

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.M.A.T. 624 OF 2016

WITH

I.A. NO. CAN 1 OF 2016(Old No. CAN 5241 OF 2016)

CAN 3 of 2017 (Old No. CAN 5293 of 2017)

CAN 5 of 2019 (Old No. CAN 8696 of 2019)

CAN 6 of 2021

Smt. Mousami Sarkar

Versus

Subhendu Sarkar

For the Appellant : Mr. Deb Dutta Basu, Adv.
Mr. Pampa Dey (Dhabal), Adv.
Ms. Sangita Banerjee, Adv.,

For the Respondent: Mr. Tapan Dutta Gupta, Adv.
Mr. Parvej Anam, Adv.
Mr. Sandip Dinda, Adv.,

Heard on : 9th March, 2021

Judgment on : 19th March, 2021

SUVRA GHOSH, J. :-

1. The appeal is directed against judgment dated 30-03-2016 passed by the Learned Additional District & Sessions Judge, First Court, Tamruk, Purba

Medinipur in Matrimonial Suit No. 04 of 2015 and the decree that followed it.

2. The parties were married according to Hindu rites and customs on 23-11-2012 and the appellant/wife accompanied the respondent to his house. After a few days the appellant created pressure upon the respondent to reside in her house as “Ghar Jamai” and started visiting her parental home frequently. She was always reluctant to return to her matrimonial home. Finally on 27-12-2013 the appellant left for her parental home along with her belongings for good and several attempts by the respondent to bring her back failed. She expressed that she did not intend to lead a conjugal life with her husband. The respondent/husband was, therefore, constrained to file the application under section 9 of the Hindu Marriage Act, 1955, before the learned trial court praying for restitution of conjugal rights.
3. The appellant/wife contested the suit by filing written statement wherein she denied all the material allegations of her husband and submitted that her father gifted ornaments, articles, furniture and cash of Rs. 50,000/- to the couple during their marriage and the parties led a happy conjugal life together. Due to insufficient accommodation in her matrimonial home, the appellant’s father gifted them a piece of land by virtue of registered deed of gift on 02-01-2013 and also constructed a single storied house therein for them. The appellant further contended that a girl child was born to them on 02-02-2014 following which the respondent and his

parents inflicted physical and mental torture upon the appellant on trivial issues. They also demanded Rs. 1,00,000/- (one lakh) from her father and on her denial, they continued to assault and insult her and finally drove her out of their house on 10-08-2014 along with her daughter. Several efforts of reconciliation between the parties failed for which the appellant has been residing in her parental home under compelling circumstances. The appellant/wife prayed for dismissal of the suit.

4. Upon hearing the parties and considering the evidence on record, the trial court, by the judgment impugned, decreed the suit in favour of the respondent/husband. Being aggrieved by the said judgment and decree, the appellant/wife has preferred the present appeal praying for dismissal of the suit before the learned trial court.
5. Learned counsel appearing for the appellant has drawn the attention of the court to the fact that both the parties having their respective houses in the same locality, there was no question of pressurizing the respondent to reside in the appellant's paternal home as "Ghar Jamai". It was only the desire of her father that the parties should stay in the house gifted by the appellant's father so that they could live in a peaceful and congenial atmosphere and maintain good relationship with their respective parents. The appellant was driven out of her matrimonial home by the respondent and did not voluntarily withdraw herself from his company. She was subjected to physical and mental cruelty by her husband in her

matrimonial home and has no reasonable ground to resume conjugal life with him. In support of his contention, learned counsel has placed reliance on the authority in Ravi Kumar vs. Julmi Devi reported in (2010) 4 SCC 476 and Vennangot Anuradha Samir vs. Vennangot Mohandas Samir reported in (2015) 16 SCC 596.

6. Learned counsel for the respondent/husband has supported the impugned judgment and has submitted that the appellant left her matrimonial home with the daughter voluntarily and without any justifiable cause and he is ready and willing to resume marital life with her.
7. At the outset it is necessary to refer to an inadvertent error which has crept into the last page (page-8) of the judgment impugned. The operative portion of the judgment is set out:-

Hence, it is,

Ordered

that the Matrimonial Suit under Section 9 of the Hindu Marriage Act, 1954 be and the same is decreed on contest against the respondent/wife, without any order as to cost.

Petitioner, namely, Subhendu Sarkar do get a decree for restitution of conjugal rights against the respondent. Respondent, namely, Mousumi Sarkar is directed to resume her conjugal life with the

petitioner husband within one month from the date of this order.

8. In the same page the learned trial court has stated-

“So, considering all aspects, I do not feel it justified that an order of restitution of conjugal rights would be a positive solution or an efficacious relief to eliminate the controversy forever. So, it will not be quite pragmatic and rational to pass a decree for restitution of conjugal rights.”

9. This observation of the court is contradictory to the decree granted. However, the entire judgment including appreciation of evidence and derivation of inference are in conformity with the decree granted. Therefore, the stray observation of the court in the earlier part of page 8 can be safely construed as an inadvertent error whereby a negative expression has been wrongly used by the court which is contrary to the judgment and decree, and can be safely ignored.
10. Turning to merits, prayer for restitution of conjugal rights should be considered on the anvil of the respondent's claim that the appellant withdrew from his society without any reasonable excuse. It is the case of the appellant/wife that she was subjected to torture in her matrimonial home and driven out therefrom with her daughter on 10-08-2014. The respondent husband, on the other hand, has urged that

the appellant voluntarily withdrew from his society and left for her parental home on 27-12-2013.

11. Admittedly the appellant's father gifted a piece of land in favour of the parties and constructed a single storied house therein for the parties to shift to that house as according to the appellant, there was dearth of accommodation in her matrimonial home. It is admitted by the appellant's father Ashok Kumar Singha in his evidence before the learned trial court that the deed of gift is bereft of any averment with regard to dearth of accommodation in the respondent's house. Therefore it can be inferred that the gift was made with the desire and intention that the parties would stay in the said house admittedly situated near the appellant's parental home, away from the respondent's parents. In fact, the appellant has candidly stated before the learned trial court that she will reside with her husband only if her husband resides in the plot of land gifted to them by her father. The intention is as clear as daylight.
12. The appellant has tried to impress upon the court that she was subjected to cruelty in her matrimonial home and was driven out therefrom. Strangely, she refrained from lodging any complaint before any authority with regard to such incident or attempting to reconcile with her husband, claim maintenance or the like and sat tight over the matter until the suit was filed by the respondent. In absence of any cogent or corroborative evidence in support of the claim of the appellant, it can be held that the appellant deserted the respondent without any

justifiable cause. The authorities in Vennangot Anuradha Samir (supra) deals with the duty of the husband to honour the wife and take care of all her comfort, health and safety. Ravi Kumar (supra) speaks about desertion and cruelty. There is no quarrel with the proposition of law herein. But the proposition is not of any assistance to the appellant as her allegation of cruelty is not substantiated by sufficient evidence.

13. Another subsequent fact is relevant. In course of pendency of the present appeal, a coordinate bench of this court advised reconciliation. In this connection the appellant sought to place on record the medical document of her daughter issued on 24-03-2017 and complaint lodged by her before the police on 18-04-2017 as additional evidence. The respondent has not raised objection to the appellant's prayer. The documents in question were not in existence when the decree appealed against was passed and in our considered view, are required to be produced to enable us to pronounce judgment.
14. In adducing additional evidence before this court, the appellant has stated that in compliance with the order of the court a mutual settlement was arrived at between the parties and their respective parents and the appellant went to her matrimonial home with her daughter on 09-03-2017. She has stated that her husband inflicted severe mental torture upon her three year old daughter and herself and they were made to reside in a tin shed room for which they fell seriously ill. As the respondent was reluctant to provide medical assistance to the

child, she went back to her parental home with her daughter on 23-04-2017, got her checked by a paediatrician and returned to her matrimonial home two - three days thereafter. The appellant has further alleged that the respondent demanded Rs. 1.5 lakhs from her as reimbursement of expenses incurred by them on litigation and on 09-04-2017 she was again driven out. The appellant has produced copy of treatment sheet and complaint lodged by her before Panskura Police Station. The treatment sheet of her daughter Oindrila Sarkar dated 24-03-2017 reveals that the child was treated for constipation. The complaint also says that the child was unable to adapt to the new ambience of her father's house and fell ill due to the heat of the tin shed room where she was accommodated. There is no allegation as such against the respondent or his family members qua the child. The contemporaneous medical document also does not suggest any other illness except constipation.

15. The appellant has stated in her application that she went to her matrimonial home on 09-03-2017 whereas the date appears to be on 12th March, 2017 in the complaint. Though she claims to have been driven out of her matrimonial home on 09-04-2017, she lodged the complaint on 18-04-2017, the delay remaining unexplained. The stance of the appellant at different stages is contradictory. She once intends to resume conjugal life with her husband, again says that she will do so only if her husband resides with her in the property gifted by her father. It is also inconceivable that there was no demand of money during her

stint in her matrimonial home till 24th March, 2017 and such demand was suddenly raised by her mother in law during the second phase of her stay which reached such a height that she was thrown out of the house. It is not improbable that the complaint was lodged before the police only for the purpose of documentation of certain facts and incidents which would lend support to the oral version of the appellant. The document does not inspire confidence of this court.

16. Upon consideration of the entire material available before us, we have no impediment to hold that no case has been made out by the appellant to indicate that she was constrained to leave the respondent or was rather driven out of his house and did not withdraw from his society without any reasonable cause. The appeal is devoid of merit and be dismissed.
17. Before parting with the record, it is pertinent to record that a coordinate bench of this court, in the present appeal, directed the respondent to clear all arrears of maintenance to the tune of Rs. 2,000/- per month for the appellant and Rs. 1,500/- per month for the child by 10-08-2018, along with Rs. 5,000/- as cost of the application, vide order dated 10-07-2018.
18. We hope and trust that such order shall be complied with by the respondent forthwith, if not done earlier, in order to avoid execution/contempt.
19. F.M.A.T. 624 of 2016 be dismissed.

20. Connected applications being I.A. no. CAN 1 OF 2016(Old No. CAN 5241 of 2016), CAN 3 of 2017 (Old No. CAN 5293 of 2017), CAN 5 of 2019 (Old No. CAN 8696 of 2019) and CAN 6 of 2021 are disposed of.
21. Judgment dated 30-03-2016 passed by the Additional District & Sessions Judge, First Court, Tamluk, Purba Medinipur, in Matrimonial Suit No. 4 of 2015 be affirmed.
22. There will however be no order as to costs.
23. A copy of this judgment be sent to the learned trial court for information and necessary action.
24. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with usual formalities.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)