

**105 05.03.
2024**

Ct. No. 04

ab

FAT 11 of 2018

**Smt. Ananya Chowdhury (Bose)
Vs.
Sri Kuntal Chowdhury**

**Mr. Malay Bhattacharya,
Mr. Subhrajyoti Ghosh.
... for the appellant.**

**Mr. Shyamal Kumar Pandey,
Mr. Somnath Gangopadhyay.
... for the respondent.**

The instant appeal arises from a judgment and decree dated 30th November 2017 passed in Matrimonial Suit No. 242 of 2014 by which an application under Section 13 of the Hindu Marriage Act filed by the husband/respondent against the wife/appellant is decreed on the ground of desertion and cruelty.

The facts discerned from the pleadings as well as the evidence adduced by the parties would proceed that the husband/respondent at the time of marriage was working as a Dental Surgeon and posted at Purulia Hospital. Undeniably, the wife/appellant was also working as a Teacher in Uma Devi Girls High School, Garbeta, West Medinipur, which is near to her parental house.

It is a stand of the husband/respondent that immediately after the solemnization of marriage, according to Hindu rituals and rights, on 18th November 2012, though they live together and the marriage was duly consummated, the wife/appellant inflicted the mental and physical cruelty from the beginning of the conjugal life. It is the specific stand of the husband/respondent that the wife/appellant was never willing to live with him at the matrimonial house and was frequently visiting her parental house on the pretext of

attending the school. It is further stated that despite the resistance being made, as the husband/respondent intended to lead the matrimonial life peacefully, there was a quarrel all the time at the behest of the wife/appellant and ultimately she left the matrimonial home.

The wife/appellant refuted the contention of the husband/respondent with regard to the allegation made on the cruelty as well as the desertion. It is her specific stand that even at the time of solemnization of marriage, the husband/respondent was aware that she is working as a Teacher in the school situated near the parental house and she further asserted that she all along cooperated with the husband/respondent and it is on a mutual understanding she was living the parental house to attend the said school. It is further asserted in the written statement that she used to frequently visit the husband/respondent and has taken care of all the family members and from the said wedlock a child is born, which would indicate that there was no disharmony in the matrimonial life between the parties.

On the conspectus of the aforesaid pleadings, the parties adduced evidence and ultimately the said proceeding is disposed of by the impugned order. The learned Judge in the Trial Court after recapitulating the concept of the cruelty, as understood in the legal parlance, proceeded to held that the wife has inflicted the cruelty on the husband and, therefore, he is entitled to get a decree for divorce on such ground. The learned Judge also taken into account the factum of living at the parental home and proceeded to held that it amounts to a desertion.

It is no doubt true that the cruelty has not been defined in the Hindu Marriage Act, 1955. However, the cruelty is perceived in course of a judicial dispensation, something, which is not conducive to continue with the relationship in a conjugal life, inculcating a sense of

danger or fear in body or limb. The cruelty is of varied form and imbibes within itself mental cruelty as well apart from the physical cruelty. The case based on a physical cruelty can be reasonably determined on the basis of the documents produced by either of the parties but most arduous task is when the Court faces the allegation of a mental cruelty set up in the pleadings by the parties. Human body is complex and the human behaviour is more complicated. What may constitute a cruelty in one case may not be the same in another as it depends upon the various factors viz., the status of the parties, the mindset of the society, economic disparity, the social strata and above all the upbringing of the person in a particular atmosphere and/or environment etc.

The catena of decisions rendered in this regard by the various Courts including the Supreme Court of this country inexplicably held that the mental cruelty is such, which brings an apprehension of danger of life or the limb while living together under one roof. The trivial issues, which are normal and common in a matrimonial relationship, cannot be construed as a mental cruelty unless there is a strong evidence adduced by the parties based upon different aspects as indicated herein above. The trifling or dissent in perception of a thing is a normal wear and tear of the normal conjugal life and it is collective duty of the spouses to accept the views in a more cordial manner and the mutual respect is a need of an hour.

Defining the cruelty in a straightjacket formula would not be a safe course unless the Court arrived at a conclusive opinion that what would constitute a cruelty and what would not. It is, thus, a dynamic process and cannot be squeezed within the euclid's theorem and varies in the changing pattern of the society.

It is a specific case of the wife/appellant that it was a clear understanding after the marriage that she will

attend the school from her parental house and as and when the vacation intervenes, she lives the conjugal life or take care of the family members, which would further be evident from the fact that she gave birth to a male child.

We do not find that the allegations made in the plaint in relation to a cruelty comes within the purview of the cruelty as understood in a judicial parlance as those are the fringe issues, which are expected in a day to day life of the parties. Furthermore, the quarrel appears to have been projected as a cruelty without specify the magnanimity of the said quarrel in order to bring within the folds of the cruelty under the Hindu Marriage Act.

The learned Judge proceeded on the basis that the refusal to live in matrimonial house not only tantamount to a cruelty but also desertion and propagated a notion that living together after the marriage is the ordain of life and the disassociation brings a cruelty in the mind of the other.

In the instant case, it is a specific stand of the wife/appellant that on the basis of a mutual consensus she was attending to school from her parental house and used to visit matrimonial house as and when she gets an opportunity and, in fact, a male child is born, which would further corroborate the consummation in a congenial atmosphere.

We do not agree with the findings of the learned Judge that she often then live in a matrimonial house and decided to live in her parental house is an act of cruelty.

So far as the desertion is concerned, it is a specific stand of the wife that she never intended to desert the husband and, in fact, frequently visiting the matrimonial house. In order to constitute the act of desertion, there must be an intention to desert the other spouse permanently and there is a least possibility of living under one shelter. To constitute the desertion, the

disassociation must be voluntarily without any rhyme or reason and if any explanation is offered that what constrained one of the spouse not to live together, if such explanation is plausible and reasonable, it may not constitute a desertion.

The findings of the learned Judge that even after the marriage, she continued to reside in parental house tantamount to a desertion is not acceptable in absence of any corroborative evidence of permanent detachment of the matrimonial tie. Having held so, we hasten to record that the husband/respondent has also submitted before us that he is not intending to proceed on the basis of the instant decree as the parties have explored another avenue and, therefore, there is no fetter on the part of the Court to interfere with the instant judgment and decree.

In such view of the matter, we are unable to pursue us to concur with the decision of the District Judge in granting the divorce on both the grounds of cruelty and desertion. The judgment and decree passed in the Matrimonial Suit No. 242 of 2014 is hereby set aside. The appeal succeeds.

However, dismissal shall not prevent the parties to take appropriate steps nor will create impediment in the steps already taken before the appropriate forum.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

