

16.01.2023
SL No.5
Court No.8
(gc)

**FA 177 of 2022
CAN 1 of 2022**

**Abhijit Nath
Vs.
Sumi Nath (Singh)**

Mr. Tanmoy Mukherjee,
Mr. Soumyajit Das Mahapatra,
Mr. Souvik Das,
Mr. Rudranil Das,

...for the Appellant.

The appeal is directed against the judgment and order dated 13th January, 2022 in a suit for dissolution of marriage on the ground of adultery and cruelty.

We have made repeated attempts to ensure the presence of the respondent. The Office of the DLSA, Nadia was directed to establish contact with her. A report received from the Secretary, DLSA would show that her grandfather furnished her mobile number being No.8282835270 and stated that the respondent, namely, Smt. Sumi Nath (Singh) is not willing to disclose her present address.

The Secretary, DLSA, Nadia in his report has disclosed one letter from Smt. Sumi Nath (Singh) on the WhatsApp number of the DLSA, Nadia in which she has clearly stated that she is not willing to take any free legal aid from the Calcutta High Court Legal Services Committee and she “will engage a personal lawyer to

contest the said appeal preferred by my husband against me”

The report filed by the Secretary, Calcutta High Court Legal Services Committee enclosing communications received from the DLSA, Nadia enclosing all the relevant documents is taken on record.

We have heard Mr. Tanmoy Mukherjee, learned Counsel representing the appellant.

The appeal was dismissed on the ground that the appellant had failed to prove adultery. The appellant has also failed to prove that he suffered any physical assault. The appellant did not corroborate his statement either with any other oral or documentary evidence. The allegation of cruelty is dependent upon proving adultery of the respondent which the appellant has failed to establish. In the facts and circumstances of the case, we are of the view that the learned Additional District and Sessions Judge has rightly dismissed the suit.

Mr. Mukherjee submits that the conduct of the respondent as revealed would show that she has deserted the appellant without any just cause or excuse and could furnish a ground for filing a fresh suit for divorce on the ground of desertion.

Since we are not considering the desertion as a ground for divorce, any suit filed on the ground of desertion shall be decided on its own merits and in deciding the suit, the Trial Court may not be influenced

by the observations made in the earlier suit unless the Trial Court finds during trial any nexus between the two or otherwise finds it to be relevant.

With the aforesaid observation, the appeal and the application stand dismissed.

However, there shall be no order as to costs.

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

(Uday Kumar, J.)

(Soumen Sen, J.)