

GAHC010156552019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Mat.App./42/2019

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S/O- LATE PRODIP CHOUDHURY, R/O- WARD NO. 16, P.O. BIDIYAPARA, P.S.
AND DIST.- DHUBRI, ASSAM, PIN- 783324.

VERSUS

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D/O- SRI PURNA CHANDRA SHILL, R/O- VILL.- AMGURI, NEAR
JAGOIDATRI MANDIR, P.O. NORTH BAITHAMARI, P.S. ABHAYAPURI, DIST.-
BONGAIGAON, ASSAM, PIN- 783380.

– B E F O R E –

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Appellant	: Mr. S. Sarma.	...Senior Advocate.
	Mr. A. Gautam,	
	Mr. S.K. Deka,	
	Mr. C. Talukdar	 Advocates

For the Respondent : Mr. R. Phukan, Advocate.

Date of Hearing : 21.06.2023

Date of Judgment : 27.06.2023

JUDGMENT & ORDER [CAV]

(M. Zothankhuma, J)

Heard Mr. S Sarma, learned counsel for the appellant as well as Mr. R Phukan, learned counsel for the respondent.

2. This matrimonial appeal has been preferred by the husband, who is aggrieved with the judgment and order dated 06.04.2019, passed by the learned Principal Judge, Family Court, Dhubri in FCTS(D) Case No. 119/2018, dismissing the divorce suit filed by the appellant.

3. The case projected by the appellant is that the marriage between the appellant, who is a Librarian in Dhubri Law College and the respondent, who is Junior Assistant Sub-Divisional Librarian (Government servant), was solemnized on 01.05.2014 by way of an arranged marriage. Prior to the marriage between the appellant and the respondent, the parents of the appellant had met the respondent and her parents. The appellant having agreed to the marriage, the marriage was solemnized on 01.05.2014. The grievance of the appellant is that after solemnization of the marriage on 01.05.2014, the parties started their conjugal life from 02.05.2014 till 07.05.2014. On 08.05.2014, the appellant and the respondent went to her parental home for the athmongla function. After the athmongla function, the respondent refused to come back to the matrimonial home and live with the appellant.

4. The further case of the appellant is that the arranged marriage between the appellant and the respondent had been made by suppressing the real age of

the respondent, who was actually 7 years older than the appellant. However, prior to the marriage, the respondent had informed the appellant that she was 32 years old, while the appellant was 34 years of age at the time of their marriage. The appellant thereafter found out the real age of the respondent through an RTI dated 22.09.2015, wherein the respondent's age was found to be 7 years older than the appellant. The appellant's further case is that due to the respondent refusing to come back with the husband to the matrimonial home, after the athmongla ceremony and also in view of the fact that the respondent had suppressed her real age prior to her marriage with the respondent, the same amounted to cruelty. The appellant filed TS(D) No. 80/2015 before the Court of the District Judge, Dhubri, wherein he prayed for grant of a divorce decree under Section 13 of the Hindu Marriage Act, 1955. The same was transferred to the court of the learned Principal Judge, Family Court, Dhubri wherein it was renumbered and registered as FCTS(D) Case No. 119/2018.

5. The respondent submitted her written statement in FCTS(D) Case No. 119/2018 opposing the prayer of the appellant for granting a divorce decree.

6. After the pleadings were complete, the learned Trial Court framed 5 (five) issues and one additional issue, which are as follows:-

- “1. *Whether there is cause of action in the suit?*
2. *Whether the suit is maintainable under section 13 of Hindu Marriage Act?*
3. *(a) Whether the respondent conceal her real age?*
(b) Whether the concealment of real age materially interface with the material life of the petitioner and cause irreparable lose to him..
(c) Whether such concealment of real age amounts to cruelty against the petitioner.
4. *Whether the respondent has lost the child bearing capacity due to over age.*

5. *Whether the fertility of respondent has totally declined due to her over age.*

Additional Issue :-

1. *To what relief, reliefs, if any, the parties are entitled to?"*

7. The learned Trial Court decided issue Nos. 1 and 2 in favour of the appellant. Issue Nos. 4 & 5 were decided in the favour of the respondent.

8. Issue No. 3, which was divided into three sub issues was decided against the appellant and consequently, the additional issue was also decided against the appellant, vide the impugned judgment dated 06.04.2019, passed in FCTS(D) Case No. 119/2018.

9. Being aggrieved with the impugned judgment dated 06.04.2019, passed by the learned Family Court, the present appeal has been filed by the appellant/husband on two counts. Firstly, the concealment of age by the respondent prior to and during the time of her marriage constituted cruelty, as the appellant would not have married her, if he had known that the respondent was older to the appellant by seven years. Secondly, the fact that the conjugal life of the parties had lasted for only a few days and no semblance of marriage had taken place for 9 years. Thus, there was an irretrievable breakdown of marriage, which amounted to cruelty.

The learned counsel for the appellant accordingly, submits that the impugned judgment dated 06.04.2019, passed in FCTS(D) Case No. 119/2018 should be set aside and a decree of divorce should be granted under Section 13 of the Hindu Marriage Act, 1955.

10. On the other hand, the learned counsel for the respondent submits that the respondent wants reconciliation of the parties to the marriage and wants to

ultimately live with the appellant. Learned counsel for the respondent submits that as irretrievable breakdown of marriage cannot be construed to be cruelty in terms of Section 13(1)(ia) of the Hindu Marriage Act, 1955, the marriage between the appellant and the respondent cannot be dissolved on grounds of irretrievable breakdown of marriage.

11. We have heard the learned counsels for the parties.

12. The learned Family Court in the impugned judgment dated 06.04.2019 had come to a finding that the allegation of desertion by the respondent was not attracted, as the petition for dissolution of marriage by the appellant had been made prior to completion of two years of marriage, as was required under Section 13(i)(ib) of the Hindu Marriage Act, 1955.

The learned Family Court had also taken note of the fact that the respondent had mentioned her age differently on different occasions, in affidavits submitted in various proceedings before the Court, which are as follows:-

“Table of Respondent’s concealment of age in Court proceedings”

<u>Document details</u>	<u>Age mentioned</u>	<u>Date of Signature</u>
Annexure-3 @ 38 [rel.@ 45] Petition filed by Respondent in Transfer Pet(C) 5/2016	43, on affidavit	29.01.2016
Annexure-2 @ 27 [rel.@ 37] Written statement filed in divorce proceedings	36, on affidavit	24.02.2016

Annexure-8 @ 52 45, on affidavit 13.02.2017
[rel.@ 54]

Written objections filed
against Appellant's petition
for expeditious disposal
of divorce proceedings

Annexure-7 @ 50 44 13.02.2017
[rel.@ 50]

Admission of facts by
Respondent in pursuance
of notice

13. The learned Family Court, after considering the stand taken by the appellant that the respondent had committed a fraud on the appellant, by suppressing her real age prior to and during the time of marriage, had come to a finding that the appellant's contention had no force and was not proved.

The learned Trial Court also came to a finding that as the factum of concealment of age by the respondent and her family members had not been proved by the appellant, no case of cruelty has been made out against the appellant.

14. As shown in the chart reproduced above, the respondent has given different ages in different affidavits filed before the Court. The above being said, there is no evidence to show that the respondent had suppressed her real age prior to or during the time of marriage. It is the stand taken by the appellant and as such, it would be his words against the words of the respondent on this issue. The appellant could have brought in his parents as witnesses, to prove whether the age of the respondent had been enquired into and asked for, prior to the solemnization of marriage. However, the parents of the appellant were

not brought in as witnesses by the appellant. As such, there is nothing to show that the respondent had suppressed her age, prior to or at the time of marriage with the appellant. Thus, we do not have any reason to come to a different finding than the finding made by the learned Family Court.

15. The other issue that has to be considered is whether there is an irretrievable breakdown of marriage and whether the same amounts to cruelty. In the case of ***Rakesh Raman vs. Kavita***, reported in ***(2023) SCC OnLine SC 497***, the Apex Court has held that irretrievable breakdown of marriage and the existing bitterness between two persons has to be read as cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955. It further held that continuation of a marriage which has irretrievably broken down, would mean continuance of cruelty, which would be inflicted on both the sides. It also held that though irretrievable breakdown of marriage may not be a ground for dissolution of marriage under the Hindu Marriage Act, the same has to be read as cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955. Thus, as cruelty is a ground for dissolution of a marriage, irretrievable breakdown of marriage would have to be taken as a ground for dissolution of a marriage, coming within the four corners of Section 13(1)(ia) of the Hindu Marriage Act, 1955.

16. Now, we have to consider whether there has been an irretrievable breakdown of marriage between the appellant and the respondent, keeping in view the fact that they had a conjugal married life for only six or seven days and thereafter had lived separately for more than 9 years. In the above case of ***Rakesh Raman*** (supra), the parties had been married for four years and thereafter had lived separately. The husband Rakesh Raman in the above case,

approached the court of the learned Additional District Judge, North Delhi on 20.09.2002, praying for a decree of divorce which was granted vide judgment and order dated 02.05.2009. The wife of Rakesh Raman thereafter filed an appeal before the Delhi High Court, which was allowed, vide order dated 08.04.2011. Subsequently, on the basis of the Special Leave Petition filed before the Hon'ble Supreme Court, in which leave was granted on 26.02.2013, the final judgment was passed in the above case on 26.04.2023.

17. In the present case, the parties have been living separately as on date for more than 9 years. It is also noticed that subsequent to the impugned judgment dated 06.04.2019 passed by the learned Family Court, in FCTS(D) Case No. 119/2018, the respondent had filed an FIR dated 30.04.2019 to the Officer-In-Charge Dhubri Sadar Police Station, stating that the appellant had been demanding money from her and that he had been torturing her as she did not succumb to the demand for money. Further, it was alleged in the FIR that the appellant had driven her out of the house and snatched the cupboard keys, wherein there were gold ornaments worth Rs. 10,00,000/-. She also alleged physical and mental torture from 02.04.2014, i.e. one day after her marriage till 30.03.2019, by using his hands and also by using a knife. Consequent to the FIR filed by the wife/respondent, Dhubri P.S. Case No. 739/2019 under Sections 498A/325/34 IPC was registered against the appellant and his family members. Consequently, G.R. Case No. 2103/2020 is pending before the court of the learned Judicial Magistrate First Class, Dhubri as on date.

18. We have also noticed that while this present appeal had been filed on 01.07.2019, this Court had made an attempt to resolve the dispute between the parties through the process of mediation vide order dated 18.03.2021. The

parties thereafter appeared before the Mediator. However, the process of arriving at a negotiated settlement of the dispute between the parties through mediation ended in failure as per report of the Mediation Centre, which is reflected in the order dated 23.03.2022 issued by the Secretary, Gauhati High Court Mediation Centre. As can be seen from the above facts, the mediation attempt between the parties has failed. However, there is a pending criminal case made against the appellant and his family members in pursuant to the FIR submitted by the wife/respondent. The bitterness that has crept in, which is apparent from the filing of the case by the respondent against the appellant and his family members cannot be ignored. The very fact that there has been no conjugal life between the parties after six/seven days of their married life and their continued separation for 9 years also points to an irretrievable breakdown of marriage.

19. As stated in the foregoing paragraphs, the respondent had filed the FIR dated 30.04.2019 against the appellant and his family members after the learned Family Court had dismissed the appellant's case for grant of a divorce decree. The parties having been separated for a number of years at the time of passing of the impugned judgment dated 06.04.2019 by the learned Family Court, the respondent could have filed an execution case for compliance with the judgment dated 06.04.2019. However, for reasons best known to the respondent, an FIR has been filed even though an FIR on the same issue could have been filed earlier. In any event, the fact remains that a lot of bitterness has now come between the parties. Though the respondent's counsel submits that the respondent want to retrieve the marriage and live with the appellant, the facts show that there is a lot of bad blood between the parties.

20. In the case of ***Rakesh Raman (supra)***, the Hon'ble Apex Court has held that to keep the façade of a broken marriage alive, would be doing injustice to both the parties and a marriage which has broken down irretrievably, spells cruelty to both the parties. Therefore, the Apex Court held that the same was a ground for dissolution of marriage under Section 13 (1)(ia) of the Act. The Apex Court also considered the illustration of mental cruelty in respect of another case, i.e. ***Samar Ghosh vs. Jaya Ghosh***, reported in ***(2007) 4 SCC 511***, wherein it held that when there is a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repairable. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage. On the contrary, it shows scant regard for the feelings and emotions of the parties. In such a situation, it may lead to mental cruelty.

21. Paragraph 20 of the judgment in the case of ***Rakesh Raman (supra)*** states as follows :

“20. This Court though did ultimately give certain illustrations of mental cruelty. Some of these are as follows:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond

is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situation, it may lead to mental cruelty."

22. In view of the reasons stated above, the law laid down by the Hon'ble Apex Court in the case of ***Rakesh Raman (supra)*** and the three Judges Bench of the Hon'ble Apex Court in ***Samar Ghosh (supra)***, we are of the view that there has been an irretrievable break down of marriage in this case and the continuation of such marriage would only amount sanctioning cruelty, with one refusing to divorce the other. Further, we are aware that no children was born out of the union between the parties. Under the circumstances, we are of the view that the appellant has made out a case for grant of a divorce decree in terms of Section 13(1)(ia) of the Hindu Marriage Act, 1955. Accordingly, the marriage between the parties is dissolved and a decree for divorce is granted to the appellant. Consequently, the impugned judgment order dated 06.04.2019 passed by the learned Principal Judge, Family Court, Dhubri in F.C.T.S.(D) Case No. 119/2018 is hereby set aside. Send back the LCR.

JUDGE

JUDGE

Comparing Assistant