

FACTS OF THE CASE

1. Lara is a businesswoman based in Bangalore and was in a relationship with Rahul, a Local artist. Lara and Rahul met in a General Entrepreneurship Development Programme in Bangalore in June 2018 and they got married in the same year within a few weeks.
2. Since Lara didn't want to give birth keeping in view her busy schedule, they decided to adopt a child in September 2021 and have been working towards it.
3. Successfully, in the month of November 2021, they were given a child for adoption.
4. Lara used to overwork and failed to take care of the child properly. As a result of this, Rahul asked her to quit her job and take care of the child fulltime - become a stay at home mom. Lara refused to stop working since her business had recently started to flourish. Enraged, Rahul started to abuse her verbally.
5. Later in Jan 2022, Lara decided that she does not want to carry forward the relationship and they started living separately. During their time apart, Rahul made efforts to visit the child. However, Lara didn't allow the same.
6. Since the child was under her mother's care, Lara never allowed Rahul to visit the child despite his regular efforts. Even during school events, birthdays, Rahul was denied the right of visiting his child due to the mother's apprehension that he would ill-treat her.
7. On many occasions Lara had also mentioned to her neighbours that her husband had subjected her to mental torture through verbal abuse.
8. Rahul claimed to be worried that Lara was busy overworking and did not take proper care of this child. He also claimed that on many occasions Lara failed to fulfil the needs of the child.
9. Concerned about the welfare of the child, one day Rahul decided to pick up Sonia from school and took her to his house. However he failed to inform Lara that he would be taking the child with him.
10. Lara, triggered by this, went to his place and caused a scene in front of the neighbours, and Rahul slapped her and humiliated her.
11. The action taken by Rahul caused Lara to approach the court and file a petition for divorce on the grounds of cruelty.
12. Court referred the case to mediation.

BEFORE THE FAMILY COURT
At Bengaluru

Matrimonial Case No.: ____ of 2022

BETWEEN

Mrs. Lara
W/o Rahul Shankar,
Aged about 33 years,
Businesswoman and founder of Alora,
Residing at Flat no 15
17th Main road
6th Block Koramangala,
Bengaluru, Karnataka 560024

And

Mr. Rahul Shankar,
S/o Mr. Vivaan Shankar,
Aged about 38 years,
Artist,
Residing at Flat no. 01,
Shanthi Pura, Electronic City Phase II,
Electronic City, Bhoji Palya,
Karnataka, Bangalore, 560100.

**PETITION FOR DIVORCE UNDER SECTION 13(1)(ia) OF THE HINDU
MARRIAGE ACT, 1955 AND CUSTODY UNDER 12 of the GUARDIANS AND
WARDS ACT, 1980**

The above said petition respectfully submits the following:

1. The petitioner and the respondent were lawfully married according to traditional Hindu rites on 24-06-2018 in a temple located at Bangalore. The petitioner however owing to her busy schedule was not interested in giving birth to her own child out of wedlock. Therefore they adopted a child in June 2021 in accordance with the provisions of the Hindu Adoption and Maintenance Act, 1956. Both the petitioner and respondent were well settled in their careers as one was a businesswoman and the other a Local artist.
2. Before the adoption the petitioner and respondent lived well without any quarrels. After the adoption however things changed as the respondent begun ignoring his duties and often engaged in quarrels with his wife the petitioner.
3. The respondent was a Local Artist whose studio was their house which was located in the heart of the city. The respondent was also of the opinion that it was the job of the mother to take care of the child therefore leading to him neglecting his fatherly duties. The respondent therefore forced the petitioner to quit her successful career to be a full time mom.
4. When the petitioner questioned the respondent on the same he said that it was her duty and must take care of their daughter Sonia. He also resorted to verbal abuses when the petitioner returned home from work after a long day. In a few instances, the respondent had also verbally abused the petitioner in the presence of their daughter Sonia.
5. The respondent also resorted to heavy drinking each time he fought with the petitioner. In hopes of reconciling, the petitioner made constant efforts to ask him to stop his drinking habit. However, the respondent refused to change his habits.
6. After a year of adopting the child, the petitioner had lost all interest in continuing her relationship owing to the constant mental and verbal abuse meted towards her by the respondent.
7. The petitioner was also of the opinion that the verbal abuse took place in the presence of their daughter and this in turn affected the child in her development mentally as well as emotionally.
8. Due to the actions of the respondent the child would often fail to mingle with the other kids of her age and also affected her learning. She was also engaged in fights with the other kids

in her class and would repeat and make use of the words the respondent used towards the petitioner while verbally abusing her.

9. Due to these reasons the petitioner felt the need to live separately for her daughter's well-being. This however did not last long as the respondent on a particular day picked up their daughter from school without informing the petitioner.
10. The petitioner also felt the grave need to protect her daughters' interest owing to the actions by the respondent to take her daughter away from her the petitioner wanted to approach the court for a divorce
11. The petitioner filed for divorce and child custody on grounds of cruelty.
12. The family court at Bangalore thereby referred the matter to mediation.

PRAYER

Wherefore, in the light of the issues raised, arguments advanced and authorities cited, the counsel for the petitioner respectfully prays that the Hon'ble Court be pleased to

1. Grant divorce to the petitioner and
2. Grant the custody of the child in the favour of the petitioner
and/or
3. Grant any other relief which this Hon'ble Court may deem fit in the light of Justice, Equity and Good Conscience

Place: Bangalore

Date : 22.08.2021

Advocate for Petitioner

Deeksha D R

Petitioner

Safa Shameem
(Lara)

VERIFYING AFFIDAVIT

I, Mrs. Lara w/o Mr. Rahul aged about 33 years, businesswoman and founder of Alora, residing at Flat no 15, 17th Main Road, 6th Block Koramangala, Bengaluru, Karnataka 560024, hereby state on oath and swear to this affidavit, which is as follows:

1. I, am the petitioner in the above case, and I know the facts of the case.
2. I state that whatever stated in Para 1 to 18 in the accompanied petition is true and correct to the best of my knowledge, belief and information.
3. I state that the documents annexed with the petition are the true copies of the original documents.

Whatever stated above is true and correct to the best of my knowledge, belief and information.

Place: Bangalore

Date: 22.08.2022

Deponent:

Safa Shameem

(Lara)

Advocate:

Deeksha DR

ARGUMENTS

I. WHETHER LARA IS ENTITLED TO A DIVORCE?

1. The petitioner contends that ever since the Petitioner and respondent adopted the child, the respondent's behaviour and attitude has become strange. Before the adoption of the child, the couple lived in harmony and had a good relationship. After the adoption of the child however the relationship between them became strained.
2. The respondent started neglecting his duties as a father and started quarrelling with the petitioner on a regular basis. The respondent also goes on to claim that the petitioner failed to take care of the child.
3. The respondent compelled the petitioner to give up her job and when she refused to do so, he started verbally abusing her. He also resorted to heavy drinking and abused the petitioner daily leading to mental trauma for the petitioner. He also belittled her work in front of her employees.
4. In one instance, the respondent even slapped the petitioner and publicly humiliated her in front of their neighbours.
5. The petitioner has also had to attend sessions with her psychiatrist in order to cope with the trauma that she has been put through.
6. A bare reading of Section 13(1)(ia) of the Hindu Marriage Act, 1955, states that cruelty is a ground for divorce. The petitioner tried staying apart from the respondent with hopes that he would give up on his drinking habits and make amends to be a good husband and father. However, the respondent only subjected the petitioner to further cruelty and humiliation. The petitioner submits that she can no longer bear the torture and the above mentioned reasons have prompted her to approach the Hon'ble court to get a decree for dissolution of marriage.

II. Whether the actions of the respondent amount to cruelty ?

1. Section 13(1)(ia) of the Hindu Marriage Act, 1955 acknowledges cruelty as a valid ground for divorce. There is no statutory definition for the word "cruelty" provided under the statute. However in the case of *Naveen Kohli vs Neelu Kohli*¹, it has been recognised that cruelty can be defined as a pattern of behaviour that consistently subjects victims to torture and indescribable mental suffering. Thus, the word cruelty in the context of matrimonial cases, is not restricted to physical cruelty but it would also include mental cruelty as was

¹ AIR 2006 SC 1675

observed by the apex court in the case of *Pravin Mehta v Indrajai*.² The definition of cruelty goes beyond just bodily injury. It is the behaviour that has a negative impact on the partner. Whether intentional or inadvertent, such cruelty can be "mental" or "physical."

2. Mental cruelty can be construed to mean cruelty which occurs when one party causes the other party mental pain, agony, or suffering to the point that it breaks the bond between the wife and husband and makes it impossible for the party who has suffered to coexist with the other party.
3. Cruelty has been designedly left undefined in order to leave the courts the liberty to relieve the couple of living in misery and of the mess they have made of their lives and where they refuse to reconcile. Cruelty has also been made a punishable offence under Section 498 A of IPC.
4. In the instant case, the respondent's behaviour has been such that the petitioner cannot fairly be expected to live with the respondent, which is one of numerous factors that demonstrate that the marriage has broken down.
5. The respondent used to excessively indulge in alcohol and misbehaved with the petitioner by subjecting her to verbal abuse and mental torture. Apart from physical violence, intoxication and bullying of the petitioner or the family's children and any form of abuse, threats, and nagging may all be considered behaviours that make it unreasonable for the petitioner to cohabit with the respondent.
6. The respondent compelled the petitioner to give up her job, and as a result of her refusal to leave her job, he would engage in drinking alcohol and subject her to filthy abuses everyday which was taking a toll on the petitioner's mental health and also affecting her progress at work. No person enters into a marriage intending to accept habitual inebriation. persistent drunkenness after warnings that such a course of conduct is inflicting pain on the other spouse, certainly if it is known to be injuring the other spouse's health, may of itself amount to cruelty.³
7. The respondent even slapped the Petitioner at one instance and subjected her to humiliation when the Petitioner confronted the respondent for picking up their daughter from school without informing the Petitioner.
8. These actions of the respondent clearly constitute mental cruelty which is embodied as a valid ground for divorce.

² (2002) 5 SCC 706.

³ Rita vs Brh Kishore Gandhi, ILR 1984 Delhi 289.

III. Whether either of them is entitled to custody of the child?

1. The petitioner contends that she being the more financially stable person can provide the child with the needful support possible with finance thereby providing her with all the benefits and amenities she can which will aid to her overall development and growth.
2. Having a stable job is essential for raising any child as it is required for funding their education and lifestyle in a healthy manner without any sort of discrepancies. Therefore, financially the petitioner is way more stable to provide for the child.
3. The petitioner would also like to state that the environment the child is raised is way healthier on her side, having no sort of addictions or substance abuse on her, she is way more stable to provide a healthy physical environment for the child to be raised in which the respondent will not be able to provide for with his alcohol abuse.
4. Therefore, considering the financial aspects of the case, the petitioner has a higher possibility of raising the child stably providing better growth and development.

BEFORE THE FAMILY COURT
At Bengaluru

Matrimonial Case No.: ____ of 2022

BETWEEN

Mrs. Lara
W/o Rahul Shankar,
Aged about 33 years,
Businesswoman and founder of Alora,
Residing at Flat no 15
17th Main road
6th Block Koramangala,
Bengaluru, Karnataka 560024

And

Mr. Rahul Shankar,
S/o Mr. Vivaan Shankar,
Aged about 38 years,
Artist,
Residing at Flat no. 01,
Shanthi Pura, Electronic City Phase II,
Electronic City, Bhoji Palya,
Karnataka, Bengaluru, 560100.

**STATEMENT OF OBJECTION FILED BY THE RESPONDENT TO THE
MAIN PETITION**

The abovesaid respondent respectfully submits as follows:

1. The petitioner and the respondent married each other in the year 2018. They had met each other in a General Entrepreneurship Development Programme in Bangalore in June 2018
2. Since they were ready to start a family the couple decided to adopt a girl child Sunaina in the year 2021 who was six years old at that time.
3. After adoption, the respondent noticed that the petitioner was not devoting sufficient time towards their daughter. The petitioner's business had recently started to flourish so she would work for extra hours and return home late at night. As a result, the petitioner wasn't able to spend a lot of time with Sunaina. The respondent on many occasions had told the petitioner his wife that she neglected her duties as a mother and always prioritised her work over that of the child.
4. The respondent thus having Sunaina's best interests at heart, suggested the petitioner to give up her job, only temporarily so as to enable her to spend more time with their child. However, the petitioner got offended and refused to leave her job. She stated that she would never give up her job at any cost.
5. The respondent claims that there have been many such instances where the child was left alone with no parental supervision and the child had often suffered injuries since the child was left by herself most of the time.
6. The respondent has also been supportive of the petitioner in all her professional endeavours and has not subjected the petitioner to any mental or verbal abuse. The respondent has made all efforts to reconcile with the petitioner despite all their differences.

PRAYER

Wherefore, the above said Respondent respectfully prays before this Hon'ble Court

1. Not to consider the above grounds for the dissolution of marriage as submitted by the petitioner as the Respondent does not want a divorce from his wife.
2. The Respondent should not be denied of the custody of the child .

and/or

3. To pass any other order, directions or relief that it may deem fit in the interest of Justice, Equity and Good Conscience.

Place: Bangalore

Date: 22.08.2022

Advocate For Respondent:

Shravya D'souza

Respondent

Rahul S

(Rahul)

VERIFYING AFFIDAVIT

I, Mr. Rahul s/o Vivaan Shankar, Mr. aged about 38 years, Artist, residing at Residing at Flat no. 01, Shanthi Pura, Electronic City Phase II, Electronic City, Bhoji Palya, Karnataka, Bengaluru, 560100, hereby state on oath and swear to this affidavit, which is as follows:

1. I, am the respondent in the above case, and I know the facts of the case.
2. I state that whatever stated in Para 1 to 13 in the accompanied petition is true and correct to the best of my knowledge, belief and information.
3. I state that the documents annexed with the petition are the true copies of the original documents.

Whatever stated above is true and correct to the best of my knowledge, belief and information.

Place: Bangalore

Date: 22.08.2022

Deponent:

Rahul S

(Rahul)

Advocate:

Shravya D'souza

ARGUMENTS (petitioner)

II. WHETHER LARA IS ENTITLED TO A DIVORCE?

7. The petitioner contends that ever since the Petitioner and respondent adopted the child, the respondent's behaviour and attitude has become strange. Before the adoption of the child, the couple lived in harmony and had a good relationship. After the adoption of the child however the relationship between them became strained.
8. The respondent started neglecting his duties as a father and started quarrelling with the petitioner on a regular basis. The respondent also goes on to claim that the petitioner failed to take care of the child.
9. The respondent compelled the petitioner to give up her job and when she refused to do so, he started verbally abusing her. He also resorted to heavy drinking and abused the petitioner daily leading to mental trauma for the petitioner. He also belittled her work in front of her employees.
10. In one instance, the respondent even slapped the petitioner and publicly humiliated her in front of their neighbours.
11. The petitioner has also had to attend sessions with her psychiatrist in order to cope with the trauma that she has been put through.
12. A bare reading of Section 13(1)(ia) of the Hindu Marriage Act, 1955, states that cruelty is a ground for divorce. The petitioner tried staying apart from the respondent with hopes that he would give up on his drinking habits and make amends to be a good husband and father. However, the respondent only subjected the petitioner to further cruelty and humiliation. The petitioner submits that she can no longer bear the torture and the above mentioned reasons have prompted her to approach the Hon'ble court to get a decree for dissolution of marriage.

II. Whether the actions of the respondent amount to cruelty ?

9. Section 13(1)(ia) of the Hindu Marriage Act, 1955 acknowledges cruelty as a valid ground for divorce. There is no statutory definition for the word "cruelty" provided under the statute. However in the case of *Naveen Kohli vs Neelu Kohli*⁴, it has been recognised that cruelty can be defined as a pattern of behaviour that consistently subjects victims to torture and indescribable mental suffering. Thus, the word cruelty in the context of matrimonial cases, is not restricted to physical cruelty but it would also include mental cruelty as was

⁴ AIR 2006 SC 1675

observed by the apex court in the case of *Pravin Mehta v Indrajai*.⁵ The definition of cruelty goes beyond just bodily injury. It is the behaviour that has a negative impact on the partner. Whether intentional or inadvertent, such cruelty can be "mental" or "physical."

10. Mental cruelty can be construed to mean cruelty which occurs when one party causes the other party mental pain, agony, or suffering to the point that it breaks the bond between the wife and husband and makes it impossible for the party who has suffered to coexist with the other party.
11. Cruelty has been designedly left undefined in order to leave the courts the liberty to relieve the couple of living in misery and of the mess they have made of their lives and where they refuse to reconcile. Cruelty has also been made a punishable offence under Section 498 A of IPC.
12. In the instant case, the respondent's behaviour has been such that the petitioner cannot fairly be expected to live with the respondent, which is one of numerous factors that demonstrate that the marriage has broken down.
13. The respondent used to excessively indulge in alcohol and misbehaved with the petitioner by subjecting her to verbal abuse and mental torture. Apart from physical violence, intoxication and bullying of the petitioner or the family's children and any form of abuse, threats, and nagging may all be considered behaviours that make it unreasonable for the petitioner to cohabit with the respondent.
14. The respondent compelled the petitioner to give up her job, and as a result of her refusal to leave her job, he would engage in drinking alcohol and subject her to filthy abuses everyday which was taking a toll on the petitioner's mental health and also affecting her progress at work. No person enters into a marriage intending to accept habitual inebriation. persistent drunkenness after warnings that such a course of conduct is inflicting pain on the other spouse, certainly if it is known to be injuring the other spouse's health, may of itself amount to cruelty.⁶
15. The respondent even slapped the Petitioner at one instance and subjected her to humiliation when the Petitioner confronted the respondent for picking up their daughter from school without informing the Petitioner.
16. These actions of the respondent clearly constitute mental cruelty which is embodied as a valid ground for divorce.

⁵ (2002) 5 SCC 706.

⁶ Rita vs Brh Kishore Gandhi, ILR 1984 Delhi 289.

III. Whether either of them is entitled to custody of the child?

5. The petitioner contends that she being the more financially stable person can provide the child with the needful support possible with finance thereby providing her with all the benefits and amenities she can which will aid to her overall development and growth.
6. Having a stable job is essential for raising any child as it is required for funding their education and lifestyle in a healthy manner without any sort of discrepancies. Therefore, financially the petitioner is way more stable to provide for the child.
7. The petitioner would also like to state that the environment the child is raised is way healthier on her side, having no sort of addictions or substance abuse on her, she is way more stable to provide a healthy physical environment for the child to be raised in which the respondent will not be able to provide for with his alcohol abuse.
8. Therefore, considering the financial aspects of the case, the petitioner has a higher possibility of raising the child stably providing better growth and development.

ARGUMENTS (respondent)

I. Whether the petitioner is entitled to divorce ?

1. In the instant case, none of the grounds provided under the Hindu Marriage Act, have been satisfied so as to enable the Petitioner to file a case for divorce. Allegations made by the petitioner have not been supported by any evidence and are thus likely to be untrue. The respondent was opposed to living apart from his wife.
2. The respondent contended that he has also been supportive of the petitioner in all her professional endeavours and has not subjected the petitioner to any mental or verbal abuse. The respondent has made all efforts to reconcile with the petitioner despite all their differences.
3. The respondent also contends that the petitioner has failed to prove mental and verbal abuse due to the lack of evidence. Therefore the respondent claims that the petitioner is not entitled to divorce. He also insists on continuing his marriage with the petitioner.

II. Whether the actions of the respondent amount to cruelty ?

1. In the present case, Mr. Rahul's act cannot be said to constitute cruelty as his actions were a result of a disagreement between him and his wife. The respondent had no intention of causing any kind of mental agony to his wife. Further, there are numerous incidents of the respondent making efforts to meet his wife and the child and reconcile, but all these efforts made by the respondent failed only because the petitioner refused to cooperate with him.
2. Furthermore, the petitioner has failed to prove the alleged instances of cruel treatment by any corroborative evidence. It is pertinent to note that the alleged acts of cruelty must be sufficient to convince the court's conscience that the parties' relationship has become untenable for them as a result of the other spouse's actions, and that the relationship has deteriorated to such a degree as to be impossible for them to repair and to coexist without suffering from pain, mental anguish, or sorrow.⁷
3. It is also contended that the allegation of drunkenness or addiction to liquor does not amount to cruelty. In fact, the petitioner by living separately and not allowing the respondent to meet their child has subjected him to cruelty. The respondent has always had his child's best interests at heart and he only asked the petitioner to give up her work so she could better provide for her, emotionally. The petitioner however

⁷ Rukma Kanta v. Faquir Chand, Air 1960 Punj. 493(1); Gurcharan Singh v. Waryam Kaur, Air 1960 Punj. 422(2); Pranab Biswas v Mrinmoyee Devi, AIR 1976 Cal 156; and Ashwani Kumar Sehgal v. Swatantar Sehgal, 80 Plr 573(4).

instead of trying to mutually resolve their differences, just abandoned the respondent and also denied him the right to meet his child.

4. It is also contended that the respondent never subjected the petitioner to any form of physical abuse and a single incident of slapping or simple profane abuse cannot be said to constitute cruelty.
5. The actions of the respondent thus does not amount to cruelty as laid down under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

III. Whether either of them is entitled to custody of the child?

1. The Respondent would like to remind the Hon'ble Court that the primary reason for most disagreements and fights between the parties is with regards to the Petitioner's overworking nature.
2. The petitioner's inability to contribute time to her family or anything apart from her work was causing a toxic imbalance in the household causing a lot of downfalls directly affecting the child.
3. The Respondent would like to remind the Hon'ble Court that the mere provision of finance does not suffice for the amble raising of a child. The very presence of the parent throughout the child's life plays a greater role as that is what is remembered and cherished at the end.
4. The Respondent would like to state that measures have been taken to work on his alcohol abuse problems and he has been attending rehabilitation for the same with consistent progress.
5. All of this has been an effort to be a better parent for the child in question and in hopes of restoring the broken home.

Settlement Agreement

1. The petitioner, a businesswoman and respondent, a local artist, met each other in a General Entrepreneurship Development Programme in Bangalore in June 2018 and they got married in the same year within a few weeks. Thereafter, they adopted a child in the month of November, 2021 since the petitioner didn't want to give birth keeping in view her busy schedule.
2. A few months after the adoption of their daughter Sonia, the relationship between the petitioner and the respondent soured as the Petitioner used to overwork and failed to take care of the child properly and the respondent had asked her to quit her job but the petitioner refused to stop working since her business had recently started to flourish. This resulted in fights between the petitioner and the respondent and the respondent would often verbally abuse the petitioner.
3. Later in Jan 2022, the petitioner decided that she does not want to carry forward the relationship and they started living separately. During their time apart, the respondent made efforts to visit Sonia. However, the petitioner didn't allow the same. The respondent was worried that the petitioner was busy overworking and did not take proper care of this child and so one day the respondent decided to pick up Sonia from school and took her to his house. However he failed to inform the petitioner regarding the same.
4. Triggered by this incident, the petitioner went to the respondent's place and caused a scene in front of the neighbours, and the respondent slapped and publicly humiliated her. Thus the petitioner filed a petition for divorce on the ground of cruelty, before the family court at Bangalore.
5. The dispute between the parties was referred to mediation by the Family Court and in the course of the mediation proceedings, the parties resolved their dispute and have mutually agreed for a judicial separation.
6. The petitioner wants some space and the respondent agrees with this as the respondent believes that spending some time apart will give the petitioner and the respondent a chance to reflect and work on themselves, and would ultimately enable them to come back together much healthier and capable of handling conflicts more constructively.
7. The petitioner has claimed custody rights over Sonia during the period of judicial separation and the respondent has agreed to the same. However the respondent claims that he shall retain the right to meet Sonia. The petitioner agreed to the same.

Petitioner

Safa Shameem (Lara)

Advocate for Petitioner

Deeksha DR

Respondent

Rahul S

Advocate for Respondent

Shravya D'souza