

29.09.2023
Court No.1
Item No. 45
pk/AP

**HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

**FAT 3 of 2023
IA No : CAN 1 of 2023**

**Sumitra Pradhan
Vs.
Shekhar pradhan**

Mr. Kunaljit Bhattacharjee,
Mr. Alik Sah,
Mr. Rahul Ghatak

... For the appellant.

1. The appeal is directed against the judgment and order dated 24.02.2023 passed in MAT Suit No. 158 of 2018 by the learned Additional District Judge, 3rd Court, Darjeeling.

2. The facts of the case are that the petitioner and the respondent got married on 16.12.1993 and lived at Kurbia Tea Estate in Kurseong. They have three children out of their wedlock. Since the year 2016, the petitioner has been residing at Burbung Basty, due to his work. The appellant/wife has refused to live there with the respondent. Therefore, no conjugal relations between the parties since 2016.

3. The respondent filed an application for divorce under Section 13 of the Hindu Marriage Act, 1955 on the ground of cruelty and desertion on 10th December, 2018. The defendant/wife filed

written statement but did not depose evidence or prove any documents. The plaintiff deposed as PW 1 and one Rajesh Pradhan, brother of the plaintiff deposed as PW 2.

4. The Court below found that the plaintiff could not establish cruelty because the disputes between the husband and wife even on a daily basis are part and parcel of a married life. This Court does not wholly accept it but this is not important for the purpose of present appeal. Cruelty is not found established.

5. The Court below, however, found desertion on the ground that the appellant/wife was refused to live with the opposite party/husband since 2016. The Court below found desertion on such basis.

6. Learned counsel for the appellant would argue that the wife was already residing in her matrimonial house from 1993 to 2016 with the opposite party/husband. It is the opposite party/husband who has left the matrimonial house at Kurbia Tea Estate, Kurseong and went to live at Burbung Basti with another uncle there.

7. This Court is of the view, that the fact that the wife refused to live with the husband at Burbung Basti could amount to desertion by the husband if the wife led evidence to this effect in the Court below. She did not do so.

8. In any event, this Court is of the view that the marriage has also a irretrievably broken down since the parties are separated for more than 9 years.

9. For the reasons indicated hereinabove, the impugned judgement and decree calls for no interference.

10. Accordingly, the instant appeal is dismissed.

11. In view of dismissal of the appeal itself, connected applications are also dismissed.

12. There shall be no order as to costs.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)