

04.12.2024
Sl. No.1
srm/Mujahid

**HIGH COURT AT CALCUTTA
In The Circuit Bench at Jalpaiguri**

**F.A. No. 9 of 2024
(F.A.T. No. 25 of 2024)**

**Sri Nantu Ghosh
Vs.
Smt. Pinki Ghosh**

Mr. Gobinda Saha,
Mr. Tamal Kr. Sen,
Mr. Milan Ch. Laskar,
Ms. Priyanka Dey

...for the appellant

Mr. Arijit Ghosh,
Ms. Angana Rakshit

...for the respondent

1. Under challenge in this appeal is the judgment and decree dated May 18, 2024, passed by the learned District Judge, Jalpaiguri in MAT Suit No.106 of 2016, whereby a decree of judicial separation was passed in terms of Section 10 of the Hindu Marriage Act against the respondent-wife. The facts leading to the filing of the suit was that the petitioner tied the knot with the respondent on March 2, 2012 as per Hindu rites and customs. Thereafter, they started their conjugal life. Disputes surfaced in their matrimonial life since September 20, 2012.

Ultimately she left the appellant on November 18, 2013.

2. The wife brought various allegations against the husband and insisted him to live separately from his family, which the husband refused. Thereafter, she refused to cohabit with him and left for her matrimonial home within 9 to 10 months from the date of solemnization of marriage.
3. This compelled the husband to institute the matrimonial suit seeking dissolution of marriage on the ground of cruelty and desertion, after four years from the date when the respondent left her matrimonial home.
4. It was the specific case of the husband that the wife made some unsubstantiated allegations that the husband had illicit relationship with his own mother and sisters-in-law. She refused to discharge her matrimonial obligations and misbehaved with the family. She hurled abuses at them.
5. The wife contested the suit by filing the written statement, denying all the averments made in the plaint. She insisted that despite the disputes and differences, she wanted to live with her husband. However, upon perusal of the averments made by the respective parties in their pleadings. Learned

trial court framed as many as six issues which are quoted below:-

1. Was the petitioner married to the respondent?
 2. Was the suit maintainable in its present form?
 3. Was the petitioner subjected to cruelty by the respondent?
 4. Was the petitioner deserted by the respondent?
 5. Was the petitioner entitled to get a decree as prayed for?
 6. To what other relief or reliefs Was the petitioner entitled?
6. To substantiate the statements made in the plaint, the husband produced himself on dock and deposed as PW1. He also adduced oral testimony of another witness who was a neighbour and close associate of the family, who was examined as PW2.
7. On the other hand, to resist the suit, the wife also adduced oral accounts of herself and two other witnesses. They were examined as OPW1, OPW2 and OPW3 respectively.
8. Records reveal that upon perusal of the pleadings of the respective parties and after appreciation of the evidence brought on record by the parties, the Court arrived at a conclusion that the allegation of cruelty levelled against the wife had been proved,

but the Court passed a decree of judicial separation in terms of Section 10 of the Hindu Marriage Act, only on the ground that the parties were young and there could be a possibility of reunion. Such finding was based on the respondent's deposition that she was willing to live with her husband.

9. Being aggrieved by the judgment and decree, the husband has preferred this appeal, inter alia, on the ground that although the learned trial court held that the husband has successfully proved the allegation of cruelty and desertion against the wife, it misdirected itself in passing a decree of judicial separation. He submits that the decree of divorce be passed considering the nature of evidence.
10. Per contra, learned Advocate representing the wife submits that although the parties have been living separately for 12 years, they were in touch over phone. He submits that the husband could not bring any cogent evidence to substantiate his allegation of desertion and cruelty. Learned Advocate for the wife submits that the wife is still willing to live with her husband.

11. Heard learned Advocates for the respective parties.
Perused the judgment and decree as well as the evidence.
12. Record reveals that the wife repeatedly brought allegations of illicit relationship of the husband with his mother and two sisters-in-law. The wife could not produce any document to prove this allegation to be remotely probable, as has been held by the learned trial judge. The learned trial judge held that the wife not only failed to substantiate the allegations with cogent evidence, but she also took these allegations beyond the periphery of her matrimonial family.
13. There is a catena of decisions in which the proposition of law has been laid down to the effect that if any party to the marriage brings any allegation of like nature, but fails to substantiate such allegation, the same would tantamount to mental cruelty. Support of this view can be traced to the proposition laid down in the judgments delivered in case of **Smt. Santana Banerjee vs. Sachindra Nath Banerjee**, reported in **AIR 1990 Cal 367** and **Narendra vs. K. Meena**, reported in **AIR 2016 SC 4599**.
14. In the present case, the evidence clearly indicates that the wife brought these allegations against the

husband, which disrupted his family life and lowered his dignity. He was living in a joint family with his mother, brothers, their wives and children. The trial court held that she failed to substantiate the same. The oral testimony of Biswajit Bhowmik, PW2, who was the neighbour, supports the appellant's case to the extent that the wife had always made wild allegations in front of the neighbours and abused the mother-in-law and the sisters-in-law with filthy language.

15. From the records we find that the wife withdrew herself from the society of the husband without any sufficient ground. Although, she deposed before the Court that she was willing to live with her husband, the trend of the cross-examination would indicate that she had left the company of her husband 9 to 10 months after the marriage. After being subjected to such sort of mental cruelty, it is not expected for any prudent man to continue to lead conjugal life with the respondent/wife.

16. We have heard learned Advocates. We have applied the mind and we have found that there is no possibility of reunion. Considering all these aspects, we are of the view that the learned

District Judge should have passed a decree of divorce against the wife.

17. Accordingly, the appeal is allowed on contest. The judgment and decree impugned in the appeal are set aside. The suit is decreed. The appellant/husband does get a decree of divorce against the respondent/wife, on the ground of cruelty.
18. The marriage solemnized between the parties on March 2, 2012 as per Hindu rites and customs is hereby dissolved with effect from this date.
19. During course of hearing, it is agreed by and between the parties that the husband, who is a daily labourer, will pay Rs.1,25,000/- to the wife.
20. We are inclined to hold that amount shall be treated as a permanent alimony within the meaning of Section 25 of the Hindu Marriage Act.
21. Trial court's records be sent down by special messenger at the cost of the appellant after drawing up of decree.
22. Photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Partha Sarathi Chatterjee, J.) (Shampa Sarkar, J.)