

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Bibhas Ranjan De

F.A. 68 of 2021

Lily Jasmati Topno

Vs.

Vicky Roshan Topno

For the Appellant : Mr. Mrinal Kanti Ghosh

Judgment on : 12.03.2025

Madhuresh Prasad, J.:

1. The present appeal arises out of the judgment of the Trial Court dismissing the matrimonial suit filed by the petitioner/appellant (wife).
2. The brief factual matrix of the case is that the petitioner met the respondent (husband) at Dasnagar where she used to study at St. Thomas High School. The respondent also joined the school in the year 2003. The petitioner completed her higher secondary in the year 2004 and the respondent in the year 2005. Thereafter the parties used to meet each other which was opposed by the petitioner's mother. The petitioner thereafter pursued her graduation while the respondent pursued a course from an Industrial Training Institute (ITI). He thereafter pursued other diplomas and ultimately secured a

job as an Assistant Teacher in one Shalimar High School in the year 2010. In the meantime, in the year 2009 the plaintiff got employment in the State Bank of India.

3. It is, the petitioner's case that the petitioner and the respondent were having an intimate relationship but were apprehensive that the families would not accept a matrimonial tie between them since they followed different religions. While the petitioner was a Hindu, the respondent was a Christian.

4. From 2010 onwards, they started convincing the family through a mediator, who was also an office colleague of the respondent. The respondent's mother was postponing the issue on one pretext or the other. Ultimately, the petitioner and the respondent were engaged in May 2011 at the petitioner's house.

5. The tribal custom of the petitioner's family required the family members of the respondent to give 5 to 10 thousand rupees being the cost of two cows to the petitioner's family. This was objected to by the respondent's family.

6. The petitioner claiming to be loyal to the respondent in view of their long standing relationship since the year 2003 left her home with all her academic certificates and a few clothes on 30.07.2011.

7. The petitioner thereafter had converted herself to Christianity and her marriage with the respondent ultimately took place on 22.11.2011. The marriage was registered on 31.12.2011 whereafter the parties started living as husband and wife. The petitioner alleges that after marriage she was subjected to humiliation and repeated

scolding on one pretext or the other. She was also subjected to filthy language and beaten by the in-laws. The petitioner discovered that the respondent was an alcoholic and when she raised an objection the same had no effect. It is alleged that in April 2012 the respondent slapped the petitioner while he was intoxicated over a trivial issue. Two days later it is alleged that he begged apology. The next month i.e. in May 2012 he used vulgar and abusive language against the petitioner and told her to leave the house. Other allegations have also been levelled regarding the respondent using abusive language against the appellant and having the habit of watching TV on a loud volume till late night.

8. The petitioner had solemnized marriage against the wish of her family and, therefore, could not share these hardships with her family members. The respondent repeatedly subjected such cruelty upon the petitioner. She also came to know that he was irregular at his work place, in the school. He in fact left the job and started torturing the petitioner for money. The respondent along with his mother and sisters consistently subjected the petitioner to such humiliation. The petitioner was hopeful of the situation improving, but the same did not happen. In fact, the mental and physical torture escalated day by day to an unbearable level. The petitioner was thus compelled to leave the matrimonial home on 04.01.2013.

9. The respondent after 20 days requested the petitioner to come back for the sake of the relationship founded on love between the parties since the last about a decade. When she returned they got

constructed a house near the house of the respondent after the petitioner took loan from her employer. The house was constructed in the respondent's name.

10. After they began to reside at the newly constructed house, the respondent came back to his old ways and started subjecting the petitioner to similar acts of cruelty, as was done earlier. On 30th June, 2015 the petitioner alleges that the respondent went to Daman and Diu with his mother and sisters to join a job. He left the petitioner behind only to return on 04.10.2015. When he returned, he asked the petitioner to take out her belongings from the locker; and again, started subjecting the petitioner to cruelty as earlier. On the 6th of October 2015, the respondent closed a middle door inside the house denying free access to the petitioner in the house. The petitioner thereafter started residing at her father's house with her brothers. She waited for some time for the situation to normalise, when the situation did not improve; and on the contrary the respondent continued to threaten the petitioner mentally and physically, she was compelled to inform the police, which she did by lodging Jagacha P.S. GDE No. 118 on 03.01.2016, since the cruel treatment meted out by the respondent and family members was of such a nature that it was harmful and injurious for the petitioner to continue to live with the respondent.

11. It is under such circumstances that she has claimed a decree of divorce from the Trial Court. The respondent, as per written statement denied and disputed the allegations of cruelty. The other

fact regarding the love marriage between the petitioner and the respondent was not denied.

12. Respondent's version of the facts, post marriage, in the written statement filed in the Trial Court, however, is different. According to him, the petitioner was a quarrelsome lady. She used to pick a quarrel between the respondent and his family members on any and every issue. She failed to discharge her duties as a wife towards the respondent and his family members. He has also alleged that she used to wear revealing dresses, which was objected to by the respondent, his family members and his neighbour. She used to insult and abuse the mother of the respondent by using dirty and filthy language. The respondent has admitted that the petitioner had taken the loan from her office but to make a new room on the roof of the petitioner's existing house for their own use and occupation. He took a stand that in fact he repaid the loan. According to him, the petitioner being an employee of the State Bank of India was proud of herself and thus, used to insult the respondent intentionally in every way. Whenever an objection was raised, she would leave the matrimonial home for a temporary period.

13. When the respondent's father was seriously ill and died in April 2013, she did not even come to the respondent's house to pay respect to the departed. She was just not willing to adjust with the respondent and the family members and took no steps to establish a congenial matrimonial atmosphere. He has specifically denied that at any point of time, he or his family members have subjected the

petitioner to any form of cruelty, let alone physical assault. In his written statement, he has stated that he continues to have a relationship of love and affection with his wife and wants to live a happy conjugal life with her. His family also has due love and affection for the petitioner, to which she is entitled by virtue of being married in the family. In fact, she was treated as a daughter not as a daughter-in-law. She however failed to match the honour and respect shown to her by the respondent's family. Respondent expressed an expectation that the petitioner in no time will come to live together as husband and wife.

14. In the above background, the Trial Court framed six issues:

- 1) “Is the suit is maintainable in its present form?**
- 2) Is the petitioner legally married wife of the respondent?**
- 3) Has the petitioner any cause of action to file the present suit?**
- 4) Has the respondent husband treated the petitioner wife with cruelty?**
- 5) Is the petitioner entitled to get relief as prayed for?**
- 6) To what other relief or reliefs is the petitioner entitled?”**

15. The issues No. 1, 2 and 3 were decided together in favour of the petitioner.

16. Issues 4, 5 and 6 were considered together. While considering these three issues, the trial Court has relied upon the examination-in-chief filed by the petitioner (P.W.1). The examination-in-chief supports the petitioner’s contention in the plaint. The Marriage

Certificate (marked as Exhibit-1) which was filed as evidence has also been taken into consideration. She has also stated about the several acts of physical and mental torture, including use of abusive language against her as well as physical assault. It is submitted that such repeated acts of humiliation by use of abusive language, the repeated physical assault, the indifferent and uncaring attitude of the respondent regarding his marital obligations, including the repeated physical assault and threats made by the respondent and his family members is a glaring example of conduct by one party to the marriage so as to cause a reasonable apprehension in the mind of the other party that it is harmful or injurious to live with the other party.

17. The nature of cruelty as stated in the petition and affidavit-in-chief, is not discredited by any cross-examination, as the respondent has chosen not to cross-examine the petitioner. The respondent also has not filed any evidence by way of affidavit in support of the averments made in the written statement filed by him.

18. The totality of such circumstances leads to an irresistible inference in favour of existence of grounds as claimed by the petitioner for the purposes of grant of a decree of divorce. The learned Counsel for the petitioner in support of such submissions has referred to the the decision of the Apex Court in the case of **Samar Ghosh vs. Jaya Ghosh** reported in **(2007) 4 SCC 511**. Referring to the said decision and the legal position which stands settled, it is submitted that though no uniform standard can be laid

down to define cruelty, however, it is by now settled that under matrimonial law cruelty consists of such conduct by one spouse, that the other spouse cannot reasonably be expected to live with the other spouse. The issue whether cruelty is made out or not is a mixed question of law and fact. In the present case, the repeated instances of cruelty over a 5-year matrimonial period, with intermittent short periods of resumption of matrimonial relationship makes it clear that the petitioner's efforts to reconcile over the 5-year period are far outweighed by the intemperate behaviour of the respondent and his family members. The cruelty is relentless and far beyond a normal wear and tear of a matrimonial relationship. The facts and the evidence adduced by the petitioner makes out a circumstance wherein there is much more than lack of affection or coldness in the relationship between the parties.

19. On 29.08.2022 there was a direction by this Court to serve a copy of application upon the respondent with a clear stipulation that if the respondent is not represented on 26.09.2022 the application filed in the appeal may be disposed of in his absence. Thereafter, from earlier order of this Court dated 26.09.2022 it appears that the matter was treated as ready as regards service. The Trial Court Record was called for by the said order. On both these dates the petitioner was unrepresented. When the matter was taken up for final hearing on 05.09.2024, or thereafter on 13.12.2024 there was none to represent the respondent. From the order of the Trial Court also it appears that written statement was filed on behalf of the

respondent. However, no evidence by way of affidavit was filed nor is there any submission recorded on behalf of the respondent in the judgment of the Trial Court.

20. The respondent in spite of valid service/(s) has chosen not to appear or contest the petitioner's prayer for divorce, either before the Trial Court, or before this Court. After filing written statement in the Trial Court the respondent chose not to file any evidence on affidavit, cross-examine the appellant, or to adduce any evidence or witness in support of the written statement filed.

21. We also find that during a 5-year period of matrimonial relationship the respondent in the affidavit has stated several instances of verbal abuse, humiliation over her dressing sense, the negligent behavior of the husband/ respondent being an alcoholic, and repeated acts of physical assault and threats being meted out to the petitioner. In between these consistent instances there were brief periods of some days of residing together, on expression of remorse by the respondent.

22. We, therefore, are not in agreement with the conclusion of the Trial Court that the various instances made out by the appellant before the Trial Court constitutes mere trivial irritations quarrels or normal wear and tear of married life. It is not a case of few isolated instances.

23. It is obvious that the petitioner was bearing the above noted acts of physical and mental abuse and torture over a period of 5 years hoping that the respondent would mend his ways. In spite of

the acts of cruelty she has returned to the matrimonial home for few days based on consideration of the love and affection existing between the parties since 8 years before the marriage. The respondent on the other hand, has been relentless in subjecting the petitioner to repeated and consistent acts of verbal and physical abuse and threats. He has also humiliated her on several occasions in the presence of his family and neighbours. It would also be worth taking note of here that the respondent has also taken advantage of the petitioner's employment in a bank. He has benefited from a loan taken by her for house construction to construct a house. Being guided by decisions of the Apex Court, in the case of **Samar Ghosh vs. Jaya Ghosh** reported in **(2007) 4 SCC 511** we are of the considered opinion that petitioner/ appellant has been able to make out a case that the respondent's conduct over the five years period of matrimony is of such a grave nature that it can be said that it was not possible and rather dangerous for the petitioner to continue in matrimony with him. The repeated and relentless cruelty meted out to the petitioner as noted above are sufficient to make out a case for grant of dissolution of marriage/ divorce.

24. Since we have found that cruelty has been made out as a ground for divorce, we set aside the judgment dated 14.02.2020 passed by the Court of Additional District Judge, 2nd Court, Howrah. We allow the appeal and direct that a decree of divorce be prepared.

25. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Bibhas Ranjan De, J.)

A.D.