

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. 379 of 2013

With

I.A. No. CAN 1 of 2013 (Old CAN 11287 of 2013)

Malay Banerjee

Versus

Antara Banerjee (Chattaraj)

For the Appellant : Mr. Probal Kr. Mukherjee, Sr. Adv.
Mr. Sagnik Chatterjee, Adv.

Heard on : 16th March, 2021
Judgment on : 24th March, 2021

SUVRA GHOSH, J. :-

1. The present appeal which is directed against judgment dated 29-07-2013 passed by the Learned Additional District Judge, First Court, Purulia in Matrimonial Suit No. 115 of 2007 is accompanied by an application under order 41 Rule 27 of the Code of Civil Procedure for production of additional evidence. A coordinate Bench, vide order dated 12-03-2014, directed that the application be heard along with the appeal.
2. Notice of appeal has been attempted to be served and was returned with

a postal endorsement “refused”. In this regard it shall be useful to reproduce order dated 24-02-2021:-

“Mr. Chatterjee, learned advocate appears on behalf of applicant. He submits, the application is for production of additional evidence. There was direction earlier made by a coordinate Bench on 12th March, 2014 for the application to come up for hearing along with the appeal. He submits, notice of appeal has been served and all formalities complied with. Respondent goes unrepresented.

We find a note, laid by the section before Registrar (Administration), saying, vide memo dated 7th April, 2015 notice of appeal was issued upon sole respondent by speed post with acknowledgment due but the same has been returned with postal endorsement on the envelope as “refuse”.

Affidavit-of-service in compliance with direction made by another coordinate Bench on 7th December, 2020 is filed. The affidavit contains postal article addressed to respondent bearing endorsement “refused”.

3. We are convinced that the respondent is not interested in contesting the appeal. The appeal is taken up for hearing and disposal.

4. The appellant intends to place on record certain documents as additional evidence and submits that though copies of the said documents were produced before the learned trial court, the originals thereof could not be produced as evidence as they were misplaced and were traced out only after judgment was pronounced. The petition is not opposed and documents relied upon by the petitioner shall, in our considered view, assist the court in pronouncing judgment. As such, the documents be taken as additional evidence in the appeal.
5. The appellant who is the husband of the respondent filed a matrimonial suit being no. 115 of 2007 before the learned trial court wherein he stated that his marriage with the respondent was negotiated through an advertisement in the newspaper and the parties were married on 17-02-2003 according to Hindu rites and customs. Though the respondent was cordially accepted in her matrimonial home, she started behaving abnormally, used abusive language towards the appellant and his family, threw away articles, spoilt food and even instigated the appellant to commit suicide. The appellant is an unemployed graduate who worked as a contractor and was humiliated by his wife on his income. The respondent also insisted on his remaining as a "Ghar Jamai" in her parental home. The appellant further contended that on 21-07-2004 the respondent left her matrimonial home with her belongings following which the appellant filed a divorce suit against her. The respondent, as a counterblast, filed a criminal case against the appellant and his family members under section 498A/34 of the Indian Penal Code wherein the appellant and his family

members were acquitted by the court on 02-02-2006. Thereafter the appellant also withdrew the matrimonial suit on request of the respondent who agreed to lead a matrimonial life with him. In the mean time, the aged parents of the appellant shifted to their younger son's house in Kolkata and started residing there permanently. The family members of the appellant resided separately and were well established and there was no question of their interference in the matrimonial life of the parties. Further averment of the appellant was that in the 3rd week of July, 2007 the respondent resumed mental torture upon the appellant and threatened to lodge complaint against him. On 29-09-2007 when the appellant was alone in his house, the respondent and her father accompanied by outsiders came to his house and assaulted him mercilessly. The neighbours who came to his rescue were also abused and insulted. The respondent lodged a vague complaint before the police on the same night which was enquired into by the police who found no substance therein and released the appellant on execution of PR bond. The appellant alleged that the respondent meted out physical and mental torture upon him for which he was constrained to stay at Mayur Hotel from 14-09-2007 to 16-09-2007. A mass petition was also submitted by the neighbours before the police on 29-09-2007 against the respondent. The appellant was admitted to the hospital and remained there for three days on account of assault by the respondent and her father. According to the appellant, the relationship between the parties having been irretrievably broken down, there was no

chance of reconciliation, for which he prayed for a decree of dissolution of marriage.

6. The respondent/wife contested the suit by filing written statement wherein she denied all the material allegations of the appellant and stated that her father gave dowry in cash and kind during her marriage on demand of the petitioner and she led a happy conjugal life with the petitioner in her matrimonial home, also with other members of the petitioner's family. About 7-8 days prior to 21-07-2004, the appellant started inflicting physical and mental torture upon her and she was rescued from the clutches of the appellant by her father on 21-07-2004. Following matrimonial suit filed by the appellant and criminal case lodged by the respondent, the parties decided to resume conjugal life and both the cases were disposed of on compromise. The appellant took the respondent to his house on 15-07-2007 where they resided together till 29-09-2007. The respondent further contended that on 29-09-2007 she visited her parents on account of her mother's illness and as the appellant did not come to fetch her from her parental home as decided earlier, she went to the appellant's house accompanied by her father at about 11:00 P.M. She found the main entrance of the house bolted from inside and on calling the appellant for considerable period, he opened the door and started abusing and assaulting the respondent and her father. His neighbours also arrived and took sides with the appellant. The respondent and her father were saved on arrival of the police at about 11:30 P.M. All present there went to the police station and the respondent and her parents lodged written

complaint against the appellant and others. The appellant was released from the police station on execution of PR bond. The respondent submitted that she was ready and willing to reunite with the appellant and prayed for dismissal of the suit.

7. Upon considering the submissions on behalf of the parties as well as the evidence on record, the learned trial court, by the judgment impugned, dismissed the suit. Being aggrieved by the said judgment, the appellant/husband has come up before this court in appeal.
8. It is submitted by learned counsel appearing for the appellant that the appellant was subjected to cruelty by the respondent who was unwilling to lead a conjugal life with him and subjected even his aged parents to cruelty. The appellant was hospitalised due to severe assault by the respondent and his father and such fact has been corroborated by neighbours of the appellant who filed a mass petition before the police on protest against the behaviour and attitude of the respondent.
9. Record reveals that the parties were married on 17-02-2003 and led a conjugal life together till 21-07-2004 when the respondent left for her parental home. It is not disputed that an earlier divorce suit filed by the appellant was disposed of due to settlement between the parties and a criminal complaint lodged by the respondent under section 498A/34 of the Indian Penal Code was also disposed of, the appellant and his family members being acquitted of the charges therein. The parties resumed marital life and stayed together till 29-09-2007.

10. The appellant has alleged that the respondent again started showing her true colours from the 3rd week of July, 2007 and meted out physical and mental torture upon him. The appellant has relied upon cash bills issued by Hotel Mayur in his name to impress upon the court that he was compelled to take refuge in the hotel from 14-09-2007 to 16-09-2007 due to ill behaviour of the respondent. The said bills demonstrate that the appellant resided in the hotel from 14-09-2007 to 16-09-2007 but it cannot be inferred therefrom that such stay of the appellant had any nexus with disturbance in his family life. There is also no corroborative evidence which explains the reason for the appellant's stay in the hotel for three days in particular when it is evident that he remained in his house prior to and after the said dates. These documents are not of much assistance to the appellant in the appeal.
11. An incident of 29-09-2007 has been highlighted. The appellant has claimed that on the said date the respondent and her father went to his house and brutally assaulted him. He has also stated that the neighbours who came to his rescue were also abused and insulted. It is also the respondent's version that she along with her father went to her matrimonial home on that date at about 11:00 P.M. The version may be different, but it is clear that the respondent and her father visited the house of the appellant in the night of 29-09-2007. Though each party claims to have been assaulted by the other; there is no contemporaneous medical document in support of the respondent's allegations. On the other hand, medical documents, filed by the appellant suggest that he

sustained injuries and was hospitalised from 30-09-2007 to 01-10-2007. Such documents lend support to the appellant's case and it can be inferred that the appellant sustained injuries on the relevant night. A mass petition filed by the local people before the police on the same date also speaks of physical and mental torture upon the appellant on 29-09-2007 by the respondent and her father. The petition is a protest by the local people against insult and humiliation suffered by them at the instance of the respondent and her father. Admittedly police had to intervene and both the parties were called to the police station. The appellant was released on execution of PR bond.

12. It is evident from the evidence on record – both oral and documentary, that the appellant was subjected to cruelty, both physical and mental by the respondent for which he was constrained to file the suit for divorce. The neighbours have also unanimously supported the contention of the appellant and had in fact assembled at the appellant's house on hearing harsh and abusive language thrust upon the appellant by the respondent. Jhulan Bhattacharjee who appears to be one of such neighbours stated in his evidence as PW-5 before the learned trial court that the appellant was lying near the drain after being assaulted on the relevant night and was taken to the hospital on 30-09-2007.
13. The appellant's case remains uncontroverted as the respondent has not bothered to contest the appeal despite service of notice.

14. Upon consideration of the entire evidence on record, we have no hesitation to hold that the appellant has succeeded in substantiating his allegation of being subjected to physical and mental torture by the respondent and is therefore entitled to get the decree as prayed for.
15. F.A. 379 of 2013 is accordingly allowed.
16. Judgment dated 29-07-2013 passed by the Learned Additional District Judge, First Court, Purulia in Matrimonial Suit No. 115 of 2007 is hereby set aside.
17. The appellant do get a decree for dissolution of marriage solemnised with the respondent on 17-02-2003 with effect from the date of decree.
18. Connected application being I.A. no. CAN 1 of 2013 (Old Can 11287 of 2013) is also disposed of.
19. There will however be no order as to costs.
20. A copy of this judgment be sent to the learned trial court for information and necessary action.
21. 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.)