

20.06.2022
SL No.11
Court No.8
(gc)

FAT 407 of 2015

**Smt. Sathi Roy nee Biswas
Vs.
Sri Sajal Roy**

Mr. Prantick Ghosh,
Mr. Siddhartha Sarkar,
...for the Appellant.
Mr. Sukanta Chakraborty
Mr. Anindya Halder,
...for the Respondent.

We have heard the learned Counsel for the parties.

The appeal is arising out of a matrimonial proceeding initiated by the respondent under Section 25 of the Special Marriage Act, 1954 for annulment of the marriage by a decree of nullity on the ground that the marriage has not been consummated owing to the willful refusal of the respondent to consummate marriage. We have carefully gone through the evidence. Apart from the ground for willful refusal, it appears to us that the parties are living separately since June, 2002 and no attempt was made by the respondent for restoration and/or restitution of the conjugal life. Moreover, the evidence would show that the appellant/wife alleged that the respondent/husband has forcibly cohabited with her and for this, she became sick and she also lodged a diary with the Officer-in-charge of the local Police Station that is marked as Exhibit-B. Even if we downplay the allegation of the willful refusal of the respondent to consummate the marriage, we feel that the decree stands at least on the ground of desertion and

cruelty. Any refusal and/or obstruction to the consummation of marriage by a spouse unless there are reasonable cause or excuse for the same would amount to mental cruelty. It seems that the appellant/wife was not willing to have a healthy cohabitation with the respondent/husband as it reveals from the evidence on record. The respondent, in our considered opinion, is entitled to a decree for divorce.

The learned Counsel for the appellant/wife on the basis of the evidence on record has fairly submitted that the appellant may not have an arguable case on the ground of desertion and cruelty, however, respondent/husband shall be gracious enough to offer permanent alimony to the appellant/wife for a sum of Rs.8,00,000/- (Rupees Eight Lakhs), out of which he has tendered Rs.5,00,000/- (Rupees Five Lakhs) by way of a Banker's Cheque/Demand Draft drawn in favour of the wife in Court today and the appellant/wife has accepted the said amount.

The respondent/husband has given an undertaking that he shall pay the remaining Rs.3,00,000/-(Rupees Three Lakhs) in two equal installments within a period of three years from date. The said undertaking is recorded separately. The respondent is aware of the consequences of such undertaking. The said undertaking shall form part of the order.

The judgment and decree of the Trial Court stands modified to the aforesaid extent. The decree is upheld on the ground of desertion and cruelty.

Accordingly, the appeal being FAT 407 of 2015 is disposed of.

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

A Photostat copy of the Banker's Cheque/Demand Draft for a sum of Rs.5,00,000/- (Rupees Five Lakhs) is kept with the record.

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

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)