

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE SOUMEN SEN
&
THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

FA 62 of 2017
Arup Kumar Pal
Vs.
Rita Pal

For the Appellant	:	Mr. Tanmay Mukherjee Ms. Shila Sarkar Mr. Souvik Das
For the Respondent	:	Ms. Sohini Chakarborty
	:	Mr. Nayeemuddin Munshi
Heard on	:	22 nd April, 2022
Judgment on	:	29 th April, 2022

Ajoy Kumar Mukherjee, J. :

1. This First Appeal is at the instance of a husband in a suit for divorce and is directed against the judgment and decree dated November 30th , 2012 passed by the learned Additional District Judge, First Court, Howrah, in Matrimonial Suit No. 200 of 2003, thereby dismissing petitioner's /appellant's prayer for dissolution of marriage. Being dissatisfied, the husband /appellant has come up with the present appeal.

2. Appellant /husband filed Mat Suit No. 200 of 2003 in the court of District Judge at Howrah for decree of divorce. The case made out by petitioner

in short is that, that the petitioner and the respondent married to each other on 17.01.2000 at the marriage office at Howrah under the special marriage Act 1954. After marriage the parties lived together as husband and wife at the matrimonial house of the respondent. Petitioner was previously married and obtained a decree of divorce on 10.09.1999 on the ground of adultery. Present marriage between the parties is an arranged marriage. At the time of negotiation it was concealed that the respondent was suffering from mental disorder and respondent used to get fainted frequently. Moreover after marriage respondent's behaviour was found to be unnatural and abnormal. Few months after marriage petitioner had to admit the respondent in a medicare clinic since her fainting and abnormality became aggravated. The doctor declared that she was suffering from mental disorder long before marriage and advised to admit her in a mental institution, since she has suicidal tendency. Father of the respondent instead of taking her to mental hospital, forcibly admitted her in National Medical College , Calcutta. During her stay at the matrimonial home the respondent wife has treated the petitioner and her mother-in-law and other family members with cruelty and she had no respect for her mother-in-law and superiors. Her behaviour shows that she was suffering from mental disorder which amounts to cruelty to the petitioner and also caused mental pain to other members of the family. The respondent was also reluctant in normal sexual life and she once kicked the petitioner from bed. The respondent always threatened to take her own life and to implicate the petitioner. On 22.02.2003 the respondent attempted to commit suicide by setting fire on her body without any provocation and due to prompt intervention by the

petitioner and his relatives, no serious accident was caused and she was saved. On 24.02.2003 the respondent wife got herself locked inside the bedroom situated at the first floor and sprinkled kerosene all over the room and started threatening with a match box. However the petitioner and his family members persuaded her to cool down and unwanted incident could avoided somehow. On 26.02.2003 the parents of the respondent came to the petitioner's house and took away the respondent without the consent of the petitioner and thereby respondent has deserted the petitioner. Marriage tie has been broken down irretrievably. The respondent's mental disorder and /or mental illness is of such a kind and such an extent that the petitioner cannot reasonably be expected to live with the respondent. Accordingly petitioner prayed for dissolution of the marriage on the ground of respondent's mental disorder , cruelty and desertion.

3. Respondent Smt. Rita Pal contested the suit by filing written statement and she denied all material allegations made in the plaint. The respondent pleaded that she was never suffering from mental disorder and her previous marriage was broken due to difference of opinion and she is/was always mentally sound and fit. She denied that she ever made any attempt to commit suicide or she inflicted cruelty to anyone. She also denied that anything was concealed to the petitioner before her marriage. Respondent further stated that after few days of marriage, the petitioner and his other family members created pressure upon the respondent and asked her to bring money and ornaments from her father and as father of the respondent had no capacity to meet the said demand, the petitioner and his family members started to

inflict physical and mental torture upon the petitioner. However, inspite of such torture the respondent stayed at her matrimonial home with a hope that in future their behaviour will be rectified and she will be able to live with her husband happily. But the petitioner and his family members did not pay any heed to the request of the respondent and on the contrary they had accelerated their physical and mental torture upon the respondent and ultimately on 15.04.2003 petitioner and his other family members had driven her out from their house after assaulting her physically. The respondent diarised the incident at Howrah P.S. being G.D. entry No. 1076/2003 dated 15.04.2003 and since then the respondent staying at her father's house. The respondent is always willing and ready to live with the petitioner as husband and wife and as such she has prayed for dismissal of the suit.

4. Learned Trial Court on the basis of pleading submitted by the parties framed 5 (five) issues to prove the case. Petitioner/husband has brought as many as 5 witnesses, out of which petitioner himself deposed as PW-1 and PW-2 to PW-4 are different doctors who treated the respondent wife on different dates and PW-5 is a hospital staff. On the contrary respondent wife in order to rebut the evidence of the petitioner, examined herself as DW-1. Petitioner husband produced several document in support of his contention, which are marked as Exhibit 1 to 18.

5. While answering the question as to whether respondent has treated the petitioner with cruelty, learned Trial Court observed that husband has alleged that the respondent attempted to commit suicide twice which was somehow saved due to proper intervention of the petitioner/husband and other relatives

but none came forward before court to corroborate such incident. Trial Court further held that a married wife cannot be expected to live apart from her husband unless she be put to an incongenial atmosphere to suffer humiliation, insult, cruelty at her matrimonial home. In this context Trial Court further held that an act or omission done under compulsion which got amply demonstrated in the evidence of respondent/wife would however reveal the real intention of the respondent/wife contrary to *animus deserendi*. The insufficient evidence adduced by the husband could not satisfy the Trial Court to come to a conclusion that the respondent treated the petitioner with cruelty. As regards the ground of desertion for dissolution of marriage, the learned Trial Court found that according to the petitioner's contention they are separately living on and from 26.02.2003 but the clear and unambiguous testimony of respondent wife exhibiting her willingness to live together with her husband for carrying their conjugal rights, has not been controverted by the petitioner/husband. As such Trial Court came to the finding that ground of desertion has also not been proved. While dealing with the issue of mental disorder of the respondent as a ground for divorce, learned Trial Court scrutinized the evidence adduced by 3 doctors namely PW-2 to PW-5 and came to conclusion that the evidence of doctors left nothing that the extent of mental ill health, if any, could not be medically treated and cured ultimately. There is also nothing to show that the respondent/wife had a prolonged mental disorder resulting in dissolution of her previous marriage. Admission of respondent to hospital thrice and followed by her treatment intermittently for her mental depressive disorder which could be medically cured, not at all decisive to reveal that

mental disorder of respondent wife is to such a critical extent that petitioner/husband cannot be expected to live together with his wife. Accordingly learned Trial Court dismissed the suit.

6. With regard to ground namely desertion, learned counsel for the appellant Mrs. Shila Sarkar made no serious effort to question the finding of the court below. Plaintiff has categorically stated in his plaint that on 26.02.2003 the parents of the respondent had taken away the respondent from her matrimonial house and it also appears that the suit for dissolution of marriage was filed on 09.04.2003 and as such it is quite apparent that the suit for dissolution of marriage on the ground of desertion was filed before the expiry of statutory period of 2 years and as such said ground is not maintainable under section 27 (1)(b) of Special Marriage Act and has been rightly rejected by the court below. As regards the ground taken by the petitioner that the respondent has been incurably of unsound mind and has been suffering intermittently from mental disorder to such an extent that the petitioner cannot reasonably be expected to live with the respondent, learned counsel for respondent Mrs. Sohini Chakraborty strenuously argued that the unsoundness of mind or mental disorder which the petitioner is trying to canvas must be of incurable in nature. Therefore, she pointed out the evidence of PW-2, 3 and 4 and contended that doctors nowhere has stated that the suffering of the respondent, if any is incurable in nature and on the contrary the sum and substance of their entire evidence goes to show that such disease if any, can very well be treated and cured but the petitioner and his family members, in order to drive her out from her matrimonial home had planted

the story of incurable nature of mental disorder. Moreover the alleged incident of making attempt to commit suicide by the respondent has not been corroborated by any of the family members of the petitioner and for which the petitioner miserably failed to prove the ground of mental disorder and is not entitled to get decree on that ground.

7. Learned Counsel for the appellant Mrs. Shila Sarkar further drawn our attention to explanation given to section 27(1)(e) of Special Marriage Act, 1954 and contended that mental disorder means and includes mental illness and / or incomplete development of mind and also includes psychopathic disorder. She further contended that psychopathic disorder has also been explained as disability of mind which results in abnormally aggressive or serious irresponsible conduct on the part of the other party. In the present case according to Mrs. Sarkar various attempts were made by the respondent to commit suicide and also in view of the fact that she get fainted frequently along with unnatural and abnormal behaviour constitutes psychopathic disorder on the part of the respondent which occurred frequently and as such the petitioner is entitled to get decree on the ground of mental disorder.

8. On the basis of the pleading and evidence as adduced by the petitioner it appears that the petitioner in support of respondent's mental disorder has contended that just after the marriage was solemnized, the petitioner noticed that the respondent used to get fainted frequently and that her behaviour was found to be unnatural and for which she was treated by a medicare clinic from 02.08.2000 to 05.08.2000. Doctor of said clinic has deposed in the case as PW-2 and he categorically stated that he is not a psychiatric and according to

the patient's statement he wrote about suicidal tendency but said doctor had not diagnosed the patient. Further case of the petitioner is that the respondent's mental illness became aggravated day by day and for which she was admitted in Shri Jain Hospital and was treated there from 24.12.2002 to 04.01.2003 and again she was treated by doctor Partha Pratim Roy, consultant psychiatrist from 19.01.2003 to 09.02.2003. Said doctor Partha Pratim Roy faced the dock as PW-3 and stated that the patient was suffering from mental depression and he had prescribed drug accordingly. In the cross-examination said doctor also opined that mental depression is a treatable ailment. Moreover, Dr. Rajashree Sengupta from aforesaid Jain Hospital also faced the dock and deposed as PW-4 and stated that the patient had recurrence unconsciousness and he diagnosed a case of depression disorder with P.I.D. i.e. back pain and he referred the patient to psychiatrist and also to a gynaecologist. However, said PW-4 in cross-examination opined that it was not a case of chronic disorder and it is curable in many of the cases. He further opined that prescription does not show the case of permanent lunacy. Accordingly we have no other option but to hold that petitioner has miserable failed to prove that the respondent has been incurably of unsound mind or has been suffering either continuously or intermittently from mental disorder to such an extent that petitioner cannot reasonably be expected to live with the respondent.

9. In support of ground of cruelty Mrs Sarkar contented that respondent is suffering from mental disorder long before her marriage and also after marriage but learned Trial Court did not discuss ground of cruelty in view of

suppression of fact. When petitioner detected her mental illness, he was mentally shocked and suffered mental pain. Petitioner's mother also received mental shock at the cruel behaviour of the respondent and finally she expired in July, 2001. It has been further argued by Mrs. Sarkar that from the very beginning of the marriage the wife /respondent always avoided and repelled all advances of the husband/petitioner in normal sexual life and she once kicked the petitioner from the bed and marriage was never consummated and no child was born in the wedlock which also amounts to mental cruelty inflicted by the respondent upon the petitioner. Learned Counsel for the respondent Mrs. Chakraborty argued that it is incorrect to say that the respondent was suffering from any kind of mental illness prior to her marriage and petitioner could not prove the same by way of oral or documentary evidence. It appears from the certified copy of dissolution of earlier marriage of the respondent which has been marked as Exhibit-6 that said marriage of respondent got dissolved as after the marriage the dispute and differences cropped up and it became impossible for them to reside together and both the parties tried their level best to remove their dispute and differences but they failed. In the aforesaid petition nowhere it is found that the dissolution of earlier marriage of the respondent took place as she was suffering from any kind of mental illness. No document in support of long standing mental disorder prior to her marriage has also come before the court and on the contrary PW-1 admitted in evidence that on 02.08.2000, he came to know first that his wife is mentally disbalanced. As such petitioner's allegation of concealment of any kind of decease by the respondent or her father does not arise at all and cannot

constitute cruelty. Though the petitioner has categorically stated that during respondent's stay at her matrimonial home, she treated petitioner and her mother-in-law with cruelty both physically and mentally, but no member of his family had faced the dock to corroborate such incident of cruelty nor there is any specification in the pleading or in evidence as to what kind of cruelty was allegedly inflicted by the respondent upon the petitioner and his family members. There is also nothing to show that the mother-in-law of the respondent died in July, 2001 due to mental shock or due to cruel behaviour on the part of the respondent as alleged by the petitioner. The allegation of avoiding normal sexual life by the respondent has been specifically denied by respondent Mrs. Chakraborty, learned Counsel for the respondent submitted that the allegation that respondent was reluctant to perform normal sexual life with the petitioner or that marriage was never consummated, which causes cruelty on the part of respondent, is absolutely untrue and on the contrary respondent's willingness to reside with the petitioner all along disproves such allegation levelled by the petitioner. The incident of allegedly making attempt to commit suicide by the respondent has not been proved by corroboration so the suffering of mental pain or agony on that score to constitute cruelty as alleged by the respondent also does not arise. It is quite natural that if the wife after marriage became ill for any reason whatsoever the husband is very much expected to arrange for her treatment and during her treatment if husband suffers any mental agony that cannot constitute cruelty. Furthermore in support of cruelty Mrs. Sarkar, learned Counsel for the appellant referring to ***Pankaj Mahajan vs. Dimple @Kajal*** reported in (2011)

12 SCC 1 and **Samar Ghosh Vs. Jaya Ghosh** reported in **(2007) 4 SCC 511** contended that there being no possibility to “unite chain of marital life” between the parties and they are in continuous separation for a long period and their relationship has gone beyond repair and also because the marriage becomes a fiction so such situation may be construed as cruelty and marriage should be dissolved on that ground. The case cited by petitioner namely **Pankaj Mahajan (supra)** is not at all applicable in the present context as in that case grounds of mental illness and cruelty by wife was proved beyond doubt. **Samar Ghosh (supra)** case is also not applicable in the present case as we are of the view that though there has been a long period of continuous separation but the marriage has not become a fiction as wife respondent in her written statement, evidence and also before us clearly stated that she is always ready and willing to live with the petitioner as husband and wife. So judging from all perspectives of the case we have no other option but to conclude that the petitioners has miserably failed to prove the ground of cruelty for dissolution of marriage.

10. F.A. 62 of 2017 is dismissed.

There will be no order as to costs .

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

Let the copy of the order be send to Additional District Judge, 1st Court, Howrah, in connection with Mat Suit No. 200/2003

I agree

(Soumen Sen, J.)

(Ajoy Kumar Mukherjee, J.)