

26.04.2022  
SL No.48  
Court No.8  
(gc)

**FAT 130 of 2019  
With  
CAN 2 of 2022**

**Mrs. Mohini Khandelwal  
Vs.  
Mr. Barun Khandelwal**

Mr. Ayan Banerjee,  
Ms. Debasree Dhamali,  
Ms. Riya Ghosh,  
....for the Appellant.  
Mr. Suddhasatva Banerjee,  
Ms. Ayushi Kundu,  
....for the Respondent.

By consent of the parties, the appeal and the application are taken up together and disposed of by this common order.

The appeal is arising out of an order passed by the learned District Judge, Bankura in MAT Suit No.279 of 2014. The respondent/husband filed a suit under Section 13 of the Hindu Marriage Act against the appellant/wife praying, inter alia, for dissolution of marriage on the ground of cruelty. The appellant/wife filed her written statement but did not participate in the proceeding thereafter. The learned District Judge after giving several opportunities to the wife to appear and contest the proceeding ultimately proceeded with the suit ex parte and decided the issue in favour of the husband. It appears from the record that the wife for reasons best known to her did not adduce any evidence in support of her case. The wife had remained absent.

PW-1 was cross-examined by the Advocate of the appellant/wife. The learned District Judge has no further alternative to proceed with the matter on the basis of the evidence on record. The uncorroborated testimony of the PW-1 and PW-2 clearly establish the cruelty as pleaded in the plaint. The cross-examination of the PW-1 could not shake the quality of the evidence adduced by the PW-1 with regard to cruelty. On the basis of uncontroverted and unchallenged testimony of the PW-1 and PW-2, the suit was decreed.

The wife preferred an appeal. However, during the pendency of the appeal, the appellant had given birth to a child. The appellant and the respondent are living separately for a considerable period of time and there is no access to the wife by the husband. The birth certificate records the name of another person as the father of the child. This fact also would constitute a ground for not interfering with the decree passed by the learned District Judge. This factor along with quality of evidence of the PW-1 and PW-2 establishing cruelty, we do not find any reason to interfere with the judgment and decree passed by the learned District Judge.

Accordingly, the appeal being FAT 130 of 2019 stands dismissed.

**Re: CAN 2 of 2022**

The respondent/husband has filed an application to bring on record the birth certificate to show that the

appellant remarried and relocated herself to Jaipur, despite the pendency of the appeal and the fact that the said marriage is in violation of the order dated 29<sup>th</sup> July, 2019. The appellant has not denied the birth certificate of the child born on 13<sup>th</sup> August, 2021. The said fact clearly establishes that the appellant has no intention of continuing her relationship with the respondent/husband.

Accordingly, the application being CAN 2 of 2022 is allowed and disposed of.

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.

**(Ajoy Kumar Mukherjee, J.)**

**(Soumen Sen, J.)**