

Item-31. 31-10-2022

sg

Ct. 8

FA 90 of 2021

Baisakhi Dutta  
Versus  
Chandan Dutta

Mr. Chittapriya Ghosh, Adv.  
Ms. Priyanka Saha, Adv.

...for the appellant

Mr. Malyasree Maity, Adv.  
Mr. Sabyasachi Bhattacharjee, Adv.

...for the respondent

The husband filed a suit for dissolution of marriage on the ground of cruelty. The said suit was decreed on contest.

Briefly stated, the marriage between the parties was solemnised on 25<sup>th</sup> April, 2012. The parties initially stayed in the matrimonial house. The plaintiff alleged that the respondent/wife was quarrelsome and she did not want to stay with her in-laws. Considering the nature of mental and physical torture inflicted upon the plaintiff and on the advice of the parents of the plaintiff, the plaintiff left her matrimonial house on 25<sup>th</sup> November, 2012 and the parties shifted to a rented accommodation. It is alleged that the husband was subjected to mental and physical torture even at the rented accommodation. The husband being unable to bear such torture, was forced to leave the rented accommodation in or about 11<sup>th</sup> August, 2013 and since then the parties are living separately.

The wife filed a written statement denying the allegations. It was alleged that she was subjected to mental and physical cruelty by the plaintiff and her in-laws for demand of dowry at the matrimonial house. It was alleged that she was compelled to leave

the matrimonial house. She tried her best to adjust with the petitioner and to live peacefully. However, the appellant left the rented premises without any just cause or excuse.

During trial, it transpired that proceedings under Section 498A of the Indian Penal Code and under Section 125 of the Code of Criminal Procedure were initiated one year after receipt of the notice of the matrimonial suit. In the proceeding the plaintiff has disclosed the complaints made by him in between 3<sup>rd</sup> June, 2013 and 11<sup>th</sup> August, 2013 with the local police station disclosing the mental and physical torture to which he was subjected to and he was apprehensive of his body and health. Due to such unrest at home and quarrelsome attitude of the wife, his work was affected as he was a teacher in a Junior High School. At the time of marriage the plaintiff was a teacher in the high school but later on he joined the junior high school as teacher. The wife admitted that she did not disclose in petition under Section 125 of the Code of Criminal Procedure that a proceeding was initiated under Section 498A of the Indian Penal Code against the plaintiff and the other members of the matrimonial home.

The learned Trial Judge in deciding the suit in favour of the appellant has taken into consideration the evidence of PW-1 along with the evidence of neighbours and the mother of the appellant with regard to the degree of mental and physical torture received by the plaintiff at his parents' house and the subsequent facts of cruelty as borne out from the several complaints lodged with the local police station before the husband left the rented accommodation. The Trial Judge has also taken into consideration the fact that the respondent and her father admitted that she filed a

criminal case under section 498A Indian Penal Code against the petitioner and his family members and under section 125 of the Cr.P.C. against the petitioner only after receiving the notice of the matrimonial suit. The father of the respondent used to stay with the daughter and only after the plaintiff left the rented accommodation, they decided to leave the rented accommodation and she returned to her parents' house. The wife alleged that she was treated with cruelty by her husband and other inmates of the matrimonial house but curiously she did not lodge any complaint either before 25<sup>th</sup> November, 2012 or thereafter. The reason for the plaintiff to leave matrimonial home is clearly attributable to the unhealthy atmosphere created by the appellant/respondent at her matrimonial house.

No son could easily leave his parents unless there are compelling reasons. The case is required to be decided on the preponderance of probabilities. The appellant was found to be of suspicious nature and character. Affection of the petitioner towards the children and wife of his younger brother was viewed with suspicion.

Human relations are delicate and needs to be respected. Each and every relation has separate meaning and needs to be defined in its proper perspective. The allegation of the wife of torture either physical or mental could not be proved at the trial. There was no evidence on record which would show that the wife was even inflicted with any torture mental or physical. There is a complete lack of understanding, faith and respect between the parties. The conduct of the wife would show that it is not possible for the husband to lead a healthy marital life with the appellant.

Initiation of criminal proceeding almost after one year from the date of notice of matrimonial suit is also a relevant factor in deciding the evidence of the wife and the claim of the plaintiff.

It is in the conspectus of the aforesaid facts, we concur with the findings arrived at by the learned trial court. From the evidence adduced by the parties it can be reasonably inferred that the allegation made by the plaintiff cannot be disbelieved.

On such consideration, we did not find any reason to interfere with the judgment and decree passed by the learned Additional District Judge.

The appeal fails. However, there shall be no order as to costs.

**(Uday Kumar, J.)**

**(Soumen Sen, J.)**