

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE SIDE
APPELLATE SIDE

Present:

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

FAT 545 of 2018

Koushal Kumar
Vs.
Priyanka Kumari

Appearance:

For the Appellant : Mr. Partha Pratim Roy, Adv.
Mr. Dyutiman Banerjee, Adv.

Judgment On : **18.10.2023**

Harish Tandon, J.:

The judgment and decree dated July 2, 2018 passed by the Additional District Judge, 1st Court, Sealdah, South 24-Paraganas dismissing the application for dissolution of marriage on the ground of desertion and cruelty is assailed in the instant appeal by the husband.

Several allegations on the conduct of the respondent in relation to the normal wear and tear of the marital life is projected as a case of cruelty. According to the appellant immediately after the marriage the conduct of the respondent became indifferent as she was insisting for a separate mess. It is further alleged that the respondent tried to control the financial aspect of the appellant and in fact proceeded to withdraw the entire amount from the account and the appellant was forced to assign reason for any money which he required in day to day life. It is further alleged that the respondent never cooked food in the house nor prepared tiffin when he went to discharging his duties and even forced the appellant to take food from outside. It is alleged that on 20.07.2014, the wife voluntarily left the matrimonial house along with the daughter born on 23.11.2013 to her parent's house and after a gap of one year, forcibly entered into the matrimonial house which compelled the appellant to leave the said house and take shelter in the house of his friend. The appellant has further disclosed several proceedings initiated at the behest of the parties in order to prove that the marital relationship has become bitter and the emotional bonding is totally shattered.

On the other hand, the respondent contends that she is all along ready and willing to live with the appellant and take all initiatives to maintain a conjugal atmosphere required for happy living. However, she disclosed the startling facts in the written statement that the appellant grew an intimate relation with one lady by the name of Soma and precisely for such reason the suit for divorce is filed against the respondent. Though she

has also stated that the flat purchased by the husband was funded by her father but that itself cannot be a ground for the purpose of establishing a cruelty or the desertion being the fundamental issues involved in the instant suit.

It is pertinent to mention that three witnesses were cited by the appellant one of whom was a friend with whom the appellant is allegedly residing at present but the respondent who was partly cross examined was not further cross examined by the appellant and Trial Court closed the evidence of the respondent and proceeded to decide the said application and ultimately held that the appellant has miserably failed to prove the ground of cruelty and desertion.

An argument is advanced by the appellant that there has been several proceedings initiated between the parties and the moment they are found at the loggers head, it is not advisable to keep the marital tie and the divorce should be granted. It is vociferously argued by the appellant that on an allegation touching upon the aspersion on the character of the appellant, in absence of any conclusive proof, made in the proceeding, is always regarded as a cruelty perpetrated upon the appellant. It is thus submitted that the serious allegation is made by the respondent in the written statement and also in the Examination-in-Chief filed before the Court that the appellant had grown a relationship outside the marriage institution with a lady which tantamount to cruelty and, therefore, the Trial Court ought to have considered the aforesaid aspect and should have granted a decree for dissolution of marriage.

There is no quarrel to the proposition of law that a proceeding for dissolution of marriage founded upon a ground of cruelty may be decided if the cruelty is further perceived in the course of proceedings more particularly, when a serious allegation is made by the respondent impacting the character of a person and creating a stigma in the Indian society. The Court while embarking his journey on the peripheral of the aforesaid aspect should evaluate the credibility of the witnesses and the quality of the evidence adduced in this regard. The relationship in a matrimonial institution depends upon the reposition of trust and confidence into two individuals who have decided to live together for life. The human body is complex but the human behaviour is more complicated. Two individuals brought up in a different environment may at times have a conflicting views but those are always regarded as a vagaries of life as well as normal wear and tear of the marital relationship. Every conflict may not tantamount to a cruelty which is decided on a high degree of the evidence more particularly, the conduct of one is such to create apprehension in the other to live under one roof in safe and secured state. The sense of security must be of such degree which renders a person always in a state of unsafe impacting upon his/her mental status. Mere demanding to live separately cannot be said to be a cruelty of such degree which would invite the marital tie to be severed. There may be circumstances for such demand which cannot be said to be unreasonable and therefore, it is a reciprocal obligations imposed upon both the persons to understand the emotions in the attending circumstances.

In the instant case, the allegation is made by the appellant in this regard but in the cross-examination as well as in the Examination-in-Chief of the respondent, it does not appear that the aforesaid facts have been duly proved. It is a specific stand of the respondent that she left the matrimonial house to pursue her higher degree course at her parental house and was subsequently instructed to live in the father-in-law's house at Bokaro which she respected. Such evidence goes to prove that the respondent never disassociated herself from the appellant without any reason and rhyme but a reasonable explanation can be seen therefrom. There is no evidence put forth by either of the parties that the respondent refused to cook the food nor ever prepared tiffin for the appellant. In Examination-in-Chief, the respondent categorically asserted that she, in fact, prepared the food and ready to prepare the food for the appellant as she has still an emotional connect with the appellant and despite the fact that the appellant has a relationship outside the marriage institution, she is ready to live a happy conjugal life. There is no hesitation in our mind that the allegation of cruelty pleaded in the plaint has not been proved by the appellant and therefore, no ambiguity in the finding returned by the Trial Court can be seen.

However, it takes us to the another incident of cruelty when the respondent alleged that the appellant had developed a relationship outside the marriage institution by naming a lady and further alleged that the husband is residing with her. She further deposed that after coming to know of such fact, she returned to the matrimonial house but there was a strong resistance by the appellant in not permitting the respondent to enter into

the house. Ultimately on intervention of the local people she was permitted to enter the house but the appellant suddenly left the house without keeping any relation and/or touch with the respondent. Interestingly, during the cross-examination the appellant was confronted with the photograph where the husband and a lady were shown. The appellant accepted that the said photograph is of the appellant. The said photograph was marked Exhibit-B on admission. However, the appellant after admitting that he is shown in the said photograph but with one of his colleagues. Astonishingly, the appellant refused to divulge the name of said colleague appearing in the said photograph nor he disclosed her address as well as the mobile number. It is important to know that a person can recognise the photograph of another person as his colleague but does not know his or her name which is improbable. The respondent has further deposed that the incident of developing a relation outside the marriage institution was communicated not only to her parents but also to parent-in-laws and the father-in-law along with his father came to Kolkata and went to the house of the said lady. After the lady was confronted with the said fact she called the appellant over the telephone and within few minutes the appellant arrived and started abusing which propelled the lodging of complaint with Netaji Nagar Police Station on 15.09.2015 and 01.10.2015. Aforesaid categorical statement in Examination-in-Chief goes uncontroverted as no question was put in this regard in the cross-examination. It is a cardinal principle of evidence that if the statement of fact disclosed in the Examination-in-Chief is not cross-examined it will be deemed to have been proved. Therefore, it cannot be said that the allegation of the respondent that the appellant had a

relationship with the lady outside the marital institution has not been proved.

We, therefore, do not find any substance in the stand of the counsel for the appellant that such disclosure of the fact in the written statement amounts to cruelty.

We, thus, do not find any illegality and/or infirmity in the impugned judgment, the appeal is dismissed.

No order as to costs.

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.)