

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Supratim Bhattacharya

FAT No. 83 of 2022

Sri Netai Golder
Vs.
Smt. Sonali Golder

For the appellant : Mr. Satyam Mukherjee,
Ms. Sayani Ahmed,
Mr. Purnendu Shekhar Ghosh,
Mr. Saibal Rakshit, Advs.

Heard on : December 11, 2025.

Judgment on : December 11, 2025.

Sabyasachi Bhattacharyya, J.:

1. It appears that by previous orders, administrative notices were directed to be served afresh on the sole respondent. As per the office report dated August 19, 2025, no service return had yet been received by the department with regard to such service.

2. However, learned counsel for the appellant rightly points out that vide order dated August 29, 2022 passed in connection with CAN 1 of 2022 in respect of the self-same appeal, it was recorded by a coordinate Bench that the report filed by the department showed that administrative notice could not be served upon the respondent as the postal envelope was returned with the endorsement "insufficient address". It was further recorded that strangely, the earlier notice sent by the appellant to the same address was served upon the respondent, as would appear from the report filed by the postal department and disclosed in the affidavit of service filed in court on that date with regard to earlier service. Under such circumstances, the coordinate Bench recorded that it considered that the service was complete.
3. Hence, we find that further insistence of service of administrative notice is redundant, in view of the order dated August 29, 2022, which shows that despite service having been concluded once, the respondent was not represented at any point of time. It is, thus, evident that the respondent is

deliberately avoiding service and/or appearance before this court.

4. Under such circumstances, the appeal is taken up for hearing *ex parte*.
5. The present appeal arises out of the dismissal of the appellant's suit for declaration of the marriage between the parties to be a nullity under Section 12, read with Section 5, of the Hindu Marriage Act, 1955 (HMA), alternatively, divorce on the ground of cruelty under Section 13(1)(ia) of the HMA.
6. Both sides led evidence. On behalf of the plaintiff/appellant/husband, the appellant himself as well as his father adduced evidence, respectively as PW1 and PW2, whereas, on behalf of the respondent/wife, the wife deposed as DW1 and the father of the wife deposed as DW2.
7. The learned Trial Judge, after narrating the respective cases of the parties, dismissed the suit primarily on the ground that as per the allegation of the plaintiff/appellant, the respondent/wife was treated for her mental ailment in the Pavlov Hospital; however, it appeared from the OPD (Outdoor Patient Department) ticket of the said hospital, marked as Exhibit 1,

that Thursday, on which the visit allegedly took place, was not a visiting day of the treating doctor, being one Dr. Biswajit Dey.

8. The learned Trial Judge also observed that the evidence of the husband and his father were not corroborated by the neighbours or the local people and that the female members of adjoining houses, who were present on the alleged occasions of attempted assault on the husband by the wife, were not cited as witnesses.
9. The learned Trial Judge went on to observe that the plaintiff had to prove his case by standing on his own leg, whereas the plaintiff/appellant had failed to do so.
10. Learned counsel for the appellant argues that the learned Trial Judge, although mechanically narrating all the evidence, did not advert to the specific admissions of the wife in her cross-examination.
11. Learned counsel takes us through the cross-examination of the wife, particularly where she had stated that she was medically treated at the R. G. Kar Medical College & Hospital but shall not bring documents from the said hospital by filing any application in the suit. More importantly, in the later part of

her cross-examination, the defendant/respondent/DW1 admitted that she had seen the documents which had been filed by the plaintiff/husband and did not have any objection against the said documents. The said documents, *inter alia*, included medical papers indicating the treatment of the defendant/wife in different hospitals in respect of her psychiatric problems.

12. The wife, as DW1, in her cross-examination, crucially admitted that she had never visited R. G. Kar Medical College for her treatment. The said admission was contrary to the specific allegation made by the wife as well as her father, as DW2, to the effect that she was tortured during pregnancy and for such purpose was taken to the R. G. Kar Medical College & Hospital. DW2, the father of the respondent/wife, also furnished certified copies of a seizure list and First Information Report as well as the complaint from which the same arose, which documents were marked as Exhibits, alleging that torture was meted out to the respondent/wife by the appellant during her pregnancy, which was the cause of her being taken to the R.G. Kar Hospital.

13. It is argued that the said allegation did not find place in the written statement, and, moreover, was rebutted by the wife herself in her cross-examination by admitting that she never visited R.G. Kar Medical College. It is argued that in view of the premise of the said allegation being demolished by the wife/DW1 herself, the said baseless and false allegation against the husband itself tantamounts to cruelty.
14. Learned counsel also relies on the medical papers exhibited by the husband, which were discarded by the learned Trial Judge on the ground that the concerned doctors were not brought as witnesses, contrary to the admission of the wife that she did not have any objection to the documents submitted by the husband. From the said medical papers, it is argued that it is evident that the wife was consistently being treated for psychiatric problems.
15. Learned counsel cites a judgment of a learned Single Judge of the Madras High Court in the matter of *A.R. Subramanian vs. Amutha*, reported at *2018 SCC OnLine Mad 14222*, for the proposition that there is no straight jacket formula to apply for

mental cruelty and each case depends on its own facts and must be judged on such facts.

16. Learned counsel also cites *Rakesh Raman vs. Kavita* reported at (2023) 17 SCC 433 for the proposition that if the marriage between the parties has broken down irretrievably, the same itself tantamounts to cruelty by both parties to each other and comes within the ambit of Section 13(1)(ia) of the HMA.
17. Learned counsel, in his usual fairness, also cites an unreported judgment of the Supreme Court in the matter of *Rinku Baheti vs. Sandesh Sharda*, where the judgment of *Rakesh Raman* was considered and the Hon'ble Supreme Court observed that in various cases the said court had granted divorce decrees on the ground of irretrievable breakdown of marriage, but under Article 142 of the Constitution of India. However, it is argued that even in *Rinku Baheti (supra)*, the Hon'ble Supreme Court did not deviate from the ratio laid down in *Rakesh Raman (supra)*.
18. Learned counsel lastly submits that since admittedly the respondent/wife was taken away by her family on January 20, 2011, i.e. within a few months after the marriage took place on

March 10, 2010, and the parties have never lived together ever since, it is evident from the facts of the case that the marriage between the parties has irretrievably broken down.

19. Thus, relying on *Rakesh Raman (supra)*, learned counsel submits that a divorce decree ought to be granted by this Court.
20. Upon a perusal of the materials on record, we find certain unique features of this case.
21. First, the written statement of the wife did not contain any specific allegation against the plaintiff/husband with regard to any torture being meted out to her during her pregnancy, for which she had to be taken to the R. G. Kar Medical College & Hospital. Such allegation, for the first time, came up in the evidence, more specifically in the evidence of DW2, the father of the respondent/wife, who also exhibited documents to show that complaints were lodged with the Panchayat authorities as well as the police on the basis of such alleged torture.
22. However, from the written statement of the wife, we find merely an omnibus and cursory mention of torture being inflicted upon the respondent/wife on the ground that she was

forced to bring more money in cash, after a previous pressure being put on the respondent wife for a sum of Rs.25,000/- in cash, gold ornaments etc. However, such allegations were not specifically corroborated in the respondent wife's evidence.

23. From the narrative recorded in the impugned judgment itself, we find that the wife was being consistently taken for medical treatment to various hospitals.
24. For example, on September 14, 2010, the plaintiff husband took the defendant wife to the Bongaon Hospital, which treated the defendant/ respondent, and lastly on October 12, 2010, it referred the defendant to a psychiatrist of the Barasat District Hospital, where she was taken on October 13, 2010 for her treatment. The said hospital wrote down the mental illness as 'depression'. Thereafter, the Barasat Hospital apparently referred the defendant respondent to the Medical College and Hospital at Calcutta where, in the description of the mental illness of the defendant, the terms "aggressive" and "sleeplessness" were written. Also, the Pavlov Hospital, on January 17, 2011, wrote down the description of mental illness as "aggressive".

25. Although the learned Trial Judge discarded the evidence of such treatment by choosing specifically the documents of the Pavlov Hospital on the ground that the doctor regularly treating the defendant respondent was not visiting on the relevant day, it may very well be that on a particular date, the doctor usually treating the respondent was not there but the respondent was treated all the same by some other doctor. Be that as it may, even without going into such issue, what comes out from the documents exhibited by the husband is that the wife was being regularly treated for her psychiatric problems and was diagnosed to have aggression.
26. The documents produced by the husband have not been objected to categorically by the defendant/respondent/wife, who stated specifically in her cross-examination, "I do not have any objection against the said documents", after having stated that she had seen the documents filed by her husband.
27. Taken in conjunction, the documentary evidence of the husband, coupled with the admission of the wife in her cross-examination, corroborates the veracity of such medical documents, at least to show that the wife was having some

psychiatric issues, including aggression. The said ingredient of aggression was also corroborated both by PW 1, the appellant, as well as his father, the PW 2, by stating about two specific incidents of cruelty meted out by the wife against the appellant.

28. On September 02, 2010, the defendant allegedly assaulted the plaintiff husband with a bamboo stick and on September 08, 2010, the defendant wife tried to stab the plaintiff with a knife.
29. The learned Trial Judge did not lend much credence to such allegation on two-fold grounds, first that there was no corroborative evidence by the neighbours and secondly, that the husband or his family did not lodge any complaint before any authority or proved that he was medically treated.
30. However, the mere factum of attempted assault by the wife with a bamboo stick and an attempt to stab the plaintiff with a knife does not necessarily entail that an injury to such an extent would be suffered by the husband which would require medical intervention worth the name, particularly in view of the specific corroborative evidence of PW 1 and PW 2 that due to intervention of the family members of the husband, the said

attempts did not reach culmination by seriously injuring the husband.

31. Such acts of cruelty have not been dispelled in evidence by the respondent wife. Rather, it is not understandable as to why the corroborative evidence of P.W.1 and P.W. 2 was disbelieved by the learned Trial Judge without any rebuttal evidence specifically coming from the wife's side.
32. It is common knowledge that what happens within the precincts of a particular domestic household might not reach the entire neighbourhood, sufficient to rope in other neighbours as witnesses to corroborate such incidents.
33. That apart, the fact that PW 2 was the father of the plaintiff does not *ipso facto* disqualify PW 2 as a relevant witness, if his deposition remains unshaken in cross-examination, which is the case in the present *lis*.
34. Read in conjunction with the above, we also cannot overlook the fact that categorical allegations were made by DW 2 in his evidence as well the wife, tangentially, in her cross-examination to the effect that the husband/plaintiff had assaulted the wife with kicks and blows during her pregnancy

to such an extent that the foetus of her baby was destroyed and she had to be taken for treatment to the R.G. Kar Medical College and Hospital. However, not a single document was furnished from the side of the defendant/respondent to corroborate her visit and treatment on such occasion before the R.G. Kar Medical College and Hospital. On the contrary, such allegations were demolished by the wife herself, as DW 1, in her cross-examination when she stated that she never visited the R.G. Kar Medical College and Hospital.

35. Thus, such uncorroborated allegations made in the evidence beyond the pleadings, although even otherwise cannot be taken as gospel truth, go on to comprise elements of cruelty meted out by the respondent wife against the husband by making false and baseless allegations. Although serious allegations were levelled against the husband regarding him having assaulted his wife mercilessly during her pregnancy, which would otherwise be cruelty of a high order, the said factum remained completely unproved in the evidence. Rather, the wife even denied her having ever visited the R.G. Kar Hospital for such treatment.

36. From the complaints lodged with the police authorities, which were exhibited, particularly Exhibit-B, which is the complaint on the basis of which an FIR was lodged against the plaintiff, we find that serious allegations of the husband having beaten up the wife severely, *inter alia*, by kicking her on her stomach, which resulted in the foetus being lost as well as the husband having forcibly administered sleeping pills to the defendant respondent, upon which she allegedly came to the verge of death and approached her neighbours who took her to the hospital, were levelled.
37. However, not a single document, nor the oral evidence of any neighbor was adduced in evidence to corroborate such grave allegations of cruelty of the first order against the plaintiff husband, which itself tantamounts to cruelty against the husband and would make it impossible for the husband to live with the wife for the rest of his life, which is a cardinal yardstick of assessing cruelty under Section 13(1)(ia) of the HMA.
38. The proposition laid down in *A.R. Subramanian (supra)* by the learned Single Judge of the Madras High Court is well-settled and has been reiterated in all the relevant judgments of the

Hon'ble Supreme Court, to the effect that there is no straight jacket formula to apply for mental cruelty and each case depends on its own facts and has to be judged on such facts. The prevalent legal position is that vague concepts of cruelty cannot be imported by the Court on the premise of its own notions but the Court has to judge the parties who are before it to ascertain whether the acts complained of amount to cruelty coming within the ambit of Section 13(1)(ia) of the HMA. In the present case, in view of the above discussions, we are of the opinion that the appellant/husband proved sufficient cruelty by the respondent wife, if not otherwise, by dint of her concocted and baseless allegations against the husband, to be entitled to a decree for divorce on such ground alone.

39. An interesting question has been posed before us as to whether irretrievable breakdown of marriage can now be treated to be a component of cruelty under Section 13(1)(ia) of the HMA.
40. Although in most of the judgments where the Hon'ble Supreme Court has granted a decree of dissolution of marriage by divorce on the ground of irretrievable breakdown, the Hon'ble

Supreme Court resorted to Article 142 of the Constitution of India, which empowers the Hon'ble Supreme Court to pass any decree or order for the ends of justice and to do complete justice between the parties, fact remains that in *Rakesh Raman (supra)*, also rendered by a two-Judge Bench, the Hon'ble Supreme Court, sitting in a two-Judge Bench, deviated from such established norm and touched the issue as to whether irretrievable breakdown can itself tantamount to cruelty coming within the purview of Section 13(1)(ia). We choose to quote the observations of the Hon'ble Supreme Court itself in that regard in the said report, particularly paragraphs 22 and 23 of the same:

“22. Irretrievable breakdown of a marriage may not be a ground for dissolution of marriage, under the Hindu Marriage Act, but cruelty is. A marriage can be dissolved by a decree of divorce, inter alia, on the ground when the other party “has, after the solemnization of the marriage treated the petitioner with cruelty”.

23. In our considered opinion, a marital relationship which has only become more bitter and acrimonious over the years, does nothing but inflict cruelty on both the sides. To keep the façade of this broken marriage alive would be doing injustice to both the parties. A marriage which has broken

down irretrievably, in our opinion spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is therefore a ground for dissolution of marriage under Section 13 (1) (i-a) of the Act.”

41. From the above statement of law by the Hon'ble Supreme Court, it is clear that the Hon'ble Supreme Court categorically observed that a marriage which has broken down irretrievably spells cruelty to both the parties as in such a relationship each party is treating the other with cruelty. Crucially, the Hon'ble Supreme Court observed thereafter that it is therefore a *ground for dissolution of marriage under Section 13(1)(ia) of the Act* (emphasis supplied).
42. Insofar as the said statement of law is concerned, the same, ex facie, was not an exercise under Article 142 of the Constitution of India but a categorical law laid down by the Apex Court of the country which has the force of law under Article 141 of the Constitution of India, not stating that irretrievable breakdown, on its own footing, is a ground which has to be read into the statute but incorporating the component of irretrievable breakdown as an ingredient of cruelty which, in

turn, is a ground for divorce under Section 13(1)(ia) of the HMA.

43. Thus, although it was not directly held that irretrievable breakdown, which is not in the statute book, is a standalone ground of divorce, the same was, by incorporation within the notion of cruelty, made a ground under Section 13(1)(ia) of the HMA in *Rakesh Raman (supra)*.
44. In a subsequent judgment of a Bench of similar strength in *Rinku Baheti vs. Sandesh Sharda (supra)*, the Hon'ble Supreme Court discussed a string of judgments where the Hon'ble Supreme Court had exercised its powers under Article 142 of the Constitution of India to grant divorce merely on the ground of irretrievable breakdown of marriage. However, as is well-settled, an exercise under Article 142 of the Constitution of India cannot be equated with law laid down under Article 141.
45. Let us now examine, in such backdrop, how *Rakesh Raman (supra)* was dealt with in *Rinku Baheti (supra)*.
46. In paragraph no. 8.1 of the latter judgment, the Hon'ble Supreme Court observed that the exercise of power by the

said Court under Article 142 (1) to grant a decree of divorce and the factors to be considered while doing so have varied with facts and circumstances of each case.

47. Thereafter, the Hon'ble Supreme Court, in *Rinku Baheti (supra)*, stated that in the case of *Rakesh Raman (supra)* it was observed "as follows" and thereafter quoted certain paragraphs of the said judgment.
48. After quoting such excerpt of the said judgment, the Hon'ble Supreme Court, in *Rinku Baheti (supra)*, considered several other judgments. It is to be noted that while referring to all the other judgments, including *Vikas Kanaujia vs. Sarita, reported at (2024) 7 SCR 933*, *Prakashchandra Joshi's case, reported at (2024) 1 SCR 697*, *Vineet Taneja vs. Ritu Johari's case, etc.*, the Hon'ble Supreme Court specifically observed that dissolution of marriage was granted in those cases under Article 142(1) of the Constitution of India. Conspicuously, such an observation was not made with regard to the ratio laid down in *Rakesh Raman (supra)*.
49. In the ultimate analysis, after considering all the previous judgments, the Hon'ble Supreme Court, in *Rinku Baheti*

(*supra*), held that there remains no doubt that the said Court has the power to grant a decree of divorce on the ground of irretrievable breakdown of marriage by invoking its powers under Article 142 of the Constitution of India. It was further observed that unlike a divorce proceeding before the Family Court, where the court is bound by the fault-divorce provisions contained in the HMA and other allied legislations and thus has to necessarily appreciate the evidence to give a finding about whether a party has indeed committed the alleged matrimonial offence or not, the Hon'ble Supreme Court, while dealing with an application seeking divorce under Article 142(1) of the Constitution of India, can depart from the said procedure as well as the substantive laws by acting as a problem solver and balancing out the equities between the conflicting claims.

50. Thus, the question which fell for consideration before the Hon'ble Supreme Court in *Rinku Baheti (supra)* was whether the Hon'ble Supreme Court has power under Article 142(1) of the Constitution of India to depart from the usual established procedure of proving the facts of a case and grant a decree of

divorce as a problem solver balancing out equities, under its powers within the contemplation of Article 142(1) of the Constitution of India. The Hon'ble Supreme Court, however, in *Rinku Baheti (supra)*, was not deciding the question as to whether divorce can be granted on the ground of cruelty by incorporating irretrievable breakdown as a component of cruelty within the contemplation of Section 13(1)(ia) of the HMA, thus, merging the said ground within cruelty, which is a valid ground of divorce under the said Act.

51. Moreover, the Hon'ble Supreme Court did not either distinguish or overrule or deviate from the ratio laid down in *Rakesh Raman (supra)*, as discussed above, while rendering the judgment in *Rinku Baheti (supra)*. As such, it cannot be deduced by any stretch of imagination that the Hon'ble Supreme Court, in the *Rinku Baheti (supra)* judgment, distinguished or overruled the specific ratio laid down in *Rakesh Raman (supra)*.

52. It is also well-settled that a judgment operates as a precedent only in the particular factual matrix of the said case and only in the context of what has actually been decided on

the facts of the case and not something which can be deduced in a secondary or tertiary manner from the ratio laid down in such judgment.

53. Viewed from such perspective, in *Rinku Baheti (supra)*, the only question which fell for consideration was, while hearing a transfer petition filed by the petitioner/ wife under Section 25 of the Code of Civil Procedure, whether the Court can exercise its powers under Article 142(1) of the Constitution of India to grant a decree of divorce between the parties.
54. Hence, on a comprehensive assessment of the above judgments, we are of the clear opinion that the Hon'ble Supreme Court, in *Rakesh Raman (supra)*, categorically incorporated irretrievable breakdown as an ingredient of cruelty, which is a ground of divorce under Section 13(1)(ia) of the HMA, which proposition of law still holds good.
55. In the facts of the present case before us, the parties are admittedly living separately for more than 14 years from January 20, 2011. The parties do not have any issue, which might have been a consideration as a bond which ought not to have been broken otherwise.

56. That apart, there is nothing on record to indicate that throughout the pendency of the proceedings, either of the parties made any endeavour to resume conjugal relationships with each other.
57. In the absence of the same, we cannot but hold on the facts of the case that the marriage between the parties has broken down irretrievably, which is a component of cruelty, putting an additional edge to the ground of cruelty otherwise alleged by the husband.
58. In view of the above, we are of the opinion that the learned Trial Judge erred in law in dismissing the divorce suit of the plaintiff/appellant on the ground of cruelty.
59. Accordingly, FAT 83 of 2022 is allowed *ex parte*, thereby setting aside the impugned judgment and decree dated April 21, 2018 passed by the learned Additional District and Sessions Judge, Fast Track Fourth Court at Barasat, District: North 24 Parganas in Matrimonial Suit No. 107 of 2011. We hereby decree the said suit, thereby granting a decree of divorce in favour of the appellant/husband against the respondent/wife on the ground of cruelty.

60. There will be no order as to costs.
61. A formal decree be drawn up accordingly.
62. Interim order, if any, stands vacated.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Supratim Bhattacharya, J.)

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(TN/SSS)