

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

FA 112 of 2021
IA No: CAN 2 of 2024

Pranab Kumar Khan @ Pranab Khan
Vs.
Smt. Mousumi Khan

For the appellant : Mr. D. K. Adhikari,
Mr. Samir Adhikari,
Mr. Debdip Adhikari,
Mr. Kousik Sahoo

For the respondent : Mr. Arijit Dey

Heard on : 01.05.2025

Judgment on : 01.05.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred by the plaintiff/husband against the judgment and decree of the learned Trial Judge whereby the husband's divorce suit on the ground of cruelty and desertion was dismissed.
2. Learned counsel for the appellant/husband submits that the respondent/wife, in her written statement, levelled serious allegations of illicit relationship of the husband with another lady. In her

evidence, she failed to corroborate the same by way of any other witness than herself.

3. Secondly, it is submitted that the husband had obtained a decree of judicial separation as long back as on November 21, 2006. The present suit for divorce was filed in 2015. During these long years, cohabitation between the parties never resumed. It is submitted that the husband has been attempting to bring back the wife to reside with him but without any result. Learned counsel points out to the pleadings and the evidence of the husband adduced in the suit and contends that the husband has been residing in several places, first in a rented accommodation in Kharagpur, thereafter at Bhawanipur and then at Malancha. However, since the husband was not permitted to enter into the Malancha rented accommodation by the respondent/wife, he shifted to another rented accommodation at Kharagpur, which is also his workplace.
4. Learned counsel submits, by placing reliance on the judgment of *Samar Ghosh vs. Jaya Ghosh*, reported at (2007) 4 SCC 511, that if the matrimonial tie between the parties has broken beyond repair, the marriage should be dissolved.
5. Learned counsel for the appellant also cites *Sukhendu Das vs. Rita Mukherjee*, reported at (2017) 9 SCC 632 for the proposition that in case of irretrievable breakdown of a marriage, where the marriage is totally unworkable, emotionally dead and beyond salvage, the same should be dissolved by a decree of divorce.

6. Learned counsel also places reliance on the evidence of the husband and submits that the plaint case has been sufficiently corroborated thereby. The evidence of OPW2, the father of the respondent/wife, was hearsay evidence, it is argued.
7. Learned counsel appearing for the respondent/wife contends that there is no explanation as to what prevented the husband from filing the divorce suit for a long period of nine years between November 21, 2006, when the decree for judicial separation was passed, and the year 2015, when the divorce suit was filed.
8. It is submitted that the wife categorically stated in her evidence that the husband used to come every weekend to the matrimonial home, where the respondent/wife has been residing all along, and used to live with the respondent as husband and wife.
9. It is further argued that the OPW2, the father of the respondent/wife, also supported her case in his evidence.
10. Insofar as the allegation of illicit relationship is concerned, learned counsel submits that it is difficult to produce witnesses to prove such relationship.
11. It is further contended by learned counsel for the respondent/wife that the very fact that the husband waited for so long to file the divorce suit as well as that the wife has been residing in the matrimonial home all along, go on to show that the conjugal relationship between the parties was never severed.

12. During arguments, this Court gave notice to both parties that it might be relying on the judgment of *Rakesh Raman vs. Kavita*, reported at 2023 SCC OnLine SC 497, in the context of the present suit.
13. Learned counsel for the husband submits that the said judgment enures in favour of the proposition sought to be advanced by the husband.
14. Learned counsel for the respondent/wife submits that in the said reported judgment, the conjugal life between the parties was broken for a long period of 25 years and there was no issue of the marriage. It is also submitted that in the reported judgment, the relationship between the parties had ended.
15. However, the facts of the said case, it is submitted, are different from the present. It is reiterated that since the wife has been residing in her matrimonial home, the ratio laid down in *Rakesh Raman* (supra) case is not applicable here.
16. After a careful perusal of the impugned judgment and upon hearing learned counsel for the parties, we find certain cardinal features involved in the matter.
17. First, in the written statement of the wife, she levelled serious allegations as to alleged illicit relationship of the appellant/husband with a lady who was working in the Diesel POH shop of Kharagpur Railway and worked as a *khalasi*.
18. Such specific allegation was reiterated in the evidence of the wife as well. However, despite such specific details being furnished about the

alleged illicit relationship, it is surprising that the wife failed to produce even a single witness from the concerned locality, the workplace of the appellant/husband and/or from the neighbourhood where the alleged illicit relationship fructified, in order to corroborate such serious allegation against the appellant/husband.

19. The OPW2, being the father of the wife, is obviously an interested witness. Even if we proceed on the premise that the OPW2 was not biased in favour of his daughter, paragraph no.8 of the examination-in-chief of the OPW2 categorically mentions that his daughter (the present respondent-wife) came to know that there was an illicit relationship between the appellant/husband and the said lady. Thus, his knowledge of the alleged relationship was derived from his daughter, the respondent/wife, and was thus hearsay.
20. It has also been repeated by OPW2 that gradually the appellant started to stay with the said lady at her quarter.
21. Apart from the nature of the allegation indicating that the said evidence was hearsay insofar as the purported illicit relationship is concerned, in the event the respondent and her father were so sure that the appellant used to stay with the lady in an amorous affair in the quarter of the said lady, it defies logic as to why not a single soul was brought as witness from the said neighbourhood to corroborate such serious allegations. In the absence of any concrete proof of the grave allegation of illicit relationship, the said allegation itself takes the shape of cruelty.

22. That apart, the husband, both in his pleadings and in his evidence, reiterated that he has been living outside his parental home during the entire relevant period.
23. Although the respondent/wife has been residing in her “matrimonial home”, meaning thereby the parental house of the husband, since the appellant/husband himself did not reside there, mere living in the matrimonial home could not signify automatically that the respondent/wife was living with her husband in conjugal relationship there.
24. Rather, the respondent/wife states in her evidence that the husband used to come every weekend, lived a conjugal life with the respondent during such stay, and used to take the son of the parties to the doctor.
25. However, if the respondent/wife has actually been residing in the matrimonial home all along, it is unexplained as to why not a single witness, not even a domestic help or a neighbour or any member of her matrimonial family could be brought as witness to corroborate the fact that the husband used to live with the respondent/wife in conjugal relationship during the weekends. In the absence of any such witness, we cannot but draw adverse inference in that regard against the contention of the wife regarding the husband having lived in conjugal relation with the wife.
26. Thus, seen in proper perspective, after the decree of judicial separation passed on November 21, 2006, we do not find any concrete

evidence on record or independent corroborative witness to prove that the respondent/wife ever made any effort to come and reside with her husband, when he was living in one rented accommodation or the other away from his parental home, and/or that the spouses lived together at any point of time as husband and wife after the said judicial separation decree was passed in the year 2006.

27. Although the appellant/husband has relied on *Sukhendu Das's Case*, we are unable to accept the said decision as a binding precedent since the said judgment was rendered under the powers enjoyed by the Supreme Court under Article 142 of the Constitution of India, which benefit the High Courts do not have. It is well-settled that judgments passed by the Supreme Court have binding effect under Article 141 of the Constitution of India if the law of the land is laid down therein. Article 142, as opposed thereto, deals with the special powers of the Supreme Court to passing any order to do complete justice between the parties. Thus, judgment in *Sukhendu Das*, which was *ex facie* rendered under Article 142 of the Constitution, cannot be taken to be a binding precedent in the present context.
28. Rather, in *Samar Ghosh* (supra), the Supreme Court, in paragraph no.101(xiv), held that mental cruelty includes a situation where there has been a long period of continuous separation and it may be fairly concluded that the matrimonial bond is beyond repair. The marriage in such case becomes fiction, though supported by a legal tie. By refusing to sever that tie, the law in such cases, it was held, does not

serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, the Supreme Court held, it may lead to mental cruelty by itself.

29. Also, in *Rakesh Raman* (supra), which we have referred to above, the Supreme Court categorically observed that it is not possible in every case to pinpoint to an act of “cruelty” or blameworthy conduct of the spouse. The nature of the relationship, the general behaviour of the parties towards each other, or long separation between the two are relevant factors which a court must take into consideration. The court, while holding so, also took into consideration the ratio laid down in *Samar Ghosh* (supra).
30. Upon a detailed consideration of the governing legal principles in the context of mental cruelty, it was held by the Supreme Court in *Rakesh Raman* (supra) that in a given case such as the one at hand before the court in that case, where the marital relationship had broken down irretrievably, with multiple court cases and long separation and absence of cohabitation between the parties, then continuance of such marriage would only mean giving sanction to cruelty which each spouse is inflicting on the other. The Supreme Court further observed that dissolution of the said marriage would affect only the two parties as there was no child from the wedlock.
31. In the present case, most unfortunately, the child of the parties has met his demise.

32. That apart, we find that the interesting ratio laid down for the first time in *Rakesh Raman (supra)* finds its echo in the present case.
33. For the first time, in *Rakesh Raman (supra)*, in continuance of the cue left in *Samar Ghosh (supra)*, the Supreme Court categorically brought irretrievable breakdown of marriage between the parties within the conspectus of the concept of cruelty, which is a ground of divorce under the Indian Marriage Laws.
34. The Supreme Court, in *Rakesh Raman (supra)*, held that if the marriage is irretrievably broken down between the parties and there is no conjugal relationship between the parties worth the name, it tantamounts to cruelty by the spouses against each other and if such a matrimonial tie is not severed, it would tantamount to more cruelty between the parties.
35. In the present case as well, in view of our assessment of the evidence as recorded above, we find that the marriage between the parties has irretrievably broken down. Moreover, since over a long period of nine years after the decree of judicial separation was passed on November 21, 2006 the spouses failed to reconcile with each other by resuming a harmonious conjugal life, such fact itself affords a ground for divorce to the appellant/husband.
36. The respondent/wife has failed to prove *animus revertandi* on her part to resume the conjugal life with her husband, the appellant herein.

37. In such view of the matter, we are of the opinion that the learned Trial Judge failed to take into consideration and advert to the components discussed above and erroneously refused to grant a decree of divorce.
38. Accordingly, FA 112 of 2021 is allowed on contest without costs, thereby setting aside the impugned judgment and decree dated February 26, 2021 passed by the learned Additional District Judge-in-Charge, in charge of Additional District Judge (Re-designated Court), Paschim Medinipur in Matrimonial Suit No. 731 of 2015 (CIS Matrimonial Suit No. 569 of 2015). Accordingly, we grant a decree of divorce in favour of the plaintiff/appellant and against the respondent/wife, thereby dissolving the marriage between the parties.
39. However, we make it clear that nothing in the above observations shall prevent the respondent/wife from taking out an appropriate application for permanent alimony under Section 26 of the Hindu Marriage Act. If such an application is filed, the same shall be dealt with independently on its own merits.
40. A formal decree be drawn up accordingly.
41. IA No: CAN 2 of 2024 is treated to be on the day's list and in view of the disposal of the appeal, also stands disposed of.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)