

07.11.2022
SL No.14
Court No.8
(gc)

FA 146 of 2014

**Smt. Nupur Roy
Vs.
Sri Prasanta Roy**

Mr. Debajyoti Deb,
Ms. Somdyuti Parekh,
...for the Appellant.
Mr. Swagata Datta,
...for the Respondent.

The appeal is directed against the judgment and decree dated 26th March, 2013 passed by the learned Additional District Judge, Fast Track Court, 3rd Court at Barasat in Mat Suit No.70 of 2008. The respondent/husband filed an application under Section 9 of the Hindu Marriage Act, 1955 praying for restitution of the conjugal rights. The marriage between the parties was solemnized on 13th March, 2008 according to Hindu rites and ceremonies. The respondent/husband alleged that on 22nd August, 2008, the appellant without any cogent reason left the house of the respondent/husband and in spite of best efforts the appellant/wife has refused to come back. Finding no other alternative, the respondent/husband has filed an application for restitution of conjugal rights. The appellant/wife entered appearance and filed her written statement. She alleged that her husband inflicted torture on her, both physically and mentally, for which she filed one complaint and ultimately she was compelled to leave the matrimonial

home on 19th February, 2009. Parties are leaving separately since then.

In a suit for restitution of conjugal rights, the party filing the suit has to establish that the other spouse has without reasonable excuse withdrawn from the society of the party aggrieved. Reasonable excuse to stay away from the other spouse could defeat a claim for restitution. In the instant case, the respondent/husband were to prove that the wife without any reasonable excuse has left the matrimonial home. The onus is on the respondent to establish the factum of absence of any reasonable excuse as a ground for restitution. The husband made an allegation that the wife is having an illicit relationship with one Probir Mondal, but this relationship the husband could not prove. This is a serious aspersion on the character of the wife. This could be a reasonable excuse for the wife not to stay with the husband. This aspect of the matter seems to have been overlooked by the Trial Court. Having regard to the fact that the husband has now filed a suit for divorce on the ground of mental cruelty, it is clear that the husband has abandoned his right to have restitution of conjugal rights.

On such consideration, we set aside the impugned order.

However, any observation made in this order shall not affect the trial in the other suit.

Accordingly, the appeal being FA 146 of 2014 stands dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)