

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.1152 of 2018

Sanjay Kumar Shaw Son of Sri Ganga Prasad Shaw Resident at 8/1 C
Panditiya Road, P.S.- Garia Hat Kolkatta- 700029 (West Bengal)

... .. Appellant/s

Versus

Smt. Anjali Kumari Shaw Wife of Sri Sanjay Kumar Shaw, Daughter of Sri
Bhola Prasad Shaw Permanent Resident of Village- Akbarpur, P.O.- Raj-hat,
P.S- Akbarpur, District- Nawada.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Surendra Kishore Thakur, Advocate
	:	Mr. Sanjay Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Satish Chandra, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date :07-04-2025

Heard learned counsel for the parties

2. The present appeal under Section 19 of the Family Courts Act, 1984 is directed against the judgment and order dated 22.11.2018 passed by learned Principal Judge, Family Court, Nawada in Matrimonial Case No. 52 of 2010 (15 of 2013), whereby and whereunder the petition filed by the appellant-husband under Section 13(1) (ia) and (ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for annulment of marriage has been dismissed.

3. The appellant has filed Matrimonial suit No. 52 of 2010 with the learned Court of District and Sessions Judge,



Alipore (West Bangal) and the same was transferred to the Family Court, Nawada by the Hon'ble Supreme Court vide order dated 02.10.2012 in Transfer Petition (Civil) No. 278 of 2011.

4. As per appellant case, the marriage between appellant-husband and respondent-wife was solemnized on 21.05.2005 at Akbarpur, Nawada as per Hindu rites and ceremonies. The appellant and respondent started living together in a rented house at Kolkata. They lived together for about 1 year and 11 months. Immediately after marriage, the appellant-husband found some abnormal behavior in attitude and also in movement of the respondent which gradually intensified. The respondent was treated in the department of psychiatric in Ramkrishna Mission Sewa Pratisthan where the doctor diagnosed her to be suffering from *schizophrenia* i.e., sort of mental disease or disorder. Also, respondent has got permanent disability in her leg and cannot move properly for which she was treated in the same hospital. The appellant-husband was physically attacked for several times by the respondent without any cogent reason. The parents of respondent never disclosed about any disease of the respondent. The couple never mixed up as husband and wife and the respondent realized the mistake on



part of their family members and after discussion with her parents and other family members decided to leave the petitioner without any allegation and decided to cease the matrimonial tie with the petitioner. She left without any allegation against her husband by executing two document in her own handwriting agreeing to dissolve their marriage. On 26.11.2006 the mother along with two relatives of the respondent took her with all articles and belongings of the respondents. Since then, the respondent has been living at her parental home. The respondent with malafide intention has withdrawn herself from the society of petitioner and has deserted him.

5. Both the parties were given adequate opportunities by the Co-ordinate Bench of this Court on 15.10.2019 to reach an amicable settlement through mediation. However, the efforts remained unsuccessful as no mutual agreement could be reached between the parties.

6. Respondent-wife had filed written statement before the Family Court stating that prior to marriage the parents of the appellant saw her twice, once at Akbarpur and secondly at Kolkata, thereafter, marriage was solemnized. The respondent further denied all the allegations regarding her



mental condition or allegation that she is suffering from *schizophrenia*. It has been denied that behavior of respondent-wife is aggressive towards her husband. It is stated that she is a spiritual lady, she had never used any weapon such as knife and spoon to cause harm to the appellant-husband as alleged. It has also been specifically refuted that respondent had executed any document regarding dissolution of her marriage and has also refuted that she was being counseled by any psychiatric, in furtherance any such document, if prepared, is false and fabricated and was made without her knowledge and consent. She has no disease and lived with petitioner as husband and wife. Furthermore, it has been stated that the appellant had no reason to bring this suit, therefore, it is liable to be dismissed with cost.

7. On behalf of the appellant, two witnesses have been examined, viz., Nathun Shaw P.W.-1 (uncle of the appellant) and Sanjay Kumar Shaw P.W.-2 (appellant). On the other hand, the respondent-wife, in support of her case, examined three witnesses viz., Anjali Shaw O.P.W.-1 (respondent herself), Bhola Prasad O.P.W.-2 (father of respondent) and Shyam Sundar Shaw O.P.W.-3. No document was exhibited on behalf of both the parties.



8. On the basis of pleading and submissions advanced on behalf of the parties, the learned Family Court framed following issues:

- (i) Whether the case as framed is maintainable?*
- (ii) Whether the petitioner has valid cause of action?*
- (iii) Whether the defendant committed cruelty against the petitioner and due to the said conduct petitioner has been living a deserted life since two years before filing the petition?*
- (iv) Whether the defendant has sufficient ground to refuse to give divorce against the petitioner?*
- (v) Whether the petitioner is entitled to the relief or other reliefs sought?*

9. After hearing the parties, appraising the pleading and evidence, the learned Family Court came to the conclusion that appellant-husband failed to prove that the responded-wife had committed any cruelty with the appellant-husband. Even the parents of appellant have not been examined as witnesses. There is no evidence on record to show that respondent has deserted the appellant-husband. The appellant-husband himself has committed dowry torture and abandoned the respondent-wife, therefore he cannot take advantage of his own mistake. The appellant except allegation has not adduced any document to show that respondent-wife is suffering from *schizophrenia* or any other mental disorder or any deficiency in her leg. Recording the aforesaid findings, the Family Court has



dismissed the divorce suit filed by the appellant-husband under Section 13 of the Act vide judgment dated 22.11.2018 and decree dated 04.12.2018. The appellant being not satisfied and aggrieved by the said judgment filed the present appeal.

10. Learned Counsel on behalf of the appellant has submitted that the Family Court without considering the facts and evidence on record, dismissed the Matrimonial Suit of the appellant. It is further submitted that the learned Family Court has failed to appreciate the statements of the respondent and her father made during examination and also, it has erred in considering the mental disease or disorder of the respondent-wife due to which both the parties are living separately for about 12 years, thus, it is fit case for divorce. Moreover, it is further submitted that the impugned judgment was passed without exhibiting any documentary evidence and no issue was framed with respect to whether the respondent is suffering from mental disorder i.e., *schizophrenia* or not?

11. It is further submitted that marriage was solemnized in year 2005 and they are living separately since more than 18 years having no regard to the feelings and emotions of the parties and their matrimonial bond is beyond repair and by refusing to sever that tie may lead to mental



cruelty. In para 3 of the chief and para 18 of cross-examination of the responded-wife herself stated that she lived in her *sasural* (matrimonial home) for about one year which shows that admittedly there was desertion on the part of respondent-wife. Furthermore, it was submitted that there was concealment of mental condition of respondent-wife. On the ground of aforesaid facts and circumstances, learned counsel for the appellant submitted that the impugned judgment and order passed by learned Principal Judge, Family Court, Nawada is liable to be set-aside.

12. Per contra, learned counsel for the respondent-wife submitted that the learned Family Court after appreciating the evidences and considering the material available on record has rightly dismissed petition filed by the appellant-husband. It is further submitted that the appellant-husband has failed to prove that responded-wife is suffering from any mental disease or disorder. Also, the respondent-wife has no deficiency in her leg as asserted by the appellant-husband. The appellant has also not made out his specific plea with respect to cruelty by the respondent-wife. Moreover, it is submitted that the respondent-wife intends to live with the appellant-husband as earlier they had always resided as husband and wife at Kolkata. Thus, the



impugned judgment and decree passed by the learned Family Court is justified and no interference is required by this Court.

13. It appears from the petition that application for divorce has been filed by the appellant under Section 13 (1) (ia) & (ib) of the Act i.e. on the ground of cruelty and desertion. However, the main ground taken for divorce is that respondent-wife is suffering from mental disease or disorder (*schizophrenia*) and permanent disability in her leg and due to her abnormal behavior the appellant-husband do not like to continue the matrimonial life with respondent. The learned Trial Court in para 12 of the impugned Judgment considered this aspect and held that appellant has failed to prove that respondent is suffering from the *schizophrenia* disease and her leg disability. From perusal of the record the question which this court has to decide is *whether the respondent is suffering from schizophrenia or other mental disorder of such a kind and to such an extent that the appellant cannot reasonably be expected to live with respondent-wife or not?*

14. Taking note of the evidence adduced by the appellant, it is clear that he has not proved the mental disease or disorder of the respondent-wife, as the doctor who is treating the respondent-wife has not been examined. The grounds claimed



by the appellant-husband are that the respondent-wife is of unsound mind, aggressive and has deserted the appellant have not been proved from the material available on the record.

15. In the light of discussions made above, relevant statutory provision as mentioned in Section 13(1) (ia), (ib) &(iii) of the Act which reads as under:-

“13. Divorce-

(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party

XXXXXXX

(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

XXXXXXX

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.”

16. The Hon'ble Supreme Court in the case of **Ram Narain Gupta v. Smt. Rameshwari Gupta** reported in **(1988) 4 SCC 247** held as under:-

“Section 13(1)(iii) of the Hindu Marriage Act, 1955 does not make the mere existence of a mental disorder of any degree sufficient in law to justify the dissolution of a marriage. The context in which



the ideas of unsoundness of 'mind' and 'mental disorder' occur in the section as grounds for dissolution of a marriage, require the assessment of the degree of the 'mental disorder'. Its degree must be such that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree.”

17. In the judgment cited above, the Hon'ble Supreme Court cited the decision of Calcutta High Court in **Smt. Rita Roy v. Sitesh Chandra** reported in **AIR 1982 Cal 138** in which the Division Bench of the Calcutta High Court observed as under:-

“9.each case of schizophrenia has to be considered on its own merits.

15.According to the aforesaid clause (iii), two elements are necessary to get a decree. The party concerned must be of unsound mind or intermittently suffering from schizophrenia or mental disorder. At the same time that disease must be of such a kind and of such an extent that the other party cannot reasonably be expected to live with her. So only one element of that clause is insufficient to grant a decree.”

18. The Hon'ble Supreme Court in the case of **Kollam Chandra Sekhar vs. Kollam Padma Latha** reported in **(2014) 1 SCC 225** has reiterated the same principle as discussed in **Ram Narain Gupta v. Smt. Rameshwari Gupta** (*supra*).

19. Section 13(1) (iii) of Act provides that either of



spouse can apply for dissolution of marriage in case the other spouse is of unsound mind or suffering from mental disorder. The Hon'ble Apex Court considered earlier precedents including judgment of **Ram Narain Gupta v. Smt. Rameshwari Gupta** reported in (1988) 4 SCC 247 and Judgment of **Vinita Saxena v. Pankaj Pandit** reported in (2006) 3 SCC 778, wherein the Apex Court observed as under:-

“37.in our considered view, the contents of the report as stated by the team of doctors do not support the case of the appellant that the respondent is suffering from a serious case of schizophrenia, in order to grant the decree of divorce under Section 13 (1) (iii) of the Act. The report states that the respondent, although suffering from “illness of schizophrenic type”, does not show symptoms of psychotic illness at present and has responded well to the treatment from the acute phases and her symptoms are fairly under control with medication which had been administered to her. It was further stated that if there is good compliance with treatment coupled with good social and family support, a schizophrenic patient can continue their marital relationship. In view of the aforesaid findings and reasons recorded, we have to hold that the patient is not suffering from the symptoms of schizophrenia as detailed above.”

20. In view of the above pronouncement, it appears that the ground of a spouse suffering from *schizophrenia*, by itself is not sufficient for grant of divorce under Section 13 (1) (iii) of the Act as it may involve various degree of mental



illness. The law provides that a spouse in order to prove a ground of divorce on the ground of mental illness, ought to prove that the spouse is suffering from a serious case of *schizophrenia* which must also be supported by medical reports and proved by cogent evidence before the Court that disease is of such a kind and degree that husband cannot reasonably be expected to live with wife.

21. Section 13(1)(iii) of the Act does not make mere existence of a mental disorder of any degree sufficient in law to justify dissolution of marriage. The contents in which the ideas of unsoundness of mind and mental disorder occur in section as ground for dissolution of a marriage, require assessment of degree of mental disorder and its degree must be such that spouse seeking relief cannot reasonable be expected to live with the other. All mental abnormalities are not recognized as grounds for grant of decree. The burden of proof of existence of requisite degree of mental disorder is on the spouse who bases his or her claim on such a medical condition.

22. In the present case, the appellant has made bald allegation in the Matrimonial Suit that respondent-wife is suffering from mental illness and her behavior is abnormal but he has failed to adduce any documentary evidence thereto. The



appellant did not produce the medical documentary and oral evidence of the doctor who is treating *schizophrenia* of the respondent-wife. Also, the appellant-husband has also failed to prove the defect in leg of the respondent as she freely moved before learned Family Court. In this way, all the allegation made by the appellant in the divorce petition lacks ingredients of Section 13(1) (ia) and (ib) of the Act. From perusal of evidence available on record, it is evident that marriage took place in the year 2005 and appellant himself made allegation that her behavior is unusual and she is suffering from mental sickness as since the beginning, she made unusual behavior like attacking the appellant-husband by spoon or knife, etc. The appellant has failed to produce any documentary evidence to substantiate his claim that the respondent-wife suffers from *schizophrenia* or any leg deficiency. Her free movement before the Family Court contradicts any claim of incapacitation. Additionally, no specific plea regarding cruelty has been made, and vague allegations cannot constitute a ground for divorce. Furthermore, the appellant himself abandoned the respondent-wife cannot take advantage of his own wrong to seek relief. The appellant-husband having deserted the responded-wife, cannot claim divorce on grounds of cruelty or other allegations when he



himself is at fault.

23. Coming to facts of the present case and considering above pronouncement and legal position, findings of learned family court recorded have been examined wherein Family Court has opined that husband has failed to prove the factum of *schizophrenia*. After considering the entire evidence available on record, this court has no hesitation in accepting findings and approach of learned Family Court, which appears to be valid. No sufficient material was brought on record by husband to prove that respondent-wife is suffering from *schizophrenia* of such a kind and degree, which may be accepted for dissolution of marriage in terms of Section 13(1) (iii) of the Act. Therefore, in considered opinion of this Court, finding of the family Court in this regard is just, proper, legal and does not suffer from any perversity and does not call for interference by this Court in this Appeal.

24. On all counts keeping in view the discussions made in foregoing paragraphs, we find that there is no merit in the present appeal warranting any interference in the impugned judgment. The learned Family Court has rightly dismissed the matrimonial case of the appellant-husband seeking divorce. The present miscellaneous appeal is **dismissed** accordingly,



affirming the impugned judgment passed by the learned Family Court.

25. Interlocutory Application(s), if any, stand disposed of.

(Sunil Dutta Mishra, J)

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CAV DATE	18.02.2025
Uploading Date	07.04.2025
Transmission Date	NA

