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(Annexure P16). He gave reasons and set out the circumstances which forced upon him the break in service. The Government did not question the sufficiency or validity of those reasons and grounds. The genuineness of the claim was not even doubted. But, it was rejected by a non speaking order on the spacious plea that the claim was "time barred". Since the respondent was asked to get the break condoned by the letter dated 31st July, 1982 (Annexure P15), and he applied for it on 22nd October, 1982 (Annexure P16); surely, it cannot be said that there was delay or laches or any other fault attributable to the respondent in perusing his legitimate claim in accordance with the rules. In any event, the pension rules do not prescribe any time limit for condonation of such break in service. In these circumstances, we find the stand taken on behalf of the Government wholly unreasonable, unfair and unjust.

(29) Therefore, we up-hold the directions given to the appellants to count the War Service rendered by the respondent from 20th July, 1994 to 31st March, 1946 for computation of his civil pension and release the consequential benefits. We direct the appellants to do the needful now within one month. The other directions, for counting military service from 1st April, 1946 to 22nd March, 1947 towards civil pension and for refund of the amount of Rs. 1,749.77 paisas, given in the impugned judgment are set aside. Accordingly, the impugned judgment dated 14th February, 1991 is modified and the appeal is partly allowed. Parties are left to bear their own costs.

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S.C.K.

*Before Jawahar Lal Gupta & N.C. Khichi, JJ*

PAWAN KUMAR—Appellant

*versus*

CHANCHAL KUMARI—Respondent

L.P.A. 536 of 1996

27th October, 1998

*Hindu Marriage Act, 1955—S. 13—Decree for divorce—  
Marriage irretrievably broken—Grant of divorce in such a situation.*

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*Held that* the parties to the marriage have stayed separately for the last more than 13 years. They have lived together for only a month. They have no child which may bind them together. It appears that the marriage has been dead for more than a decade. It has irretrievably broken. It is an 'insoluble mess'. It would be appropriate to grant the decree of divorce in the circumstances of the case.

(Para 12 & 18)

J.L. Malhotra, Advocate—for the Appellant.

Hemant Kumar Gupta, Advocate—for the Respondent.

### JUDGMENT

*Jawahar Lal Gupta, J. (Oral)*

(1) The husband's petition under Section 13 of the Hindu Marriage Act, 1955, for a decree of divorce was dismissed by the trial Court. The First Appeal was also dismissed. Hence this Letters Patent Appeal.

(2) The short question that arises for consideration is—Should the decree of divorce be denied despite the fact that the parties have admittedly been staying separately for the last more than 13 years? A few facts as relevant for the decision of the case may be briefly noticed.

(3) The parties are Hindus. They were married on December, 2, 1984. The appellant alleges that they had parted company in January, 1985. The wife disputes it and states that they are staying separately since July 1985. After four years on April 3, 1989, the appellant had filed a petition under section 13 of the Hindu Marriage Act. He alleged that the attitude of the respondent was harsh. She used to misbehave with him and his family members. She insulted them. In January, 1985 she left the matrimonial house and went to her mother's sister's house and thereafter to her mother's house. The appellant claims that inspite of repeated visits she and her family members refused to send her back. According to the appellant a settlement was arrived at between the parties on June 9, 1985. It was duly scribed by a deed writer. In pursuance to the agreement, an amount of Rs. 10,000 was paid to her. The articles of dowry were also returned to her. She had agreed that both the parties could remarry. However, after taking the money she filed a petition under Section 125 Cr. P.C. wherein she admitted her signatures on the deed of compromise. The appellant maintains that the

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respondent has withdrawn from his society "without any reasonable cause". She has been cruel to him. Thus, he prays for a decree of divorce.

(4) In the written statement filed by the respondent, the allegations that she was harsh or that she had misbehaved have been denied. It has been asserted that no dowry articles were returned. She had never abandoned her right. There was no agreement that the parties could remarry. The respondent maintains that it was the petitioner and his family who had misbehaved and harassed her. They alleged that "she had not brought sufficient dowry according to their wishes.....". She claims to have been "asked repeatedly.....to bring more dowry from her parents and relations". She maintains that she was "ousted from the matrimonial home on 5th July, 1985.....without any rhyme or reason" after being mercilessly beaten. She was not even allowed to have "necessary clothings, jewellery and other articles of daily use.....she was forced to sign some papers under pressure and threat which the respondent signed in order to save her life". According to the respondent "the petitioner and his family members were approached so many times.....". But the petitioner and his family refused to accept this request unless "payment of Rs. 10,000 was made by the respondent or till the house of the respondent's mother situated at Yamuna nagar is gifted in the name of the petitioner". It has also been averred that the respondent has seven sisters and no brother. She has already lost her father and the mother is very old. She has no independent income from any source whatsoever. The financial position of the family is very bad. All the sisters are living separately. None "is ready to spare any amount for her maintenance". The respondent's marriage "with the petitioner was arranged all of a sudden through a common relation when the engagement.....with some other girl of Ludhiana was broken on the point of his demand of motor cycle from them, after the date of marriage was fixed". In spite of this, the relations of the respondent spent huge amount and quite sufficient dowry including jewellery, clothings and other articles etc. were given. The respondent asserts that she had not withdrawn from the society of the petitioner. She is still ready and willing to live with the petitioner. Consequently, she prays that the petition be dismissed.

(5) The appellant filed a replication reiterating his claim.

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(6) The learned trial Court framed the following issues:—

1. Whether the respondent has deserted the petitioner for a continuous period of more than two years; if so, to what effect ? OPP.
2. Whether the respondent has committed such acts towards the petitioner which amounted to cruelty ? OPP.
3. Whether this petition is not maintainable as the same has not been framed in accordance with the rules ? OPP.
4. Relief.

(7) The trial Court found that the present appellant had “failed to prove on the record that the respondent has deserted him without any sufficient cause for a continuous period of more than two years”. It further found that the allegation of cruelty against the respondent was false. So far as issue No. 3 was concerned, no arguments had been advanced by either party. Resultantly, the petition was dismissed.

(8) The findings were affirmed by the learned Single Judge. It was held that the respondent was maltreated and was turned out of the matrimonial home. She is still ready and willing to join the appellant. However, he is not willing to keep her. According to the learned Single Judge the reason appeared to be that “he has remarried and is blessed with two children. Therefore, now he is not inclined to take her back”.

(9) Learned counsel for the parties have been heard.

(10) It has been found as a fact by the Courts below that the agreement as alleged by the appellant had not been executed. In fact, the learned Single Judge has referred to the statement of the appellant and observed that he has “admitted unequivocally in cross-examination that at the time of the execution of this agreement, dispute arose and all the above mentioned persons left the place before the execution of the agreement itself”. Yet, it has been observed that it is “in compliance of this agreement, the respondent is living separately that is not without his consent or against his will, as he has permitted her to live separately”. Thus, the appellant’s plea of desertion has been rejected. It has also been found that the respondent was married to the appellant “with a notice of one day only”. Despite this, the appellant’s plea that he never asked for or

expected any dowry has been rejected with the observation that "the ways of the world are peculiar. After the marriage a husband and his relations sometimes behave in that fashion and start demanding dowry. The respondent's statement is worthy of credence when she says that she was turned out of the matrimonial home on July 5, 1985, after being tortured and maltreated by the appellant and his family members. No doubt, she has not examined her mother, but the reason is obvious. She is an old ailing woman. Hence even in the absence of her statement, respondent's sworn testimony is believable that after July, 1985, when an attempt was made for her rehabilitation, the appellant and his father demanded either Rs. 10,000 or execution of gift deed of respondent's mother's house at Yamuna Nagar in appellant's name".

(11) Can these findings be sustained ?

(12) It is, undoubtedly, correct that in a Letters Patent Appeal the Court is reluctant to reappreciate the evidence. Normally, the Court confines itself to errors of law. It is also true that even an irretrievable break down of marriage is not statutorily recognised as a ground for annulling a marriage. However, the admitted facts in the present case are:—

1. The parties have stayed separately since July, 1985. According to the appellant, they had stayed together for only a month. According to the respondent-wife they had stayed together from December, 1984 to July, 1985.
2. They have no child which may bind them together.
3. The respondent is one of the eight sisters. The father had died before the marriage. The mother is stated to have passed away during the pendency of the case. The family had no source of income at the time of marriage. The position has not improved since then.
4. It is the respondent's own case that the appellant has remarried and has two children. She has produced a birth certificate indicating that a male baby was born.

(13) From these facts, it is absolutely clear that the marriage is completely "dead". It is an "insoluble mess". The parties have never had a happy married life. Should the dead horse be flogged and the marriage be made to subsist ?

(14) Undeniably, marriage is a human relationship. It must

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bring happiness to the parties. It must be a source of joy. It must give the parties a home. In the present case, It is the admitted position that both, the appellant as well as respondent, have been totally unhappy. They have stayed separately since 1985 after their marriage in December, 1984.

(15) It has been contended on behalf of the respondent that she had not withdraw from the company of the appellant. In fact, he had shown dissatisfaction with the Dowry. He was greedy and wanted more of it. Thus, he had treated the respondent with cruelty and turned her out of the house. is it so?

(16) It is the admitted position that the respondent is one of the eight sisters. her father had died long before the marriage. The family had no source of income. It was despite this situation that the appellant had married the respondent. In this situation, it appears improbable to accept the contention that the appellant was wanting more dowry. Surely, it was known to the appellant that there was no earning member in the family at the time of marriage. How could he have expected the respondent to give him any thing except herself? It appears that the story has been made out with the sole object of creating a plea. Learned counsel for the respondent submitted that her mother owned a house and that the appellant had his eye on the property. Even this contention cannot be accepted. Firstly, neither the mother nor any other relation has been produced to prove this allegation. Secondly, any body would know that even if there is a house, all the eight sisters would have an equal share therein. No one could have claimed the property exclusively. Thirdly, learned counsel has not referred to any evidence to indicate that the property could have been given by the respondent's mother to any one to the exclusion of others. Thus, even the story with regard to the appellant's desire to have the house does not appear to be believable.

(17) Admittedly, the parties have stayed separately for the last 13 years. It is also clear from the record that initially efforts had been made by the husband to persuade the wife to stay with him. Having failed, he had sought divorce. The wife accused him of merciless beating, turning her out of the house and not taking care of her. The evidence on the record does not prove these allegations. Still further, it is the admitted position that she was willing to join him even when the matter was pending in this Court. If the husband had really beaten her and then driven her out of the house, she

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would not have been willing to go back to him. Her conduct belies her allegation.

(18) After consideration of the matter, it appears to us that the marriage has been 'dead' for more than a decade. It has irretrievably broken. It is an 'insoluble mess'. Respectfully following the view taken by their Lordships of the Supreme Court in *Ms. Jordan Diengdeh v. S. S. Chopra* (1), *Chanderkala Trivedi v. Dr. S.P. Trivedi* (2), *V. Bhagat v. D. Bhagat* (3), *Romesh Chander v. Savitri* (4) and *Ashok Hurra v. Rupa Bipin Zaveri* (5), we think it would be appropriate to grant the decree of divorce as prayed for by the appellant.

(19) The appeal is, accordingly, allowed, In the circumstances, the parties are left to bear their costs.

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**S.C.K.**

*Before G.S. Singhvi & Iqbal Singh, JJ*

GEETA RAM,—*Petitioner*

*versus*

P.O.L.C. BATHINDA & OTHERS,—*Respondents*

*C.W.P. No. 11602 of 1997*

26th March, 1998

*Constitution of India, 1950—Arts. 226/227—Industrial Disputes Act, 1947—S. 10—Punjab Civil Service (Punishment & Appeal) Rules, 1970—Rls. 8 & 14—Absence from duty—Charge sheeted—Ex parte inquiry—Thereafter dismissed from service—No evidence produced by employer to substantiate allegation made—Petitioner denied all allegations—Rules 8(2) & 14 not complied with—Burden to prove allegation of misconduct is on employer unless employee admits such allegations—Labour Court failed to appreciate that rules were violated—Well settled principle of law that if delinquent does not participate in inquiry proceedings*

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- (1) A.I.R. 1985 S.C. 935
- (2) 1993 (4) S.C.C. 232
- (3) A.I.R. 1994 S.C. 710
- (4) A.I.R. 1995 S.C. 851
- (5) A.I.R. 1997 S.C. 1266