

01.05.2023
SL No.2
Court No.8
(gc)

FAT 457 of 2017
CAN 1 of 2017 (Old No: CAN 9822 of 2017)

Tanushree Das (Biswas)
Vs.
Souvik Biswas

Mr. Suchindram Bhattacharjee,
...for the Appellant.
Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. K.R. Ahmed,
Mr. Rudranil Das,
Mr. Anindya Sundar Das,
...for the Respondent.

This matter was earlier sent to mediation. The dispute between the parties with regard to stridhan was the stumbling block. However, the ornaments towards Stridhan have been handed over to the wife during the pendency of this proceeding. The claim with regard to the other ornaments does not appear to be justified.

The parties are living separately for more than 8 years. Both of them are school teachers. The status is equal. However, we have been informed that there was an order directing payment of interim alimony at the rate of Rs.2000/- per month since 2018. We feel that in the fitness of the thing, the husband shall pay the amount determined notwithstanding the order that we are passing in relation to the judgment under appeal.

The record shows that in spite of opportunities, the wife did not contest the proceeding. The Trial Court decided the matter on the basis of oral and documentary

evidence. The law requires that the divorce cannot be granted without establishing the grounds on which such relief is claimed by the plaintiff spouse. In the instant case, the evidence on record shows that appellant was insisting the respondent/husband to leave his own house and live with the wife at her parent's residence. The husband did not agree to such demand for which he was put to physical and mental torture. She has also evinced an intention not to continue with the relationship and the consummation of the marriage has also failed. The husband alleged that he was subjected to humiliation and abuse.

We have recently held in ***FA No.25 of 2010 (Jharna Mandal Vs. Prashant Kumar Mandal) dated 31st March, 2023*** that if the wife without any lawful reason or justification left the matrimonial house and insists separation with the husband from his parents, it would amount to mental cruelty. In the instant case, we are of the view that the mental cruelty is proved on the basis of the evidence on record. We could not find any reason for the wife not to participate in the said proceeding, although she had ample opportunity to appear and contest. She did not file any application for recalling of the decree. In the appeal the appellant has to proceed on the basis that the quality of evidence does not justify the conclusion.

However, in view of the uncorroborated testimony of the petitioner proving the grounds on which he has claimed divorce, we find no reason to interfere with the judgment and decree passed by the Trial Court. The judgment was passed on appreciation of evidence.

The decree of the Trial Court is affirmed.

However, the petitioner shall pay a sum of Rs.1,00,000/- (Rupees one lakh only) towards the consolidated permanent alimony within two months from date.

Accordingly, the appeal and the application stand disposed of.

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

(Uday Kumar, J.)

(Soumen Sen, J.)