

12.12.2025.
Court No.13
Item No. 11
ap

F.A. 40 of 2005
With
I.A. No. CAN 2 of 2017 (Old CAN 2000 of 2017)

Sri Lalu Roy
Versus
Smt. Kabita Roy

Mr. Chittapriya Ghosh,
Mr. Sabyasachi Roy Chowdhury,
Ms. Priyanka Saha.

...For the appellant.

Mr. Amales Ray, ld. Sr. Advocate,
Ms. Mousumi Bhowal,
Mrs. Anjana Banerjee,
Mr. Ishan Bhattacharya,
Mr. Subhankar Banerjee.

...For the respondent.

1. This Court on 17th November, 2025 had made observations to the effect that the parties have been living separately for about 24 years.

2. Counsel for the opposite party/wife submits that initially an amount of Rs.1,200/- was granted under Section 125 of the Code of Criminal Procedure towards maintenance of his client and/or towards the upbringing of the son. He further submits that the said amount was enhanced subsequently to Rs.5,000/- for the opposite party/wife and Rs.3,000/- until the son became the major. He also submits that the said order has been stayed by the learned District Judge.

3. The Hon'ble Supreme Court of India in the case of **Rakesh Raman – Vs. – Smt. Kavita** reported in **2023(3) SCR 552** which referred to an earlier decision

of the Hon'ble Supreme Court of India in the case of ***Samar Ghosh – Vs. – Jaya Ghosh*** reported in **(2007) 4 Supreme Court Cases 511.**

4. It was held in the said case that 24 years of separate living, would amount to irretrievable break down of marital relations apart from cruelty. The cruelty becomes an irrelevant consideration, given the long period of 24 years of separation. Such separation assumes paramount importance, from which there is an inference of irretrievable break down of marital relations.

5. Learned Counsel appearing on behalf of the opposite party/wife submits that his client's son is now grown up and is working and he is desirous of seeking his parents live together.

6. Admittedly, the son has grown up without his father and under the care of the mother and her family. The desire of a son to see the parents living together cannot be a ground for restoration of marital relationship.

7. In so far as the quantum of permanent alimony is concerned that this Court had requested the parties to negotiate, it appears that such negotiations have failed.

8. This Court, in the interest of justice, deems that a sum of Rs.5,00,000/- shall be the total quantum of alimony payable by the appellant to the opposite party/wife. The aforesaid sum has been arrived at

considering the fact that the appellant himself is a retired person and was working in a small Private Firm engaged in the business of manufacture of paper files and like stationery. The appellant/husband is receiving pension under the NPS Scheme.

9. There shall be a decree of divorce between the appellant and the opposite party/wife which shall take effect upon payment of the aforesaid sum of Rs.5,00,000/- as permanent alimony by the appellant to the opposite party/wife.

10. Upon payment of the aforesaid amount of Rs.5,00,000/-, the maintenance proceedings before the Trial Court shall cease and shall stand automatically dismissed.

11. Any dues payable to the maintenance already ordered by the First Court under Section 125 of the Code of Criminal Procedure shall also become payable by the appellant to the opposite party/wife.

12. With the aforesaid observations, the impugned judgment and order dated 9th July, 2004 passed by the learned 13th Additional District Judge, South 24 Parganas at Alipore in Matrimonial Suit No. 44 of 2001 shall stand set aside.

13. F.A. 40 of 2005 is allowed and disposed of.

14. In view of disposal of the appeal itself, the connected application being CAN 2 of 2017 shall also stand disposed of.

15. There will be no order as to costs.

16. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)