

31.10.2022
SL No.34
Court No.8
(gc)

FA 17 of 2022

**Sri Manishdeb Nath
Vs.
Smt. Aparupa Banerjee**

Mr. Gopal Ch. Ghosh,
Mr. Uttam Kr. Bhattacharyya,
...for the Appellant.
Mr. Swagata Datta,
...for the Respondent.

We have heard the learned Counsel for the parties.

The appeal is arising out of the judgment and decree dated 15th February, 2020 in a matrimonial suit filed by the wife for divorce under Section 27(1) of the Special Marriage Act, 1954. In the impugned order, the learned Trial Judge did not discuss the evidence at all. The learned Trial Judge has merely set out the facts referred to few of the exhibits relied upon the appellant but there was no discussion at all on the evidentiary value of such exhibits and the reason for accepting the plaintiff's version and rejecting the defendant's version of the case. It is true that the cruelty has to be gathered from circumstances but there has to be some evidence to establish that cruelty has been perpetrated on the plaintiff. The instances mental cruelty has been clearly enunciated in **Samar Ghosh Vs. Jaya Ghosh** reported at **(2007) 4 SCC 511**. The celebrated decision on cruelty is the decision of the Hon'ble Supreme Court in **Narayan Ganesh Dastane Vs. Sucheta Narayan Dastane** reported at **(1975) 2 SCC 326**. The mental

cruelty is considered to be a conduct which inflicts upon other party such mental pain and suffering as would make it not possible for that party to live with the other. It must be of such a nature that the parties cannot reasonably be expected to live together.

However, from the impugned judgment, we do not find any discussion with regard to the nature of the evidence and of quality of the evidence. The Trial Court is required to write a judgment on appreciation of the evidence. It is not clear from the judgment as to whether the exhibits marked with objection were ultimately overruled.

Be that as it may, we feel that the Court is required to write a fresh judgment on appreciation of evidence.

On such consideration, the impugned judgment is set aside as it does not contain any reason.

The learned Trial Judge is directed to dispose of the suit on the basis of the pleadings and evidence on record. The learned Trial Judge shall give an opportunity of hearing to the parties afresh and rewrite the judgment uninfluenced by the observation made by us in this judgment.

The parties are directed to place this order before the learned Additional District Judge, 2nd Court, Serampore, Hooghly for fresh consideration.

The hearing of the suit shall commence from the stage of argument. The learned Trial Judge is requested to fix a firm date for argument. The learned Trial Judge

is also requested to dispose of the suit within two months from the date of communication of this order by either of the parties or by the Registrar Administration-I (L & OM) whichever is earlier.

The appeal being FA 17 of 2022, is accordingly, allowed.

The LCR shall be sent down to the Court below immediately along with a copy of this order. The Registrar Administration-I (L & OM) shall ensure compliance of this order.

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

(Uday Kumar, J.)

(Soumen Sen, J.)