

23 01.8.2022

FAT 216 of 2017

Ct-08

**Smt. Chandrani Biswas
Vs.
Sri Amit Biswas**

ar

Mr. Bikash Kumar Chattopadhyay
Mr. Susenjit Banik
... For the Appellant

Mr. Dipanjan Roy
Mr. Tanmoy Mukherjee
Mr. Triptimoy Talukdar
Mr. Abhiraj Tarafdar
Mr. Diptomoy Talukder
... For the Respondent

The appeal is directed against the judgment and decree dated 20th March, 2017 passed by the learned Additional District Judge, 2nd Court, Barasat, 24 Parganas (North) in Matrimonial Suit No. 177 of 2011.

Brief facts of the case is indicated herein below:-

The marriage between the parties was solemnised on 25th November, 1988 and it was duly consummated, though the respondent/wife initially disclosed to her husband that the marriage was solemnized against her will, but the parties started leading a normal conjugal life. The respondent/wife was in the habit of leaving her matrimonial home every now and then. The petitioner/husband tried to convince the respondent not to leave her matrimonial home frequently, which infuriated the respondent/wife and she became violent. The petitioner requested her parents to convince her, but in vain. The petitioner found that the respondent/wife was maintaining an extra marital relationship with one Dilip Kumar Banik.

On 25th March, 1989 the respondent/wife abused the petitioner and his parents in filthy language and ultimately left the matrimonial home.

The petitioner filed a suit for divorce but the same was withdrawn on the understanding that the respondent would mend herself. But it was a far cry.

The respondent contested the present suit by filing written statements denying all allegations made in the plaint. According to the respondent/wife, she did not leave her matrimonial home voluntarily and she expressed her mind to live with the petitioner/husband.

Learned Trial Judge upon perusal of pleadings of the parties framed eight issues.

The petitioner/husband failed to prove the allegation on cruelty allegedly meted out by the wife. The Trial Court also refused to accept the allegation of the petitioner/husband that the respondent had an extra marital relationship. We found from the evidence adduced by the parties that the respondent/wife, without any reasonable cause, withdrew herself from the society of her husband. During her oral testimony, the respondent/wife admitted that she was not driven out from her matrimonial home. From the oral testimony of the respondent/wife, the Trial Court found that she did not show any interest to lead conjugal life with her husband till the death of the parents of the petitioner. She has admitted to have been living separately for last 22 years without filing any suit for restitution of conjugal rights. This conduct of the respondent/wife establishes *animus deserendi*.

Even after dismissal of the previous suit for divorce being Mat Suit No. 1135 of 1997, the respondent/wife did not make any attempt to come and stay in her matrimonial home. She did not also join the petitioner after the demise of his parents or during the marriage of her sister-in-law, which reflects her intention to stay apart from her husband. Learned advocate for the respondent relied upon a judgment of Hon'ble Supreme Court pronounced in ***Durga Prasanna Tripathy Vs. Arundhati Tripathy, reported in AIR 2005 SC 3297*** where the wife deserted the husband after seven years of marriage and they were living separately for almost 14 years, the wife was not prepared to lead conjugal life with the husband. The marriage was dissolved by decree of divorce on the ground of desertion.

The impugned judgment passed by the Trial Court is based on sound reasoning and we do not find any infirmity to interfere with the impugned judgment particularly when the parties are found to have been living separately for more than 30 years and there is element of desertion on the part of respondent/wife.

The appeal being FAT 216 of 2017 merits no consideration and is hereby dismissed, but without cost.

Respondent/husband has been paying Rs.35,000/- per month to the appellant as maintenance pendente lite.

The appellant/wife will be getting Rs. 35,000/- per month during her lifetime from the respondent/husband as permanent alimony.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)

