

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

**FAT 222 OF 2012
FA 21 OF 2015**

**Sm. Krishna Lakshman (Dutta)
Vs.
Sasthi Pada Lakshman**

Appearance:

For the Petitioners : **Mr. Samiran Mandal, Adv.**

Judgment On : **07.07.2023**

PRASENJIT BISWAS, J.:

1. This is a wife's appeal against a decree for restitution of conjugal rights which has been granted in favour of the husband under the provisions of the Special Marriage Act, 1954 by the learned Additional District Judge, Bankura.

2. The parties got married on the Special Marriage Act, 1954 which was registered on 08.12.2008. They were blessed with a child who was born on 01.11.2009. It is stated by the respondent/husband that since the date of marriage appellant showed her inclination not to accompany him at the matrimonial home without any reason. The respondent is an employee of Thermal Power Corporation and presently posted at Bakreshwar whereas the appellant is an Assistant Teacher of Majdiha Saradamoni Vidyatan High School which is situated 4/5 miles away from her matrimonial home at Bankura and it is 30 kilometers away from her paternal home. On 26.03.2009 when the respondent was posted at Kolaghat and was in his office at that time this appellant fled away from her matrimonial home. It is stated that just after few days of marriage the appellant went back to her father's house and respondent repeatedly tried to bring back his wife but he failed.
3. Thereafter the respondent somehow managed to bring back his wife at his working place but after a day or two the appellant again left the quarter of the respondent. On 29.09.2009 the appellant went to her school from her matrimonial home but thereafter never came back. Several attempts were made on behalf of the respondent/husband to bring back his wife but his attempts were ended in vain. After continuous persuasion of the respondent the appellant/wife came back to her matrimonial home but expressed that she would not maintain conjugal relationship.
4. The suit was contested by the wife by filing written statement denying the allegations made in the application for restitution of conjugal rights and defence of the wife was that she was always subjected to cruel treatment in absence of husband at the matrimonial home by her in-laws. It is alleged that she was physically tortured by the elder brother-in-law for handing over her monthly salary.
5. The trial court decided the issue against the wife on the ground that the story of torture upon her had not been established. Not a single scrap of

paper has been filed by the wife to show that she was ill treated by the inmates of her husband. No complaint was lodged by the appellant regarding torture upon her before anywhere.

6. Restitution means restoration and conjugal rights means right to start together. Restitution of conjugal rights is the restoration of right of the parties to stay together. It expounds the idea of mutual fidelity being continued until death. It indicates reestablishment of marital relationship between two spouses to leave away from each other without any valid reason. Where by the act of other party, one of the spouses is compelled to leave the society of the other then it is a reasonable cause for withdrawing from the society of each other. The withdrawal from society must be based on reasonable excuse. What is reasonable excuse is not defined. Therefore, a prudent man's definition is sufficient. The ground of withdrawal must be reasonable. It should not be shallow. There must be an intention to be aloof for the reasons that grounds are existing for withdrawing from the society of each other.
7. Learned counsel appearing on behalf of the appellant/wife submits that the appellant was being ill-treated and subjected to cruelty by the inmates of the respondent. It is difficult to believe that an educated lady being subject of torture did not complain before anybody. The suit was filed before the trial court on 13.07.2010 but the Exhibits A, B and C reflect that complaints were filed before the Gram Panchayat dated 22.09.2010 and 24.09.2010 which are post filing of the suit.
8. It appears that appellant admitted that there is no one except her husband/respondent who had borne the delivery charges of their baby. It shows that this respondent was very much aware about his responsibility towards his wife and is willing to get back his wife to lead his conjugal life but the appellant has not returned to her matrimonial house in spite of several attempts made by the respondent/husband.

9. Section 22 of the Special Marriage Act, 1954 provides for restitution of conjugal rights which is quoted below:

When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the district court for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Explanation- where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.

10. On perusal of section 22 of the Special Marriage Act it appears that either the husband or wife may apply to the district court for restitution of conjugal rights when either the husband or wife without reasonable excuse, withdrawn from the society of the other. Having considered the grounds stated the court having been satisfied on the truthfulness of the statement can order for restitution of conjugal rights.
11. Going by explanation to section 22, where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society. The essence of a decree or restitution of conjugal rights is that, either the husband or the wife desiring the company of his/her spouse makes an effort through the court to restore his/her conjugal rights.
12. Therefore, it is incumbent on the petitioning husband or wife, as the case may be, to satisfy the court about his/her sincerity in wanting to resume cohabitation with his/her spouse. The relationship of husband and wife is very delicate and depends upon the cordiality and good intention of both the parties. If the intention of either of the two is not good and such circumstances are created that are not conducive to the cordial living the

two and can create danger or threat or can give rise to any apprehension, the other party can lawfully refuse to live together and there may be a sufficient ground for the other party to live separately. The concept of restitution of conjugal rights is incorporated in the Act to preserve the institution of marriage so that the spouses can iron out differences arising out of the normal wear and tear of the matrimonial life with judicial intervention and is aimed towards cohabitation.

13. In the present case, from the pleadings and evidences it is seen that the appellant/wife without any reasonable excuse withdrawn from his society and inspite of his best attempts she refuses to come back to live with him as husband and wife. This appellant made some vague allegations of maltreatment and cruelty to her both mentally and physically by the respondent without clearly specifying on which particular date she was subjected to cruelty. It appears to us to be a completely vague and unsubstantiated allegations not backed by credible facts.
14. The burden of proof initially lies on the petitioner. It indicates that the petitioner must satisfy the court that the other party has without any reasonable excuse or explanation withdrawn from the petitioner's society and unless the court is satisfied it will not give an order in favour of the petitioner granting restitution of conjugal rights.
15. After appreciation of evidences brought on record the trial court is satisfied that the respondent/husband has a bonafide desire to bring his partner back to him and granted decree of restitution of conjugal rights in favour of the respondent/husband. Concurring with the findings of the trial court we are convinced from all aspects that it is a fit case wherein the respondent/husband is entitled to the right of conjugal life with his wife.
16. We find that there is no illegality or irregularity in the said judgement passed by the learned trial court.

17. The instant appeal preferred by the appellant/wife is devoid of any merit and accordingly it is dismissed.
18. There is no order as to costs.
19. Consequently, connecting applications are therefore disposed of as dismissed.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)