

Item-
ML-19. 01-05-2023

sg Ct. 8

FAT 65 of 2014

Panchu Gopal Saha
Versus
Juthika Saha

Mr. Ashok Sadhukhan, Adv.
Mr. Anirban Ghosh, Adv.
Mr. Indranil Ghosh, Adv.
...for the appellant

Mr. Rafikul Islam Sardar, Adv.
...for the respondent

The appeal is arising out of a judgment and decree dated 21st September, 2013 passed by the learned Additional District Judge at Hooghly, in connection with an application under Section 13(1)(i-a) of the Hindu Marriage Act, praying for decree of divorce. The suit was filed for divorce on the ground of cruelty. The plaintiff is the husband and the husband is the appellant before us.

The trial court dismissed the suit as the husband had failed to prove cruelty. The plaintiff alleged that the marriage lasted for almost a year, during which time, the wife conceived and gave birth to a female child. The husband and the family members were not allowed to meet the child. They made five several attempts to meet the child and convinced the wife to come back to the matrimonial home, but the plaintiff failed. The respondent in the meantime, filed an application under Section 498A of the Indian Penal Code with a view to humiliate the husband and his family members. It is stated that during her stay in the matrimonial home, she did not take care of his elderly parents and was mis-behaving with the in-laws and other family

members of the husband.

The wife contested the suit. In her written statement, she has alleged that she was constantly humiliated and subjected to mental and physical cruelty. The wife could not meet the demand for dowry for which, she was driven out of her matrimonial home. The brother-in-law of the plaintiff has assaulted her. It was specifically alleged that during her pregnancy, her brother-in-law, sister-in-law and mother-in-law assaulted her and threatened her with dire consequences. She has also alleged that her brother-in-law made an attempt to embrace the respondent and also tried to outrage the modesty and in spite of such protest and bringing such fact to the notice of her mother-in-law and the other family members, no step was taken against him. She has alleged that on 17th Bhadra, 1415 B.S. around 10 p.m., she was driven out from the matrimonial home without any belongings.

The trial court framed four issues. The plaintiff in the evidence has stated that the wife has inflicted physical and mental torture on husband. However, curiously, he did not produce the father, mother or even his sister in support of such conduct. He produced his brother-in-law, who was himself an accused in a section 498A proceeding initiated against him. Hurling of abusive language was towards him, mother and sister-in-law. One would have expected his mother or father or sister to appear and depose in his favour of such allegation of mental cruelty. In fact it was specifically alleged by her that her mother was assaulted on 14th April, 2008 by the wife in presence of the elder sister of the petitioner. He has disclosed this fact in the

affidavit in chief but it had transpired in evidence that the only person who could have corroborated such statement is the elder sister who did not come forward and depose. The other allegation is that the wife used to humiliate the petitioner by reason of his employment as a bus conductor. However, there was no such evidence on record suggesting that within the period of one year any such dimming statement was made by the wife to the husband.

The learned counsel realizing that the husband failed to prove cruelty has relied upon the decision in the case of ***Shri Rakesh Raman vs. Smt. Kavita*** Civil Appeal No. 2012 of 2013 decided on 26th April, 2023 and has argued that having regard to the fact that there has been a long period of continuous separation, which may come to conclude that the matrimonial bond is beyond repair and such circumstance would construed cruelty which would be available to either of the parties.

We are unable to accept the said submission. The husband in fact in the year 2011 during his cross-examination has agreed to take back the wife but did not inform the court the date on which he is agreeable to take back the wife. The wife in the written statement has categorically stated that she wanted to return to her matrimonial home and lead a happy conjugal life. Pendency of the criminal proceeding could not have been a bar to reunite and resumption of the relationship could have put to an end to the proceeding under section 498A IPC. The husband did not take any step for reconciliation or show his inclination that he expressed during his cross-examination with regard to resumption of conjugal relationship. The wife was all throughout

agreeable to it. Moreover, they have a child and there is no evidence on record to show that the appellant had taken at all any care to visit the child or to claim for visitation right, if it is accepted that he was denied any access. The evidence that he went with his mother to see the child also not proved as the mother did not come and depose in favour of his son.

On such consideration, we do not find any reason to interfere with the judgement passed by the learned Trial Judge.

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

(Uday Kumar, J.)

(Soumen Sen, J.)