

31.10.2022
SL No.33
Court No.8
(gc)

FA 111 of 2021

**Sri Tamojit Bose
Vs.
Smt. Moumita Roy**

Mr. Rachit Lakhmani,
...for the Appellant.
Mr. Sabyasachi Bhattacharjee,
Mr. Rajarshi Kundu,
...for the Respondent.

The appellant is the husband.

The appeal is arising out of a judgment and decree passed by the learned Trial Judge in MAT Suit No.266 of 2019 in an application filed under Section 27 of the Special Marriage Act, 1954. The husband filed the application for divorce on the ground of cruelty.

The marriage is admitted.

Amongst various acts of cruelty, the appellant alleged the abnormal behaviour of the wife at times which the wife had alleged is due to black magic performed by the mother of the petitioner with a view to due harm. The appellant alleged that the respondent regularly used to pressurize the plaintiff to pay huge sums of money for visiting “tantriks” and the plaintiff had no option to abide by her dictates. Lastly the appellant demanded Rs.4 lacs from the plaintiff to pay to a tantric cause harm to her mother-in-law which the plaintiff refused to pay. Apart from the aforesaid, the plaintiff alleged that he was treated badly and he was shocked to learn from common friends and relatives

that the respondent had introduced the plaintiff to them as her driver.

The learned Trial Judge dismissed the suit on the ground that in order to prove cruelty, corroborative evidence would be required. We are unable to accept the said finding. If the facts are known to the parties alone and those facts are satisfactorily proved, the Court cannot insist for corroboration. The law does not require that uncorroborated testimony cannot be accepted. Corroboration to material facts may not be possible in all cases where it is solely within the special knowledge of the parties. It is a matter of believe and disbelieve.

In the instant case, the wife had enough opportunity to appear and contest the suit by filing the written statement and denying the material allegations. Insofar as the allegation of doing harm to the mother of the plaintiff and the allegation that her abnormal behavior was due to some black magic of her mother-in-law, it is difficult to have a corroborative evidence. The only person who could have known the facts is the plaintiff and the defendant. The mother and the child have a special relationship. It is one of love, respect and compassion. Reckless and unsubstantiated allegation about the mother-in-law is bound to cause mental cruelty to the appellants. This conduct of the wife is grave enough to arrive at a finding of cruelty. The defendant had enough opportunity to deny such

allegation in the written statement. The respondent for reasons best known to her did not contest the suit. The allegation in the plaint has remained uncontroverted. The testimony of the appellant has remained unshaken.

The learned Counsel for the respondent submits that the allegation made against the wife is not proved. The learned Counsel adopts the view expressed by the learned Trial Court that in absence of any corroborative evidence, the allegation of cruelty is not proved.

However, we disagree with such submission for the reasons we have indicated above in this order. Furthermore, we find that the marriage was never consummated. The non-consummation of marriage along with cruelty, to the extent we have indicated above, is sufficient to decree the suit in favour of the appellant/husband.

The appeal succeeds.

The impugned order is set aside.

The marriage between the parties is hereby dissolved on and from 31st October, 2022.

The appeal being FA 111 of 2021 stands disposed of.

The department is directed to draw up the decree as expeditiously as possible.

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

(Uday Kumar, J.)

(Soumen Sen, J.)