

Reserved On : -06.05.2025

Pronounced On : 09/05/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 482 of 2024****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE SANJEEV J.THAKER**

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Approved for Reporting	Yes	No
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Versus

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Appearance:

MR YH MOTIRAMANI(3720) for the Appellant(s) No. 1

MR.DIVYESH G NIMAVAT(3757) for the Appellant(s) No. 1

MR. VISHVESH R. ACHARYA(14664) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER**CAV ORDER**

1. The present Second Appeal has been filed under Section 100 of the Code of Civil Procedure, 1908 (for short “CPC”) being aggrieved by the Judgment and Decree dated 09.08.2024 passed in Regular Civil Appeal No. 39 of 2023 whereby, the Judgment and Decree dated 16.09.2023 passed in Hindu Marriage Petition No. 44 of 2017 by 3rd Additional Senior Civil Judge Valsad under Section 9

of the Hindu Marriage Act, 1955, has been confirmed.

2. For the sake of brevity and convenience, the parties are referred to as Petitioners and Respondents.
3. The brief facts arising in the present Second Appeal are that the Petitioner filed a Petition under Section 9 of the Hindu marriage Act, 1955 (“HMA”) for Restitution of Conjugal rights. It is the case of the Petitioner that the Petitioner and Respondent got engaged on 29.05.2016 and they got married on 13.02.2017 and after marriage, the Petitioner went to stay with the Respondent.
4. It is the Petitioner’s case that after sometime, the Respondent’s family had adopted a very unreasonable approach towards the Petitioner and therefore, on request of the Respondent the Petitioner went to stay at the address mentioned in the cause title of the Hindu Marriage Petition. It has been averred that time and again the Petitioner requested the Respondent to live with her and the Respondent did not adhere to the said request and ultimately, the Petitioner lodged a complaint before Valsad Mahila Police Station on 13.07.2017, when the Petitioner was not permitted to get

inside her matrimonial house in order to fulfill her conjugal rights.

5. It is the case of the Petitioner that the Respondent had without any reasonable excuse withdrawn himself from the society of the Petitioner and therefore, the Petitioner filed Petition under Section 9 of the Hindu Marriage Act, 1955. The Respondent appeared in the said Petition and filed written statement vide exhibit 31. The main grievance of the Respondent was that no marriage was solemnized between the parties and that false complaint had been filed by the Petitioner in Valsad Mahila Police Station.

6. The Trial Court framed issues vide exhibit 42 as under:

- (i) Whether the applicant proves that she is the legal wife of opponent?*
- (ii) Whether the applicant proves that opponent has without reasonable excuse, withdrawn himself from the society of herself?*
- (iii) Whether the applicant proves that she is entitles to get the decree of restitution of conjugal rights?*
- (iv) What order and decree?"*

7. The Petitioner examined herself vide exhibit 50 and the witnesses of the Petitioner were examined vide exhibits 58 and 70 respectively. Whereas, the Opponent examined a witness at exhibit

75 and after going through the oral evidence of the parties and giving finding on all the issues, the Trial Court dismissed the Petition. aggrieved by the said order, the Petitioner filed Regular Civil Appeal No. 39 of 2023. After re-appreciating the evidence, the First Appellate Court dismissed the said Appeal and confirmed the judgment and decree passed in Hindu Marriage Petition No. 44 of 2017, hence the present Second Appeal.

CASE OF THE APPELLANT/ PETITIONER

8. Learned Advocate for the Petitioner has drawn attention of this Court to the fact that the Trial Court has taken into consideration the fact of separation of more than six years but the fact remains that the marriage was solemnized on 13.02.2017 and the Hindu Marriage Petition has been filed in the year 2017, therefore the Petition for restitution of conjugal rights is filed only after 1 year of marriage and therefore the period in which the Petition was pending for adjudication can not be considered by the Trial Court and the Appellate Court while considering the period of separation between the Petitioner and Respondent.

9. Learned advocate for the Petitioner has also drawn attention of this Court to the provisions of Section 9 of the Hindu Marriage Act, 1955, and has argued that under the explanation to section 9 of the Hindu Marriage Act, 1955, the burden of proving the reasonable excuse shall be on the person, who has withdrawn from the society and in the present case, the burden was on the Respondent of proving reasonable excuse and the Respondent has not proved the said fact.

10. It has been argued that the Respondent has not even entered the witness box and therefore adverse inference has to be drawn on the Respondent and therefore the Trial Court and the Appellate Court could not have dismissed the suit of restitution of the conjugal rights that has been filed against the Respondent.

11. Learned advocate for the Petitioner has also drawn attention of the Court that a Criminal Complaint that was filed by the Petitioner was under the provisions of Protection of Women From Domestic Violence Act, 2005 ("Domestic Violence Act"). Moreover, in the said Petition as also the said complaint has been allowed and compensation is also given to the Petitioner with respect to the

domestic violence.

12. Learned advocate for the Petitioner has also argued that the issues that have been framed, more particularly issue no. 2 is also contrary to the explanation to Section 9 of the Hindu Marriage Act, 1955 as the burden was on the Respondent to prove reasonable excuse of withdrawing from the society and therefore, it has been argued that there are substantial questions of law involved in the present Second Appeal which have been suggested in the memorandum of appeal and therefore the Second Appeal is required to be admitted.

13. Learned advocate for the appellant has relied on the judgment in case of **Maria Margarida Sequeira Fernandes And Others Vs. Erasmo Jack De Sequeira** reported in (2012) 5 SCC 370, **Ravi Kumar Vs. Julmidevi** reported in (2010) 4 SCC 476, **Sonprabha Manwani Vs. Govind Manwani** reported in 2024 SCC Online Chh 1514.

CASE OF THE RESPONDENT

14. *Per Contra*, learned advocate for the Respondent has argued that in the Written Statement at Exhibit 31, the present Respondent has specifically taken a stance that the Petitioner has tried to commit suicide and has tried to defame the Respondent. Further, the Respondent has specifically stated that in February 2017, the Petitioner has tried to commit suicide and has also tried to defame the Petitioner since then and therefore the Respondent has stated that the Respondent has reasonable excuse to withdraw from the society of the Petitioner. It has also been argued that though Respondent has not entered witness box but the fact is that the Petitioner herself has admitted the fact that she has tried to commit suicide and has pasted posters that the Respondent is missing. Further, the Petitioner has averred that Respondent is a drunkard and does not remember things. Such type of posters have been printed by the Petitioner and therefore because of all these reasons, the Respondent has proved reasonable excuse of withdrawing from the society of the Petitioner and therefore as there are concurrent finding of the Trial Court and the Appellate Court on the factual aspects, the present Second Appeal is required to be dismissed.

ANALYSIS AND FINDINGS

15. Having heard the respective learned Advocates for the parties and having considered the judgment and decree passed by the Trial Court and the Appellate Court, it is required to be kept in mind that a restitution of conjugal rights does not entirely depend upon right of the party. While deciding a Petition under the said provision, the court shall have to consider whether it would make it inequitable for it to compel the husband to live with his wife.

16. Upon an examination of the record, the following facts are undisputed:

- i. The Petitioner–Wife has attempted suicide and distributed posters of the Respondent alleging that he was missing.
- ii. The Petitioner has also raised several disputes and alleged cruelty against the Respondent husband.

17. Though it is true that burden of proof regarding lawful and justified

withdrawal is on the party withdrawing itself. However, it also well settled law that while granting a decree under Section 9 of the HMA, the prejudice likely to be caused to the party suffering the decree must be also considered.

18. Therefore, the Court will have to look at the surrounding circumstances depending on each case. Moreover, while granting a restitution of conjugal rights the Court will also have to take into consideration the conduct of the spouse and the grounds for refusing the restitution of the conjugal rights has to be taken into consideration while deciding the same. In the present case, the Appellant has admitted that she tried to commit suicide. This naturally amounts to an extreme and coercive behavior with an intention to emotionally manipulate and mentally distress the Respondent.

19. Hon'ble Apex Court has held in ***Narendra vs. K. Meena***, **MANU/SC/1180/2016** as follows:

“With regard to the allegations of cruelty levelled by the Appellant, we are in agreement

with the findings of the trial Court. **First of all, let us look at the incident with regard to an attempt to commit suicide by the Respondent.** Upon perusal of the evidence of the witnesses, the findings arrived at by the trial Court to the effect that the Respondent wife had locked herself in the bathroom and had poured kerosene on herself so as to commit suicide, are not in dispute. Fortunately for the Appellant, because of the noise and disturbance, even the neighbours of the Appellant rushed to help and the door of the bathroom was broken open and the Respondent was saved. Had she been successful in her attempt to commit suicide, then one can foresee the consequences and the plight of the Appellant because in that event the Appellant would have been put to immense difficulties because of the legal provisions. We feel that there was no fault on the part of the Appellant nor was there any reason for the Respondent wife to make an attempt to commit suicide. **No husband would ever be comfortable with or tolerate such an act by his wife and if the wife succeeds in committing suicide, then one can imagine how a poor husband would get entangled into the clutches of law, which would virtually ruin his sanity, peace of mind, career and probably his entire life. The mere idea with regard to facing legal consequences would put a husband under tremendous stress. The thought itself is distressing. Such a mental cruelty could not have been taken lightly by the High Court.** In our opinion, only this one event was sufficient for the Appellant husband to get a decree of

divorce on the ground of cruelty. It is needless to add that such threats or acts constitute cruelty. Our aforesaid view is fortified by a decision of this Court in the case of Pankaj Mahajan v. Dimple @ Kajal MANU/SC/1145/2011 : (2011) 12 SCC 1, wherein it has been held that giving repeated threats to commit suicide amounts to cruelty.”

20. In a marriage both the individuals are expected to nurture the bond with compassion and patience and even when there is disagreement like the present case, the Petitioner resorts to self harm by attempting to commit suicide, the same is an act of desperation which often exert physiological control over the Respondent. The effect of such behaviour leaves a lasting scar on the mental health and emotional stability of the aggrieved spouse coupled with public humiliation as seen in the present case of printing posters of the husband and such acts cannot be brushed aside as such threats become tools of coercion and forcing the Respondent to remain trapped in the stated of perpetual anxiety and emotional paralysis, as such conduct crosses the boundaries of personal conflict and touches upon the very core of harassment which makes it impossible for husband in the present to continue leading a peaceful and dignified marital life. The attempt to commit suicide

itself shows the charge situation in which the parties were residing.

21. Hon'ble Supreme Court in the case of **Pankaj Mahajan v. Dimple Alias Kajal**, (2011) 12 SCC 1, while dealing with the case of divorce and mental cruelty, the court held as follows:

*“It is well settled that giving **repeated threats to commit suicide amounts to cruelty**. When such a thing is repeated in the form of sign or gesture, no spouse can live peacefully. In the case on hand, the appellant husband has placed adequate materials to show that the respondent wife used to give repeated threats to commit suicide and once even tried to commit suicide by jumping from the terrace. Cruelty postulates a treatment of a spouse with such cruelty as to create reasonable apprehension in his mind that it would be harmful or injurious for him to live with the other party. **The acts of the respondent wife are of such quality or magnitude and consequence as to cause pain, agony and suffering to the appellant husband which amounted to cruelty in matrimonial law.**”*

22. Therefore, it is reiterated that any principle of law cannot be applied in abstract divorced from the factual context. Therefore, Duty of the court in such a circumstance is to assess the proposed inequity, which may arise if a party is ordered to reconstitute the

conjugal rights.

23. As regards the burden of proof of the Respondent, in the present case, there is a clear admission by the Petitioner of attempt to suicide than the same has to be considered and the same would amount to mental cruelty caused to the Respondent by the Petitioner and therefore no longer can the Respondent carry on such suffering. The attempt on the part of the Petitioner to commit suicide is a harsh circumstance, which naturally becomes a reasonable excuse for the Respondent to withdraw from the society of the Petitioner.

24. It is trite law that admission is the best piece of evidence unless explained. [See: ***Thiru John v. The Returning Officer and Ors.***, (1977) 3 SCC 540 and ***United India Assurance v. Samir Chandra Chaudhary***, (2005) 5 SCC 784]. Therefore, when the Petitioner has admitted the said fact in cross examination, there is no further and other proof thereof required by law.

25. Moreover, the Respondent wife has leveled several allegations against the husband. In such circumstances it is not easy to digest

that the Petitioner was desirous of cohabiting with the Respondent. Confidence and faith between the husband and wife is backbone of a healthy married life and in the facts and circumstances of the case as the Petitioner has printed defaming posters of the Respondent and the fact that the Petitioner has tried to commit suicide, it will be impossible for the Petitioner and Respondent to stay together and it cannot be said that the Respondent is not able to prove that the Respondent has without reasonable excuse withdrawn from the society of the Petitioner.

26. The judgments relied on by the learned advocate for the Petitioner in case of **Maria Margarida Sequeira Fernandes And Others (Supra)** Wherein learned advocate for the Petitioner has relied on paragraph nos.53 to 55 which are as under:

“53. Pleadings are the foundation of litigation. In pleadings, only the necessary and relevant material must be included and unnecessary and irrelevant material must be excluded. Pleadings are given utmost importance in similar systems of adjudication, such as, the United Kingdom and the United States of America.

54. *In the United Kingdom, after the Woolf Report, Civil Procedure Rules, 1998 were enacted. Rule 3.4(2) has some relevance and the same is reproduced as under:*

“3.4(2) The Court may strike out a statement of case if it appears to the Court -

(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

(b) that the statement of case is an abuse of the Court's process or is otherwise likely to obstruct the just disposal of the proceedings; or

(c) that there has been a failure to comply with a rule, practice direction or Court order.”

55. *In so far as denials are concerned, Rule 16.5 provides that:*

“16.5 (2) where the defendant denies an allegation,-

(a) he must state his reasons for doing so, and

(b) if he intends to put forward a different version of events from that given by the plaintiff, he must state his own version.”

27. It has been argued that there are no pleadings given by the Respondent to prove reasonable excuse from withdrawing from the society of the Petitioner but the fact remains that while filing Written Statement vide exhibit 31, the Respondent has specifically stated that the Petitioner has given threats of committing suicide and defaming the Respondent and the said fact has been admitted by the Petitioner in her cross-examination and therefore the said fact having been admitted, it can not be said that the Respondent has not proved that there was reasonable excuse from withdrawing from the society of the Petitioner.

28. With respect to the Judgment in case of **Ravi Kumar Vs. Julmidevi (Supra)** learned advocate for the Petitioner has relied on Para no. 10 as under:

“10. The High Court after considering some decisions came to a finding that by filing a Petition under Section 9 of the Act, the appellant had condoned the earlier alleged acts of cruelty of the Respondent wife. Condonation is basically a question of fact. This Court finds that the reasoning of the High Court on condonation in the facts of this case is correct.”

29. In the present case, there is no pleading or proof that the Respondent has condoned the act of cruelty of the wife of trying to commit suicide and defaming the Respondent by printing the defamatory posters. Moreover, cruelty in the nature of suicide attempts is something which cannot be loosely be argued to have been condoned in any manner. Mental cruelty arising from suicide attempts cannot fall in the same bag as any other alleged mental cruelty.

30. In the case of **Sonprabha Manwani Vs. Govind Manwani (Supra)** it is held in para no.12 as under:

“12. Now, we shall deal with the evidence of appellant-wife Sonprabha Manwani, who has been examined herself as DW-1. She has stated that her marriage was performed with the Respondent/husband on 21.04.2006 according to Hindu Rites and Rituals and after four-five months of the marriage, the Respondent-husband, who is unemployed, used to quarrel with her under the influence of liquor and he is addicted to gambling. She has further stated that she started living separately in her parental home for the last five years. In her cross-examination, she admitted that she performed love marriage with the Respondent- husband and for this reason, her parents were not happy and

despite that they never told her to leave the Respondent-husband and used to give advice to live together. She has also stated that being fed up with the ill-treatment meted out by the Respondent-husband, she filed a complaint against the Respondent-husband who later on pressurized her to withdraw the report. It has also been stated by her that no such complaint was filed before the Court nor any report was lodged against the Respondent-husband by her family members. She has fairly admitted that on every occasion, Respondent-husband used to give a gift to her, but she denied the same. She has also denied the factum of pregnancy twice. She has further denied the facts with respect to second marriage and pressure made by her parents to leave the Respondent-husband.”

31. The same will also not be of any assistance to the Petitioner as in the present case the Petitioner herself has admitted of trying to commit suicide and the law is settled that admission is the best piece of evidence.

32. With respect to the judgments relied on by the Respondent in case of **Anil Yashvant Karande Vs. Mangal Anil Karande**, reported in **MANU/MH/3431/2015** para nos. **44 to 46**, it is held as under:

“44. In my opinion, the Respondent having treated the appellant with cruelty and such allegations having been proved, the Respondent at the same time could not maintain her application for restitution of conjugal rights by filing an application under section 9 of the Hindu Marriage Act, 1955. The husband, who had suffered mentally in view of such false criminal case filed by the wife and admittedly in which he and his family members were acquitted, cannot be compelled by the Court by passing an order of restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955 and to co-habit with the wife. In my view, once the husband has made out a case of divorce and had proved the cruelty committed by the wife under section 13(1) (i-a) of the Hindu Marriage Act, the wife could not maintain her application for restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955.

45. In my view, the appellant husband had proved before both the Courts below that he had withdrawn from the society of the Respondent due to the Respondent having committed cruelty upon the appellant and such withdrawal from the society of the Respondent was not without a reasonable excuse. In my view, both the

reliefs are counter point to each other. Once the cruelty committed by the wife is proved by the husband, no relief for restitution of conjugal rights can be granted by the Court. Both the reliefs cannot be granted together at the same time. In my view, there is thus no substance in the submission made by the Respondent that even if it was proved that the wife had treated the husband with cruelty, she will be independently entitled to maintain her application for restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955.

46. In my view no spouse can be allowed to urge that he or she would treat other with cruelty and at the same time would also sa396-13c force other to co-habit with him or her by filing application under section 9 of the Hindu Marriage Act for restitution of conjugal rights under the same roof. In my view, since the appellant husband had proved the case of cruelty on the part of the wife, the learned trial Judge as well as the lower appellate Court ought to have considered such case as a fit case for divorce and not a fit case for granting a relief under section 9 of the Hindu Marriage Act, 1995 for restitution of conjugal rights in favour of the Respondent. In my view, since the husband was entitled to a decree of

divorce under section 13(1)(i-a) of the Hindu Marriage Act, 1955, there was no question of the trial Court as well as the lower appellate Court granting the relief of restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955.”

33. In case of **K. Srinivas Rao Vs. D.A.Deepa** reported in **2023 STPL (Web) 152 SC**, it is held in para nos.22 to 24 as under:

“22. We need to now see the effect of the above events. In our opinion, the first instance of mental cruelty is seen in the scurrilous, vulgar and defamatory statement made by the Respondent-wife in her complaint dated 4/10/1999 addressed to the Superintendent of Police, Women Protection Cell. The statement that the mother of the appellant-husband asked her to sleep with his father is bound to anger him. It is his case that this humiliation of his parents caused great anguish to him. He and his family were traumatized by the false and indecent statement made in the complaint. His grievance appears to us to be justified. This complaint is a part of the record. It is a part of the pleadings. That this statement is false is evident from the evidence of the mother of the Respondent-wife, which we have already quoted. This statement cannot

be explained away by stating that it was made because the Respondent-wife was anxious to go back to the appellant-husband. This is not the way to win the husband back. It is well settled that such statements cause mental cruelty. By sending this complaint the Respondent-wife has caused mental cruelty to the appellant-husband.

23. Pursuant to this complaint, the police registered a case under Section 498-A of the IPC. The appellant-husband and his parents had to apply for anticipatory bail, which was granted to them. Later, the Respondent-wife withdrew the complaint. Pursuant to the withdrawal, the police filed a closure report. Thereafter, the Respondent-wife filed a protest petition. The trial court took cognizance of the case against the appellant-husband and his parents (CC No. 62/2002). What is pertinent to note is that the Respondent-wife filed criminal appeal in the High Court challenging the acquittal of the appellant-husband and his parents of the offences under the Dowry Prohibition Act and also the acquittal of his parents of the offence punishable under Section 498-A of the IPC. She filed criminal revision seeking enhancement of the punishment

awarded to the appellant-husband for the offence under Section 498-A of the IPC in the High Court which is still pending. When the criminal appeal filed by the appellant-husband challenging his conviction for the offence under Section 498-A of the IPC was allowed and he was acquitted, the Respondent-wife filed criminal appeal in the High Court challenging the said acquittal. During this period Respondent-wife and members of her family have also filed complaints in the High Court complaining about the appellant-husband so that he would be removed from the job. The conduct of the Respondent- wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant-husband, in filing appeal questioning the acquittal of the appellant-husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant-husband.

24. In our opinion, the High Court wrongly held that because the appellant-husband and the

Respondent-wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a pre-condition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. This is what has happened in this case."

34. In case of **Suguna Vs. Mathivanan** in C.M.A.Nos.2355 and 2356 of 2015 it is held in para nos.53 to 55 as under:

"53. In the given case on hand also the main allegation against the appellant/wife is that she had made repeated threat to commit suicide by pouring kerosene on her by putting blame on her husband (Respondent). This matrimonial offence as alleged by the Respondent/husband has been proved sufficiently through his oral evidence as well as documentary evidences under Exs.P2 to P9. This kind of cruelty postulates a treatment of the appellant with such cruelty as to create reasonable apprehension in the

mind of the Respondent/husband that it would be harmful or injurious to him to live with her. Therefore, the acts of the wife (appellant herein) are of such quality or magnitude and consequence as to cause pain, agony and suffering to the Respondent/husband which amounted to cruelty in matrimonial law.

54. We have carefully perused the materials placed before us including the grounds of appeals. We have also weighed and balanced the submissions made by both the learned counsels with the given fact situation and found that the learned I Additional Family Court has come to a correct conclusion which resulted in granting divorce to the Respondent/husband on the ground of cruelty which according to our considered opinion does not require our interference to exercise our appellate jurisdiction.

55. In the result, both the appeals are dismissed and the impugned common order dated 17.08.2015 and made in H.M.O.P.Nos.2853 of 2007 and 1288 of 2003 respectively, on the file of the I Additional Family Court, Chennai are confirmed. However, considering the nature of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.”

35. In view of the said facts, the Respondent has proved that there is

reasonable excuse for the Respondent to withdraw from the society of the Petitioner on the ground that the Petitioner has tried to commit suicide and there are defamatory posters printed by the Petitioner.

36. In view of the fact that there are no substantial question of law involved in the present second appeal and the fact that the Trial Court and the Appellate Court have given concurrent finding the appeal is required to be dismissed. Moreover, in the present case, the Appellant has not raised any substantial questions of law apart from presenting the challenge on certain factual aspects.

37. It is required to be noted that in Second Appeal, the scope is very limited and the Court cannot re-appreciate the evidence. In the case of **Navaneethammal v. Arjuna Chetty** reported in **1996 (6) SCC 177**, the Hon'ble Apex Court has observed as under:-

“11. This Court, time without number, pointed out that interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to reappreciate the evidence just to replace the findings of the

lower courts.”

38. In the case of **Jaichand (Dead) through Lrs and Other v. Sahnulal and Another** reported in **2024 SCC OnLine SC 3864**, the Hon'ble Apex Court has observed as under:-

“28. It is thus clear that under Section 100 CPC, the High Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.”

39. Therefore, also the Appellant has miserably failed to show that there is any substantial question of law involved in the present appeal and the substantial question of law which has been formulated in the memo of appeal are also not substantial question of law and on facts and the said factual aspect has well been considered by the Trial Court and the First Appellate Court.

40. Under the circumstances, this Second Appeal is devoid of any substantial question of law. Both the learned Trial Court and first

appellate Court have rightly decided the issue between the parties in the right perspective and as stated above no substantial question of law arises in the present appeal. The petitioner has failed to prove his case before the learned trial Court as well as before the first appellate Court. This Court does not find any substance in the present Second Appeal as the same is devoid of any merit both on facts and law and the same is dismissed. Notice is discharged.

URIL RANA

Sd/-
(SANJEEV J.THAKER,J)