

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble **JUSTICE ARINDAM SINHA**

And

The Hon'ble **JUSTICE SUVRA GHOSH**

**F.A.T. 121 of 2015
(Via Video Conference)**

Bulti Choudhury

Versus

Pintu Choudhury

For the Appellant : Mr. Pinaki Dhole, Adv.
Mr. Ziaur Rahaman, Adv.,

For the Respondent: Mr. Biplab Guha, Adv.
Mr. Kaushik Biswas, Adv.,

Heard on : 8th February, 2021

Judgment on : 12th February, 2021

SUVRA GHOSH, J. :-

1. Marital tie between the appellant and respondent was severed at the instance of the respondent by judgment and decree of divorce granted by the Learned Additional District and Sessions Judge, 5th Court, Malda, on 19-12-2014 in Matrimonial Suit No. 232 of 2013.
2. The respondent/husband filed the Matrimonial Suit before the learned trial court praying for a decree of dissolution of marriage under section 13

of the Hindu Marriage Act, 1955. The respondent's contention, in his petition, was that the petitioner was his legally married wife by virtue of marriage solemnised on 21-06-2010. Though the parties started leading a conjugal life in the petitioner/husband's house, the respondent/wife went to her father's house off and on and preferred to remain there until she was repeatedly requested by the petitioner to return to her matrimonial home. The respondent left for her father's house on 19-09-2010 to return only on 26-01-2011. She again left for her parental home with her cousin Proloy Bhakat with all her belongings on 02-02-2011, never to return to the petitioner again. Several attempts made by the petitioner to resume marital relationship with his wife fell on deaf ears despite the petitioner's eagerness to reunite with his wife. The petitioner finally informed the matter to the local police station and filed suit praying for dissolution of marriage on the ground of desertion and cruelty.

3. The respondent/wife contested the suit by filing written statement denying the entire contention of the petitioner. She stated that cash Rs. 2,00,000/- (two lakhs only), gold ornaments and other articles were given to the petitioner by her father during the marriage in spite of which she was subjected to physical and mental torture in her matrimonial home by the petitioner and his relatives who demanded a further sum of Rs. 2,00,000/- (two lakhs only) from her. They meted out physical and mental torture upon the respondent on a regular basis and finally drove her out of their house on 10-07-2013, compelling the respondent to return to her parental home. A salish was held at the instance of the respondent's father in his house on 25-07-2013 for an amicable

settlement between the families but in vain. The respondent's father visited the petitioner on 30-07-2013 and was informed that the respondent would not be accepted in the petitioner's house for which the respondent was constrained to lodge complaint against the petitioner before the police.

4. Upon hearing the parties and considering evidence on record, the learned trial court, by the impugned judgment, granted a decree of divorce on the ground of cruelty under section 13(1) of the Act of 1955 in favour of the petitioner/husband.
5. Aggrieved by the said judgment and decree, the appellant who was the respondent/wife before the learned trial court has preferred the present appeal.
6. Learned Counsel appearing for the appellant/wife has argued that the respondent/husband has failed to prove that the appellant deserted him and treated him with cruelty. It was the respondent who drove out the appellant from her matrimonial home after subjecting her to cruelty for which a complaint was lodged by the appellant before the police which was registered as a criminal case wherein charge sheet has been submitted. The appellant resided with her husband till 10-07-2013 and the suit filed by her husband before the learned trial court on 31-05-2013 is premature and is liable to be dismissed on that score. The members of the respondent's family were not examined by the learned trial court in connection with the case made out by the respondent and the allegation of cruelty and desertion thrust upon the appellant is out and out false.
7. Learned Counsel for the respondent has supported the judgment

impugned and has prayed for affirming the same.

8. We have considered the submission made by the parties and the material placed before us.
9. Admittedly marriage of the parties was solemnised on 21-06-2010 and the appellant accompanied the respondent to his house where they led a marital life together. The appellant has alleged that she was subjected to physical and mental torture in her matrimonial home on demand of further dowry though her father had gifted gold ornaments, cash and other articles to the couple during their marriage. OPW-3 Manmatha Saha who adduced evidence in support of the appellant's case before the learned trial court stated that he saw the documents with regard to the furniture and gold ornaments given at the time of marriage. But no such document was produced by the appellant or her father before the trial court. It is also not the case of the appellant that such documents were lost or destroyed. Alleged payment of dowry to the tune of nothing less than Rs. 2, 00,000/- (two lakhs only) ought to have been supported by evidence suggesting the source of such amount. Therefore the appellant's claim with regard to giving cash, gold ornaments and other articles during marriage should be taken with a pinch of salt.
10. A salish has been referred to by the appellant. But again, there is no convincing evidence in support of the same.
11. The appellant has urged that she resided with the respondent in her matrimonial home till 10-07-2013 whereas the respondent has claimed that the appellant deserted him on 02-02-2011 and has not returned to him since then. It appears that the respondent/husband lodged

complaint before Manickchak police station (on 09-02-2011) contemporaneously which contains detailed version of his allegation of desertion and cruelty which is in conformity with his averment before both the courts. There is also a specific averment to the effect that the appellant/wife left her matrimonial home on 02-02-2011 with her cousin Proloy Bhakat. The said cousin has not been examined before the learned trial court, nor has relation with Proloy Bhakat been denied by the appellant/wife. So it can be inferred that the evidence of Proloy Bhakat who was the best person to echo the appellant's contention, was withheld by the appellant and the court is tempted to draw up an adverse presumption against the appellant under section 114(g) of the Indian Evidence Act, 1872. The complaint lodged by the respondent/husband contemporaneously speaks in support of the respondent's contention that the appellant left her matrimonial home on 02-02-2011. Though the appellant has tried to impress upon the court that she was subjected to cruelty in her matrimonial home and was driven out therefrom on 10-07-2013, the evidence on record speaks otherwise. Strangely, no step was taken by the appellant before any authority to ventilate the alleged cruelty meted out upon her since inception of her marriage and it was only after the matrimonial suit was filed against her by the respondent that she woke up from slumber and chose to lodge a criminal case against her husband. No evidence of alleged cruelty is found within the four corners of the record. Admittedly the appellant filed no other case/complaint against the respondent besides the one referred to.

12. Section 13(1) (i-b) of the Act of 1955 envisages that a marriage can be dissolved by a decree of divorce on a petition presented by either the husband or the wife on the ground that the other party “ has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition”.
13. In the present case, it is evident from the record that the appellant deserted the respondent and left for her parental home on 02-02-2011 and has clearly and unequivocally stated before the learned trial court that she is not willing to return to her husband’s house. She has also asserted that she did not disclose such willingness even in her affidavit of examination-in-chief filed before the court.
14. Such assertion by the appellant lends support to the contention of the respondent that the appellant refused to return to her matrimonial home despite several attempts/requests made by him. The conduct of the appellant, as appears from the entire evidence on record, nullifies her allegation of cruelty and substantiates the respondent’s version that she deserted him without any justifiable cause for more than two years immediately preceding the presentation of the petition. Therefore the only inevitable conclusion that can be arrived at is confirmation of the decree of divorce granted by the learned trial court as there is no possibility of reunion of the parties on account of refusal of the appellant.
15. The learned trial court has elaborately and appropriately dealt with all the issues in arriving at its decision. There is no illegality or irregularity in the judgment that calls for interference by this court. The appeal is

devoid of any merit and is liable to be dismissed.

16. Accordingly, F.A.T. 121 of 2015 is dismissed.

17. There will however be no order as to costs.

18. A copy of this judgment be sent to the learned trial court for information and necessary action.

19. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)