

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE HARISH TANDON

&

THE HON'BLE JUSTICE PRASENJIT BISWAS

F.A. No. 21 of 2016

Susanta Kumar Das

Vs.

Anindita Das (nee Dey)

For the petitioner	:	Mr. Kamal Kumr Pathak, adv.
	:	Ms. Debanjana De, Adv.
For the respondent	:	Mr. Ivan Roy,
	:	Mr. Sarban Bhattacharjee,
Hearing concluded on	:	6.7.2023
Judgment on	:	14.9.2023

Prasenjit Biswas, J:-

1. This is unfortunate matrimonial dispute which has shattered the matrimonial bond between the parties. Instant appeal has been preferred by the appellant/husband challenging the impugned judgement and decree dated 31.08.2015 passed by the learned Additional District Judge 1st Court at Sealdah.

2. It is stated in the petition filed by the appellant/husband that he married with the respondent on 01.02.2009 under the provision of the Special Marriage Act and after marriage they started to lead conjugal life as husband and wife by residing in the ancestral house of the appellant. Soon after their marriage the dispute and differences have been cropped up in between them. It is stated that the wife used to

taunt and ridicule the family of the appellant using abusive language which caused mental cruelty to the appellant. It is further stated by the appellant that the respondent suppressed her actual age and neurological disease at the time of negotiation of marriage.

3. It is stated by the appellant that the respondent/wife left matrimonial home and returning on 21.05.2009 with her parents and some unknown persons threatened the mother of the appellant with dire consequences. This appellant was allegedly pressurised by the respondent to stay separately from his mother. The respondent and her family members allegedly used to give threat to file criminal case against the appellant and his mother. Ultimately, on 23.06.2009 the respondent left her matrimonial home but on 06.10.2009 she again returned and started staying separately at the matrimonial house. Under the above compelling circumstances this appellant filed matrimonial suit against the respondent seeking divorce on the ground of cruelty.

4. The respondent/wife entered appearance in the suit and filed written statement denying all the material allegations stated against her. It is the specific case of the respondent that she tried her best to convince the appellant to lead a happy and peaceful conjugal life but to no effect. It is further stated by the wife that this appellant developed an illegal relationship with a married woman of Paikpara. The respondent brought notice about this fact to her mother in law and sister-in-law and both of them assured her that the illicit relationship of the appellant would come to an end. It is averred by the respondent that she is still ready and willing to start conjugal life with the appellant but it is the appellant who from the very inception of

their matrimonial life have avoided her and also started to live separately under the same roof.

5. The learned trial court on the basis of pleadings framed the issues as to whether the wife has treated the husband with cruelty and in order to prove the facts, the husband examined himself as PW1 whereas the wife has examined herself as DW1. The learned trial court after evaluating entire facts and evidence dismissed the suit of the husband; therefore, the instant appeal is preferred by the husband.

6. We shall deal and discuss with the evidence brought on record about cruelty.

7. Before going to discussion about the factum of cruelty it is profitable to quote the observation of the Hon'ble Apex Court rendered in case of **V. Bhagat Vs. D. Bhagat (Mrs.)** reported in **(1994) 1 SCC 337** wherein it is held that mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out

exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

8. The Supreme Court in case of **Parveen Mehta v. Inderjit Mehta** reported in **(2002) 5 SCC 706**, has held thus:

"Cruelty for the purpose of Section 13(1) (i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other."

9. It is thus settled that whether in the facts and circumstances of a given case, the plaintiff has been able to make out a case of grant of divorce on the ground of

cruelty would depend upon the nature of the pleadings and evidence in that case. There can be no straight jacket formula where cruelty is said to have been committed by one or other party to the marriage.

10. The Hon'ble Apex Court in **GananathPattnaik v. State of Orissa**, reported in **(2002) 2 SCC 619** observed as under:

“7. The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. Cruelty for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case.”

11. In the light of the above well settled position, it is to be determined whether the Respondent has proved the cruelty giving rise to reasonable apprehension in his mind that it would be dangerous for him to live with the respondent.

12. It is submitted by the learned counsel appearing for the appellant that his client along with his mother lodged various complaints before the local police station regarding ill behaviour of the respondent/wife and those are exhibited in the case. It is further assailed by the learned counsel that although the respondent complained of adultery of her husband with a lady of Paikpara but she failed to prove the same and as such this baseless allegation tantamount to mental cruelty.

13. It is further submitted by the learned counsel that the absence of any evidence by making unfounded allegations has inflicted to mental cruelty upon the appellant. As per submissions advanced by the learned counsel that the allegations/accusations of unchastity and extramarital relationship as made by the wife upon this appellant is a grave assault on the character, status, reputation as well as health upon him and all these allegations causes mental pain, agony, sufferings which tantamount to mental cruelty. Our attention is drawn about the decisions rendered by the Hon'ble Apex Court in case of ***Jyoti Yadav vs Neeraj Yadav*** reported in **2022 SCC Online Del 795** and in case of ***Naveen Kohli vs NeeluKohli*** reported in (2006) 4 SCC 558.

14. The learned counsel appearing for the appellant submits that the trial court totally overlooked the misconduct of the wife. At the time of hearing he referred some incidents of misconduct and according to him the wife intentionally hid her real age at the time of negotiation of marriage, wife also hid her disease from this appellant and his family members and lastly this respondent wrongfully hid her monthly income at the time of filing of application under section 36 of the Special Marriage Act. It is further submitted by the learned counsel that this appellant could not have been expected to live with the respondent in a marriage and this appellant was forced to take shelter of the court of law by filing matrimonial suit praying for decree of divorce.

15. Lastly, the learned counsel submitted that both the parties have been staying separately since 13 years and there is no chance to restore the marital

tie and when the parties for whatever reason could no longer live together as husband and wife the medical tie cannot be kept alive on account of accusation and counter accusation. In this junction our attention is drawn about a decision rendered by the Hon'ble Apex Court in case of ***Sukhomoy Bag vs Mrs. Jaya Bag*** reported in (1996) 1 CHN 210. So, the learned counsel submits that the impugned judgement and decree passed by the learned trial court may be set aside and the marriage solemnised on 01.02.2009 in between the parties be dissolved by a decree of divorce.

16. It is submitted on behalf of the respondent/wife that his client had all along intention to maintain cordial relationship with the appellant but it was the appellant and his family members who did not intend to maintain cordial relationship with her. It is submitted by the learned counsel at the time of hearing that the respondent did not suppress anything about her alleged disease at the time of negotiation of marriage.

17. It is stated by the learned counsel that this respondent is still willing to resume conjugal life with the appellant and she used to visit her matrimonial home and stayed there with her mother-in-law. Our attention is drawn by the learned counsel that from the evidence on record it would appear that the appellant used to stay at Paikpara with the lady named SangitaKundu and he failed to give any explanation about it. It is the submission of the learned counsel that appellant's staying at Paikpara leaving his mother in his house is certainly an abnormal conduct and is also against the normal course of human conduct and in this circumstance it is quite reasonable for the

respondent to believe that this appellant had illicit relationship. As such, the allegation made by the respondent cannot be said to be absolutely baseless.

18. We have anxiously considered the rival submissions advanced by both the parties as well as have gone through the entire evidences brought on record. We shall deal and discuss with the evidence about cruelty.

19. In this case plaintiff/appellant was examined as Pw1 and respondent was examined as DW1. Both the parties exhibited some documents in trial court.

20. It is the specific stand of the respondent/wife that she is all along willing to continue the matrimony. It is the case of the appellant that the respondent used to misbehave with him and his family members but not a single instance of her misbehaviour been proved. The mother of the appellant is not cited as a witness in this case in support of allegation of misbehaviour. It is the duty of the appellant to prove that the respondent treated him with cruelty. It is stated by the appellant in his evidence that his wife is handicapped by her right hand and it has been suppressed by her at the time of negotiation of marriage. It reflects from the medical document that this respondent had physical problem with her right hand but that does not come within the purview of the disease as enumerated under section 27 of the Special Marriage Act. It is also pertinent to note that the appellant has not chosen to examine his mother, who is the material witnesses, to prove the allegations made by him in his pleadings. In the absence of corroborating

evidence, the solitary testimony of the appellant cannot be relied upon to hold that the conduct of the Appellant amounted to cruelty making it not possible for the appellant to live with her.

21. It is evident from the deposition of PW1 wherein he stated that “It is true that I used to stay at the said house of marriage woman for several days including the nights at a stretch, despite the vehement protest and objection raised by the respondent.” It appears from the evidence of Dw1 that on 15th March, 2009 the appellant took her to the house of the lady named SangitaKundu at Paikpara and from that very day the troubles were cropped in between them. This appellant failed to give any explanation as to why he used to stay at Paikpara at the house of a married woman for several days including the nights. We are of the opinion that it is certainly an abnormal conduct of a married person which is against the normal course of human conduct. As such it is quite reasonable for wife to believe that her husband had illicit relationship and accordingly it cannot be said that the allegations made by the wife is baseless.

22. The main allegation of husband is that marriage is not consummated due to refusal by the wife and she had caused physical and mental cruelty upon him and his mother since the date of marriage. No relations of the husband were examined before the trial court. No plausible explanation exists for the same. If the wife after marriage started to live in her matrimonial house under one roof with her in-laws and if she committed misbehaviour with the in-laws and husband as alleged by the husband which triggered the cruelty,

then the husband could have produced evidence as it cannot be presumed by mere bald statement of the husband that he and his mother were subjected to torture by the wife. It is the allegation of the appellant that the respondent/wife used to maintain distance from him but it appears from his cross-examination wherein he stated that "For 3 to 4 months altogether she led conjugal life with me at Beliaghata Road residence and after filing of this case she led conjugal life with me for about 1 month." In view of the fact the parties led conjugal life even after the filing of the suit, the allegation of the appellant that the respondent/wife used to maintain distance from this appellant is not believable at all. So, it clear to us that subsequent to filing of the suit the matrimonial relationship between the parties resumed once again.

23. Our attention is drawn by the learned counsel for the appellant about a decision rendered by the Hon'ble Apex Court in case of ***Naveen Kohli vs NeeluKohli*** reported in **(2006) 4 SCC 558**.

24. In ***Naveen Kohli (supra)*** Hon'ble Apex Court observed interalia that once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. Once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of the fact, and it would be harmful to society and injurious to the interests of the parties.

25. It is the standpoint of the respondent/wife that she is all along ready and willing to lead matrimonial life and it is quite evident from the materials

on record that she did not leave her matrimonial house even after dispute and disturbance cropped up in between them. It is stated by the respondent that she is willing to continue and resume her matrimonial life if the appellant comes back with good sense. Further, it is the admission of the appellant in his deposition that after filing of the case this respondent led conjugal life with him for about one month. So, the allegation of the appellant that they had separated and the separation is continuing since for a considerable period of time is not believable at all. Accordingly, the decision cited by the learned counsel on behalf of the appellant is not applicable in the facts and circumstances of the present case.

26. In the instant case, the burden of proving cruelty since has not been discharged properly by the husband who sought divorce on the ground of cruelty. Therefore, grant of decree of divorce on the ground of cruelty appears to be unsustainable. We are in agreement with the findings recorded by the trial court on this count that the husband is not able to prove the ground of cruelty.

27. We therefore find that there is no illegality or irregularity in the judgement and decree passed by the learned Trial Court in connection with Mat Suit No. 33 of 2010.

28. The appeal is thus dismissed. The judgement and decree passed by the learned Trial Court in connection with Mat Suit No. 33 of 2010 filed under Section 27 of the Special Marriage Act is hereby affirmed.

29. In the facts and circumstances there will be however no order as to costs.

30. Connected applications if any are also hereby dismissed as disposed of accordingly.

31. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)