

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

BEFORE:

**The Hon'ble Justice Soumen Sen
And
The Hon'ble Justice Uday Kumar**

**F.A. No. 193 of 2014
CHANDAN KUMAR BERA
Vs.
ATASI BERA**

For the Appellant : Mr. Debabrata Sen, Adv.,
Mr. Arun Kumar Das, Adv.

For the Respondent : Mr. Amit Baran Dash, Adv.,
Ms. Ankana Sarkar, Adv.

Hearing Concluded On : 27th March, 2023

Judgment On : 19th May, 2023

Uday Kumar, J.: The appellant and respondent are husband and wife. Appellant filed an application U/S 13 of Hindu Marriage Act. 1955, for decree of divorce on the ground of cruelty and desertion, upon which Matrimonial Suit Number 145 of 2005 was started. By Judgment dated 25th March, 2014, the Court of Ld. Additional District Judge, Contai, dismissed the suit, which has been challenge in this appeal.

The facts emanating from the plaint are that petitioner Chandan Kumar Bera and respondent Atasi Bera are husband and wife. Their

marriage was solemnized on 20th May 1994, as per Hindu rites and rituals and she started to live at her matrimonial home with her husband, ailing mother-in-law, handicapped sister-in-law, father-in-law, brother-in-law and other relatives since then. During her said stay she became pregnant and gave birth to her son Sankha on 22nd September 1995 at her father's house as she left her matrimonial house on 29th April 1995, in certain differences and disagreements. She was not friendly nor accommodative nor caring to her ailing mother-in-law, handicapped sister-in-law, petitioner and other family members. Once, she opposed the excessive expense accrued in treatment of her mother-in-law, who died of cancer on 05th November, 1994. She was indifferent to the appellant due to her infatuation for a young man whom she wanted to marry, but it didn't materialize. Resultantly, she lost her impulse to reciprocate his love and libido and was not liking to share bed with him. She also insisted appellant to live in a separate accommodation but he refused as he was dependant on his family due to his unemployment. So, it triggered her to leave her matrimonial home on 29th April 1995 without prior permission and took shelter at her parent's house. Petitioner tried to meet his son and to persuade the respondent to return to her matrimonial home with Sankha to celebrate his first rice ceremony, but she refused.

So, he prayed for divorce on the ground of wilful desertion and cruelty.

In response, the respondent-wife has contested the suit by filing written statement in which she denied all the material allegations. The positive case as set up by her is that she was driven out by them from her

matrimonial home when she failed to satisfy their demand of Rs. 50,000/- in dowry claimed against inferior quality of articles given as marriage gift and since then she compelled to take shelter at her father's house, where she delivered her son on 29th October, 1995, but none from her matrimonial house had visited there either to attend birth ceremony or first rice ceremony of Sankha or to bring her back to her matrimonial home. All expenses relating to maintenance, upbringing and education of respondent and her son were borne by her retired father because she had no source of income to maintain herself and to educate her son. Therefore, she was compelled to file a maintenance case being Misc. Case No. 56 of 2003 dated 21.03.2003 U/S 125 of Cr.P.C before the court of Ld. S.D.J.M. Contai, against petitioner for her maintenance and maintenance of her son Sankha, which was allowed by court on contest. Indeed appellant contested the proceeding but he did not raise any allegation against respondent that she refused to share bed with him due to her pre-marriage infatuation with a young man therein. These allegations were neither raised by him in maintenance proceeding nor in plaint.

She specifically stated that appellant has married one Aparna Guria daughter of Tapan Guria after 2½ years from the date of her last expulsion from her matrimonial home i.e. 19th July, 1999. One Tanushree Bera was born from said wedlock. In support of her said assertion, she submitted copy of voter list of Kanaidighi north assembly election constituency West Bengal, part 1 Nachinda block Contai-3, P.S Marisada, Mouza Nachinda in which name of Aparna Bera has been shown as wife of Chandan Bera and

in 2022 voter list name of Tanushree Bera has been shown as daughter of Chandan Bera. Since appellant married to Aparna Bera during subsistence of his first marriage with Atasi Bera, he instituted this Mat suit 145 of 2005 to get rid of legal complications, to humiliate her and to induct the name of Aparna Bera as nominee in his service book.

She further stated that with intention to show his eagerness for getting custody of his son, petitioner filed a Misc. Case 26 of 2005 but the same was dismissed for default as he did not take any steps in the case. However, respondent contested it by filing written objection, in which she blamed her father-in-law Sukumar Bera as 'root of all evil' for her miseries because he compelled petitioner to marry again with Aparna Bera despite existence of her marriage. Being aggrieved by her said remark, he filed a defamation case being Money Suit No. 03 of 2008, before the court of Assistant Sessions Judge, Contai, in which he claimed damage of Rs 5,00,000/- from respondent for damage of his reputation caused by her said remarks. Later the case was dismissed.

In order to resolve the dispute her father called a meeting on 10th March, 1998 to settle the matter amicably but ended in fiasco. She prayed for dismissal of the suit as she is willing to continue with her matrimonial tie and live with appellant.

On the basis of the respective pleadings of the parties Ld. Trial judge has framed issues on 22nd March, 2007 and additional issues on 23rd May, 2008, for proper determination of the suit, collectively as follows:-

COMBINED ISSUES

1. Is the suit maintainable ?
2. Has the petitioner any cause of action to file this suit ?
3. Are the petitioner and the respondent legally married husband and wife ?
4. Was the petitioner subjected to cruelty by the respondent ?
5. Was the petitioner deserted by the respondent ?
6. Is the petitioner entitled to get the decree of divorce on any ground u/s 13 (1) of the H.M. Act 1955 ?

The petitioner, his father Sukumar Bera, his sister Sumita Maity and his friend Bishnupada Maity were examined as PW1, PW2, PW3 and PW4 while respondent Atasi Bera and her relative Samiran Maity deposed their oral testimony as DW1 and DW2 but no documents were submitted by appellant. Ultimately, Trial culminated into dismissal of the prayer of petitioner for divorce by Ld. Trial Court as he failed to prove cruelty and desertion against the respondent-wife.

Being aggrieved and dissatisfied by the said judgement and decree, the appellant has challenged the same on the ground that –

1. Respondent has wilfully deserted him for a continuous period of more than two years, but Ld. Trial Court has failed to appreciate that the long separation (20 years) without any chance of resumption of marriage is a ground of cruelty, and
2. Respondent refused to share bed with him as she had affectionate relation with a young man with whom she wanted

to marry and was misbehaving with him and other family members, were sufficient to constitute mental cruelty and desertion against him,

3. Moreover, Ld. Trial Court wrongly observed that the petitioner husband was at fault by marrying Aparna Guria.

The point for determination as involved in this appeal is that whether the act of respondents as alleged by petitioner-appellant is sufficient to constitute mental cruelty and desertion on her part?

Ld. Advocate for appellant submitted that respondent resided at her matrimonial home only for 2-3 months and during her stay she misbehaved with petitioner, his ailing mother, handicapped sister and other family members on the instigation of her parents and she did not share bed with him due to her love with a young person by whom she intended to marry. She also insisted him to live separate from his parents but he refused due to his unemployment. Resultantly, she left her matrimonial home on 29th April, 1995 without his or his father's permission and took shelter at her parent's house, intentionally to deprive appellant from the holy association of his son and to desert him without any reasonable cause. Since then, they are living separately and there are no chances of their reunion because all attempts of compromise, mediation and reconciliation have already failed. Nothing remains in this marital tie. So, he prayed for decree of divorce. It is submitted that the Hon'ble Apex Court in several decisions has categorically stated that where parties are living separately for several years and their reunion is not possible, the court can pass decree of divorce. In

this regard the learned advocate has relied on *Narendra vs K. Meena* reported at (2016) 9 SCC 455 paragraphs 12 to 19, *Gurbux Singh Vs. Harminder Kaur* reported at (2010) 14 SCC 301, paragraphs 72, 74, 76, *R. Srinivas Kumar Vs. R. Shametha* reported at (2019) 9 SCC 409, paragraphs 5.1, 7, 8, *Munish Kakkar Vs. Nidhi Kakkar* reported at (2020) 14 SCC 657 paragraphs 14-16, 19, 21.

Per contra, Ld. Advocate for respondent submitted that sincere endeavour was taken by the respondent to settle this matter by sending it to mediation and through reconciliation but all efforts went in vain. Admittedly the marriage was solemnised on 20th May, 1994 as per Hindu rites and customs and the same is still subsisting but they are living separately as she was driven out from her matrimonial home. He further submitted that Appellant had married to Aparna Bera without dissolving the marital tie with her and Ld. Advocate for respondent has submitted that she is living at her father's house in village Rautara from 29th April, 1995 where her son born on 22nd September, 1995. the expenses in their maintenance, nourishment and education were obviously borne by her retired father. So, she filed Misc. Case 56 of 2003, u/s 125 of Cr.P.C. before Ld. S.D.J.M. Contai on 21st March, 2003, in which maintenance of Rs 1000/- was granted to respondent by court and the same is now increased to Rs. 7000/- per month.

Thereafter, appellant filed Mat. Suit No.145 of 2005 U/S 13 (ia) (ib) of Hindu Marriage Act 1955, before the court of Ld. Additional District Judge at Contai. The MAT suit 145 of 2005 was dismissed on contest on

25th March, 2014 by court after considering the entire evidence with observation that 'there is no doubt in mind of the court that practically there is no cogent evidence to prove that the petitioner tried for reunion but was not allowed by the respondent wife. Respondent still willing to continue her marital tie with appellant. He has relied upon the ratio decided by Hon'ble Supreme Court in *Naveen Kohli vs Neelu Kohli* reported at (2006) 4 SCC 588; *Shubha Rani Vs Madhukar Reddi* reported at 1988 (1) SCC 105 and *Darshan Gupta Vs Radhika Gupta* reported at 2013 (9) SCC 1.

Indubitably, the appellant petitioner sought dissolution of marriage on the ground of cruelty and desertion as provided under section 13 (1) (ia) and (ib) of Hindu Marriage Act 1955. The relevant provisions are: -

(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party

[(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or]

[(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

The common question of law and fact relating to mental cruelty and desertion is involved in this appeal are based on same set of facts, emanate from evidences. The petitioner-appellant has enumerated some acts of respondent which caused mental cruelty and desertion. The allegation of

petitioner appellant against respondent that she was not taking care of his sick mother, not behaving well with his handicapped sister, father and other family members including him, and that she had superiority complex as she was fairer and more beautiful than the appellant and that she insisted him to live in separate accommodation but he refused due to his unemployment. On his said refusal she fled away from her matrimonial home and shifted to her father's home without appellants or his father's consent and that she avoided to share bed with him or if she rarely shared bed that too, in most disgraceful manner because, she had no love and affection for him due to her pre-marriage love with a young person, and that respondent has falsely alleged about him that he has extramarital affairs with Aperia Bera, were sufficient to inflict mental cruelty on him. As respondent left her matrimonial house on 29th April, 1995 without any reasonable cause and without his or his parent's permission and continued to live at her father's house, petitioner missed cohabitation with her. On 06th February, 2005 he made effort to resolve the dispute by compromise but of no avail. So, he felt that no scope left for him to resume his marital life with respondent. It caused him mental pain and sufferings and desertion. The Hon'ble Supreme Court observed in **V. Bhagat vs D. Bhagat (1994) 1 SCC 337** that mental cruelty is the 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. The apex court has also explained the cruelty as a *"course of conduct of one which is adversely affecting the other. It may be mental or physical if it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the*

impact of such treatment on the mind of the spouse” in Shobha Rani vs Madhukar Reddi (1988)1 SCC 105. In N.G. Dastane Vs S. Dastane (1975) 2 SCC 326 Hon’ble S.C has that “.....the conduct charges as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent.”

The existence of relevant facts on mental cruelty and desertion can only derived from the evidence of witnesses. PW1 admitted that *“my wife developed a habit to differ to our decision on many matters taken jointly by me and my father. Once she expressed her resentment over the money spent for the medical treatment of my sick mother, but ultimately, we ignored”* and that respondent left her matrimonial home wilfully to desert him and without his or his father’s consent to her father’s home on 29th April, 1995 despite her pregnancy and she didn’t return even after birth of son. Petitioner tried hard to bring them back but failed. He also requested her parents to send respondent and baby back to arrange first rice ceremony of baby at his house but all went in vain. He wanted to hear “BABA” in his son’s lip sing sound.

But DW1 admitted that in “annaprasan ceremony” of his son she invited appellant, his father and other relatives but none of them attended the ceremony, which belies the contention of PW1 expressed in paragraph 8 of examination-in-chief that sometimes he himself, sometimes his father and relatives went to respondent to bring her back to her matrimonial home but all efforts went in vain, and his claim that *“I went to my matrimonial*

house several times after my wife had left my house.” The evidence of PW4 is relevant here as his name was referred by PW1 in his cross-examination that he is one of his friends to whom he reported about his wife’s misbehaviour, torture and all. PW4 admitted in his cross-examination that he went to the father’s house of the respondent but he did not say whether the petitioner ever went to his matrimonial house to meet his son or not. It indicates that he never reported him anything about his visit to matrimonial home.

Appellant also stated in his evidence that respondent was insisting him to live in a separate accommodation away from his family which caused mental torture on him but it was not substantiated by PW2, who used to take all decision of his family including petitioner, as he admitted in his cross-examination. It shows that petitioner was unable to take his own decision and was dependent on his father for everything. If petitioner was unable to take his own decision, then how a wife can expect from him to take decision to live separate from their family. On the contrary PW2 had no direct knowledge of this fact but was came to know about it from PW1. Even PW4, with whom appellant used to share every fact relating to misbehaviour and torture of his wife, did not state anything on it in his oral testimony. Mere allegation is not sufficient unless proved. However, this fact was denied by respondent in her evidence by stating that PW1 was not able to take his own decision as he admitted that appellant’s father used to take all important decision in the family. so, it is clear that appellant was unable to take any personal decision in his conjugal life as well.

Appellant further stated that when he refused to live in separate house, respondent fled away from her matrimonial home and took shelter at her father's house, but respondent contested it by stating in her examination-in-chief that she did not flee from matrimonial home but was driven out by them lastly on 19th July, 1999 when she failed to fulfil their demand of dowry, and every effort taken on her behalf to resolve the dispute by compromise between the parties, ended in despair.

Whatever be the reason, admittedly respondent was living at her father's house, but no evidence on record is available to show that appellant had taken any step to bring the respondent back from her father's house. He deposed that he, his father and relatives frequently visited her father's home but evidence shows that except PW4 none went there, even on the occasion of birth and first rice ceremony of Sankha. That apart they did not take any step before competent authority to bring the respondent back to his home, as it appears from admission of PW2, that *"I had not submitted any application before the local Panchayat for the return of my daughter-in-law in my house. I myself had not prayed for any search warrant for the return of my daughter-in-law or my grandson to my house."*

No evidence available on record to show that appellant had ever taken any steps for restitution of conjugal rights, by taking recourse of Section 9 of Hindu Marriage Act 1955 or compromise his dispute before the court of competent jurisdiction. Respondent might leave home wilfully but what

prevented him to take initiatives to bring her back. Inaction from the side of appellant indicates that he was at fault to live separately.

In respect of other torturous act of respondent, no specific facts were stated by PW1 in his evidence. Even PW4 did not state anything in his oral testimony in support of cruel act of respondent because PW1 admitted in his cross examination that he used to share torturous acts of wife to his friends namely Anup Das, Prasanta Das, Balai Das, Bishnupada Maity (PW4) but PW4 stated in his cross-examination that *“I cannot say whether the respondent used to pick up quarrels in her matrimonial house with others, but I am sure that she used to remain absent in her matrimonial house.”* This statement of PW1 could have been supported by PW4, if those acts of misbehaviour and torture of respondent would be shared to him. It signifies that respondent did not act anything as appellant alleged, otherwise it should be shared by him to PW4. Such contradictions are vital in nature and is sufficient to shake the veracity of witness.

Moreover, other allegations are part of routine domestic life. So, they cannot be considered as cruelty as Hon’ble Supreme Court has expressed his view in ***Shobha Rani (supra)*** that all conduct would not be cruelty but the conduct constitute cruelty should be of grave and weighty nature, from which the appellant may not reasonably expect to live with respondent. Mere trivial irritation and quarrels in day-to-day matrimonial life may not be considered as cruelty.

The benign intention of respondent also appears from the admission of PW2 that respondent did not lodge any criminal against any one of them also goes against the appellant.

We do not find any connection between the ill treatment complained of and the resultant danger or apprehension to the life and limb to appellant, which is necessary for getting decree of divorce on cruelty.

In respect of desertion Ld. Advocate for appellant submitted that respondent wilfully left her matrimonial home on 29th April, 1995 for her father's house without taking his permission with intention to deprive petitioner from cohabitation with her and to prevent holy association with his son and respondent always refused to share bed with him as she had infatuation to a young person. So, he was not leading his normal matrimonial life.

The essential ingredients for desertion as stated in Section 13(1) (ib) of Hindu Marriage Act, 1955 is that *"a decree of divorce can be granted if one party has deserted the other party for a continuous period of not less than two years immediately preceding the presentation of the petition. According to Explanation 'desertion' means the desertion of petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of the party"*. Desertion means total repudiation of marital obligation or negation of living together which is essence of any matrimonial relationship. Thus, desertion is not the withdrawal from a place, but from a state of things i.e., cohabitation. In a marriage, if one

spouse leaves the matrimonial alliance without any sufficient cause he is said to be at 'fault'.

The moot question to decide is that whether mere leaving matrimonial house would amount to desertion of appellant and what compelled respondent to live at her parent's house? What steps were taken by appellant to bring the wife back to his home?

The intention may be derived from the circumstances under which wife left her matrimonial home. Appellant alleged that she deserted him from 29.04.1995 when he denied her willingness to live in a separate accommodation away from his family.

To see whether respondent left matrimonial home with intention to forsake and abandon the appellant permanently without reasonable cause, we consider on the oral testimony of PW1 who stated that 'respondent wife left to her parent's house on 29.04.1995 and she did not return to her matrimonial home.' Other witnesses have also corroborated his version, but respondent denied this fact and stated that she did not leave her matrimonial home willingly but they have driven her out there from on 29th April, 1995, when she failed to satisfy their demand of Rs. 50,000/- in dowry. She admitted in her cross-examination that she had visited her matrimonial home even after 29th April, 1995 for the immunization of her son which had been started at Kulberia B.P.H.C. and about 1½ year after birth of her son she returned to her matrimonial house and his immunization had been followed up at Nachinda B.P.H.C. She further

admitted that *"I was in my matrimonial house for about 4-5 years."* No evidence was led to controvert it. It shows that she did not leave her house on 29.04.1995 with intention to desert him but was driven away therefrom. She returned to her matrimonial home later. So, the allegation of desertion after 2-3 months is not proved due to inherent contradiction available in evidences.

However, respondent shown her desire to live her matrimonial life with appellant but every effort made by her in the direction of resumption of conjugal life was ended in despair. She was not cross-examined on this point. On the contrary, nothing is available on record to show that petitioner ever made any effort to take respondent and "Sankha" back to his house as he did not file any petition for restitution of conjugal rights nor prayed to any authority for settlement of their dispute by compromise.

PW2 stated that respondent never brought any prosecution against them indicates that she was not willing to desert petitioner. Rather her father-in-law brought a Money suit against respondent on her remark made in her written objection filed in maintenance case that her father-in-law is the root of all evils. He claimed Rs. 5,00,000/- from her as he became offended on that remark but the same was dismissed later. Likewise, the custody case filed by petitioner also met with same fate of dismissal as he left his appearance in the case. It shows that it was not filed genuinely to get custody of his son but was a mere eyewash. So, we do not find that essential ingredients necessary to constitute desertion has been proved by appellant.

The oral testimonies of witnesses shows that both parties had taken half-hearted attempt to resolve the dispute by salish, but no document was submitted by them to prove.

However, the specific case of respondent that petitioner seek divorce to induct name of Aparna Bera in his service book with whom petitioner has extra marital relation with the aid of her father-in-law, for that she blamed him as “ROOT OF ALL EVILS” in her written objection filed in maintenance case on which he filed money suit against her. Petitioner denied to identify any Aparna Bera. Ld. Advocate for respondent submitted that petitioner married to Aparna Bera from which they were blessed with daughter Tanushree Bera. She filed certified copy of voter list of 2022 contains name of Tanushree Bera as daughter of Chandan Bera. Appellant denied this fact as well.

Respondent filed certified copy of voter list of ‘213 Kanaidighi north assembly election constituency West Bengal, part 1 Nachinda block Contai-3, P.S Marisada, Mouza Nachinda’ which was marked as exhibit x’ for identification by Ld. Trial Court, in support of her contention. It reveals the name of Sukumar Bera at serial number 642, Chandan Bera at serial 643 and Aparna Bera wife of Chandan Bera at serial no. 644 of the said voter list. He admitted in his cross-examination that he is the only person namely Chandan Bera son of Sukumar Bera in the village Nachinda and he had not seen his name in the voter’s list published in 2002, 2004, 2005 but casted his vote in every election. As his wife was not residing in village, so

he did not feel it necessary to induct nor to check her name in voter list nor he take any step to rectify the defect.

The certified copy of voter list is a public document, so is admissible in evidence without any further corroboration. The content of the voter list reveals the name of Aparna Bera as wife of Chandan Bera, is reliable. It became impeccable when petitioner admitted that no other person of his namesake is residing in village and he did not take steps to rectify it despite it came to his knowledge. So, it leaves no any doubt to presume veracity of contention of respondent as to the relationship between appellant with Aparna Bera and we do not find any substance in petitioner's contention that respondent has falsely alleged him for extramarital relationship with Aparna Bera which amount to cruelty on him.

The marriage of appellant with Aparna Bera shows that respondent was not at fault but it is the fault of appellant who solemnized marriage with Aparna Bera during subsistence of his marriage with respondent.

He relied on (2016) 9 SCC 455 in which Hon'ble Supreme Court has held that unsustainable extra marital affair allegations levelled by respondent against her husband constitute mental cruelty, but the facts and circumstances of this case is different. Here the allegation is sustainable against appellant.

PW1 also levelled wild allegation against respondent at belated stage that she had pre-marriage love affairs with a young man so usually she had no love and affection towards him and did not like to share bed with him.

No evidence was produced by him to establish this fact. He admitted in his cross-examination that *"I had not mentioned in my written objection against the application u/s. 125 Cr.P.C. that my wife had a pre-marital relation with another boy. My sister reported me the fact just about 1½ month after marriage. Then says, I got the information for the first time about one year after marriage. My sister would be examined on the point."* That too, his allegation was only against a young person and not against any specific person. Even PW4 did not corroborate this fact in his evidence as he admitted that *"he has no personal knowledge about the allegation of extra marital relation of the respondent with a boy or any other person."* Mere allegation is not sufficient unless it is proved by cogent and reliable evidences. DW denied that she never informed her husband about love affairs with one boy, and that she refused to cohabit with appellant and always willing to continue her matrimonial relationship as stated in Paragraph 7 of her examination-in-chief. It reveals that respondent had no intention to desert appellant but she was always ready to return her matrimonial home. She was not specifically cross-examined on her said denial.

Rather her allegation against appellant that he married to Aparna has vigour, as it proved by the content of voter list of said constituency duly prepared and issued by competent authority and he neither contested nor denied it. Her apprehension that appellant is only interested to get divorce so that he could incorporate the name of Aparna in the service book as his nominee and satisfy his vested interest, seems true.

Appellant failed to satisfy the essential ingredients necessary for desertion. He never taken any steps to bring her back by persuading her, nor he made any prayer to any authority for this purpose nor filed any suit for restitution of conjugal rights, never visited to her father's house even to see his son. His suit for custody of his son is also an eyewash. As he never intended to get custody of his son, so he intentionally avoided his appearance before the court to let the suit dismissed for default.

It is fact that long separation is treated as cruelty but a spouse cannot take its benefit by creating a situation which compel wife to live away, for obtaining the decree of divorce. The same has been expressed by Calcutta High Court in ***Jyotish Chandra v. Meera*, AIR 1970 Cal. 266** that "where the husband creates a condition in which the wife is compelled to leave his company and live separately, the wife will not be held guilty of desertion but the husband himself would be guilty of desertion."

The principle of irretrievable breakdown of marriage will not be applied as Section 13 of Hindu Marriage Act, 1955 does not provide any scope to grant divorce on this ground.

In so far as allegation of cruelty and desertion levelled against the wife is concerned, appellant miserably failed to prove it by reliable and cogent evidences. On close scanning of evidence on record we are of the view that appellant failed to discharge his onus to prove the fact of cruelty and desertion against respondent rather respondent proved that appellant married Aparna Bera during subsistence of her marriage. On the contrary

the marriage of the appellant with the another lady is still being in matrimony with the respondent is a ground of mental cruelty upon the respondent by the appellant. The appellant could not rebut the statement of Voter list and therefor his contentions are not trust worthy.

The view of Learned Trial Court is affirmed.

Hence, appeal dismissed.

There shall be no order as to costs.

I agree.

(Soumen Sen, J.)

(Uday Kumar J.)