that the respondent is suffering from a serious case of schizophrenia, in order to grant the decree of divorce under Section 13(1) (iii) of the Act. The report states that the respondent, although suffering from 'illness of schizophrenic type', does not show symptoms of psychotic illness at present and has responded well to the treatment from the acute phases and her symptoms are fairly under control with the medication which had been administered to her. It was further stated that if there is good compliance with treatment coupled with good social and family support, a schizophrenic patient can continue their marital relationship. In view of the aforesaid findings and reasons recorded, we have to hold that the patient is not suffering from the symptoms of schizophrenia as detailed above.

20. We are of the view that the High Court in exercise of its appellate jurisdiction has rightly come to a different conclusion that the respondent is not suffering from the ailment of schizophrenia or incurable unsoundness of mind. Further, the High Court has rightly rejected the finding of the trial court which is based on Exh. B-10 and other documentary and oral evidence by applying the ratio laid down by this Court in the case of Ram Narain Gupta v. Rameshwari Gupta referred to supra. A pertinent point to be taken into consideration is that the respondent had not only completed MBBS but also did a post graduate diploma in Medicine and was continuously working as a Government Medical Officer and had she been suffering from any serious kind of mental disorder, particularly, acute type of schizophrenia, it would have been impossible for her to work in the said post. The appellant-husband cannot simply abandon his wife because she is suffering from sickness. Therefore, the High Court allowed both the CMAs and dismissed O.P. No. 203/2000 filed by the appellant for divorce and allowed O.P. No.1/99 filed by the respondent for restitution of conjugal rights wherein the High Court granted decree of restitution of conjugal rights in favour of the respondent.

21. It is thus clear that the respondent, even if she did suffer from schizophrenia, is in a much better health condition at present. Therefore, this Court cannot grant the dissolution of marriage on the basis of one spouse's illness. The appellant has not proved the fact of mental disorder of the respondent with reference to the allegation made against her that she has been suffering from schizophrenia by producing positive and substantive evidence on record and on the other hand, it has been proved that the respondent is in much better health condition and does not show signs of schizophrenia as per the most recent medical report from NIMHANS, as deposed by PW-4 in his evidence before the trial court.

22. For the aforesaid reasons, we are of the firm view that the findings and reasons recorded in setting aside the judgment and decree of the trial court is neither erroneous nor does it suffer from error in law which warrants our interference and calls for setting aside the impugned judgment

@page-SC636

and decree of the first appellate court. Therefore, this Court cannot interfere with the impugned judgment of the High Court as the same is well-reasoned and based on cogent reasoning of facts and evidence on record and accordingly, we answer point No. 4 in favour of the respondent.

23. Under Hindu law, marriage is an institution, a meeting of two hearts and minds and is something that cannot be taken lightly. In the Vedic period, the sacredness of the marriage tie was repeatedly declared; the family ideal was decidedly high and it was often realised⁷. In Vedic Index I it is stated that "The high value placed on the marriage is shown by the long and striking hymn". In Rig Veda, X, 85; "Be, thou, mother of heroic children, devoted to the Gods, Be, thou, Queen in thy father-in-law's household. May all the Gods unite the hearts of us "two into one" as stated in Justice Ranganath Misra's 'Mayne's Treatise on Hindu Law and Usage'⁸. Marriage is highly revered in India and we are a Nation that prides itself on the strong foundation of our marriages, come hell or high water, rain or sunshine. Life is made up of good times and bad, and the bad times can bring with it terrible illnesses and extreme hardships. The partners in a marriage must weather these storms and embrace the sunshine with equanimity. Any person may have bad health, this is not their fault and most times, it is not within their control, as in the present case, the respondent was unwell and was taking treatment for the same. The illness had its fair share of problems. Can this be a reason for the appellant to abandon her and seek dissolution of marriage after the child is born out of their union? Since the child is now a grown up girl, her welfare must be the prime consideration for both the parties. In view of the foregoing reasons, we are of the opinion that the two parties in this case must reconcile and if the appellant so feels that the respondent is still suffering, then she must be given the right treatment. The respondent must stick to her treatment plan and make the best

attempts to get better. It is not in the best interest of either the respondent or her daughter who is said to be of adolescent age for grant of a decree of dissolution of marriage as prayed for by the appellant. Hence, the appeal is liable to be dismissed.

24. Accordingly, we dismiss the appeal and uphold the judgment of the High Court in not granting a decree of divorce and allowing the petition for restitution of conjugal rights. Therefore, we grant a decree for restitution of conjugal rights under Section 9 of the Act in favour of the respondent.

7. Vedic Index, I, 484,485; CHI, I, 89 as in Ranganath Misra J. Revised., Maynes Treatise on Hindu Law and Usage, Fifteenth Edition, 2003, Bharat Law House at p.97

8. Fifteenth Edition, 2003, Bharat Law House at p.97

Appeal Dismissed.
