

**IN THE HIGH COURT AT CALCUTTA
(Civil Appellate Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

**F.A.T. 211 of 2022
With
IA No. CAN 2 of 2023**

**Dr. Bikramjit Mondal
Vs
Smt. Anindita Mondal**

For the Appellant : Mr. Prasanta Kr. Pakrashi
 Mr. Shyamal Sanyal
 Mr. P. Das
 Mr. Arup Kr. Chatterjee
 Ms. Saswati Manna

For the Respondent: Mr. Srijib Chakraborty
 Md. Abdur Rakib
 Mr. Biswajit Sarkar.

Heard On : 05.10.2024

Judgement Delivered On : 03.01.2025

Supratim Bhattacharya, J.:

1. The appellant/husband who was the petitioner before the Trial Court has preferred the present appeal after being unsuccessful before the Trial Court.
2. The petitioner/husband has prayed for divorce from his wife on the ground of cruelty.

3. The matrimonial suit has been filed under Section 13 of the Hindu Marriage Act, 1955. The Ld. Trial Court after consideration of both oral and documentary evidence has dismissed the matrimonial suit on contest without any cost.
4. The factual matrix of the present *lis* is that the marriage between the parties took place as per Hindu rites and customs on 03.02.2017 and thereafter on 02.03.2017 the marriage was registered. The marriage got consummated between the parties but there has been no child born from the wedlock.
5. The husband in his petition has alleged that the opposite party/wife from the initial stages has been inflicting both mental and physical torture upon him and has been pressurizing him to reside separately in a separate accommodation at her paternal house as 'GharJamai'. The husband has denied to reside in her paternal home as 'GharJamai' as a consequence of which the dispute aggravated. It has also been alleged by the husband that the wife is a suspicious woman and she used to leave the matrimonial house without any information. The wife could not reside at her matrimonial house at a stretch and used to go to her paternal house frequently. It has also been alleged that the wife used to leave her matrimonial house as per her own accord without any information either to the petitioner or his family members. It has further been alleged that the wife left her matrimonial house with all her moveable stridhan articles and gold ornaments on

04.09.2019 and thereafter on 20.01.2020 she had even gone to his place of work and had forcibly entered the quarter of her husband and stayed there without the permission of her husband. It has also been alleged that on 05.04.2021 during the evening the respondent/wife threatened the petitioner and used slang languages and had even threatened to file criminal case against him, as a consequence of which on the same day at about 11.00 p.m. the petitioner had consumed sleeping pills intending to commit suicide, as a result of which he had to be admitted at the Sandeshkhali Gramin Hospital wherefrom he was referred to the Calcutta National Medical College and Hospital wherein also he was admitted and on the next day he was discharged. It has also been alleged that the husband had tried his level best to have a peaceful married life but because of his wife the marriage has not been a successful one.

- 6.** On the contrary the respondent/wife has denied all the allegations raised by her husband. She has categorically denied the allegation of ill-behaviour by her towards her husband and her in-laws. She has also denied the use of abusive languages by her. She has further denied of leaving her matrimonial home without prior approval of her husband or her in-laws, she has also denied the fact of ill-behaviour towards her husband and in-laws and has further denied the fact of not cooking food for her husband and her in-laws and also denied the fact that she would only cook for herself.

7. Mr. Prasanta Kr. Pakrashi Ld. Counsel representing the husband being assisted by Mr. Shyamal Sanyal, Mr. P. Das, Mr. Arup Kr. Chatterjee and Ms. Saswati Manna during his exhaustive argument has stressed upon the point that

- i)** Since marriage the wife being a woman of short temper used to ill-behave with her husband and her in-laws. She used to leave her matrimonial home without the consent of her husband or her in-laws. She used to cook food for herself only and not for her husband or her in-laws.
- ii)** The Learned Counsel has also stated that because of unsustainable mental pressure the husband had consumed pills with the intention of committing suicide. The Ld. Counsel has emphasized that the wife through her temperament has created an environment which is not conducive for peaceful cohabitation. As such the husband being a doctor and a gentleman has been compelled to pray for dissolution of the marriage on the ground of cruelty.
- iii)** The Ld. Counsel has relied upon the following citations:
 - a)** AIR 2023 SC 2144
 - b)** 2024 (1) ICC 288 (SC)
 - c)** AIR 2023 SC 4920
 - d)** AIR 2023 MP 38
 - e)** AIR 2006 SC 1675

8. Per contra, Mr. Srijib Chakraborty Ld. Counsel representing the respondent/wife being assisted by Md. Abdur Rakib and Mr. Biswajit Sarkar during argument has submitted the following:

- i)** Ld. Counsel has denied all the allegations made on behalf of the petitioner and has further submitted that it is the wife who tried her level best to have a peaceful conjugal life and is even now willing to reside with her husband.
- ii)** The Ld. Counsel has further submitted that all the allegations made by the petitioner are out of grudge because of the sole reason that from their wedlock no child has born.
- iii)** He has further submitted that the respondent/wife has been compelled to lodge General Diary being GDE No. 233 dated 04.04.2019 before Noapara Police Station, also filed Noapara P.S. Case No. 136/2019 on 07.05.2019 u/S 498A/406/307 I.P.C. and 3/4 of Dowry Prohibition Act and also lodged another diary being GDE No. 1682/2021 dated 30.06.2021 before Noapara P.S.
- iv)** The Ld. Counsel has also submitted that the wife had taken initiative to have a peaceful conjugal life.
- v)** The Ld. Counsel has relied upon the following judgments published in
 - a) (2015) 11 SCC 539
 - b) (2010) 14 SCC 301
 - c) (2005) SCC Online Cal 293

Banking upon the aforesaid submission the Ld. Counsel has submitted that the impugned judgment requires no interference.

9. Thus, the moot point in issue is as to whether the husband has been able to prove the facet of cruelty.

10. The husband who was the petitioner having been unsuccessful before the Ld. Trial Court has preferred the present appeal and has prayed for divorce solely on the ground of cruelty. In this regard Section 13 of the Hindu Marriage Act is laid down which is as follows:

“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—

1 [(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization 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]

(ii) has ceased to be a Hindu by conversion to another religion; or

[(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.

Explanation.—In this clause,—

(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub—normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]

(v) has been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive [Explanation.—In this subsection, the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.]

[(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground— (i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of 8 [one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of 8 [one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,—

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner: Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or 1 [bestiality; or] [(iii) that in a suit under section 18 of the Hindu Adoptions and

Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; (iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation.—This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).]”

On plain reading of Section 13 of the Hindu Marriage Act it transpires that any marriage solemnized can be dissolved by a decree of divorce on the ground that either party after the solemnization of the marriage treated the petitioner with cruelty. So cruelty being the sole criteria for the divorce which has been raised by the husband in this *lis*, this Court delves into the evidence of the parties. The husband has emphasized time and again on the issue of mental pressure being imposed upon him and his parents by the wife. The husband has stated that his wife does not show any respect either towards him or towards his parents and she is adamant and leaves the matrimonial house as per her wish and she even does not look after his parents.

From the evidence it transpires that the husband himself has not taken any step against his wife rather his father has been proactive to take initiative against his daughter-in-law by filing cases against her.

The wife has denied all the allegations of ill-temper and disobedience by her, on the other hand she has expressed her desire to reside with her husband and to lead peaceful conjugal life.

The husband in his petition before the Trial Court praying for divorce, has mentioned that his wife creates pressure upon him to reside in a separate accommodation at her parental house as “Ghar jamai”, which being refused by the husband his wife has started to threaten him by saying that she would commit suicide. On the other hand during the time of adducing evidence the husband has deposed that his wife pressurizes him for separate accommodation near the parental house of his wife which is in contrary to the parental house as stated in the petition. These two statements do not corroborate each other.

Allegation of uttering verbal abuse against each other have been raised by both the parties.

- 11.** On behalf of the husband an incident of 05.04.2021 has been highlighted to bring home the allegation of cruelty against the wife. It has been stated that cruelty inflicted by the wife’s behaviour was so immense and unbearable that the petitioner had lost his capacity of rational thinking and consumed some pills. As a result he was required to be hospitalized. The

incident has obviously been highlighted to show that cruelty meted out to the petitioner was of such magnitude that it was impossible to reside with the wife. In support of such submission the draft discharge info. dated 06.04.2021 of the husband has been marked as exhibit-2. On a holistic consideration of the oral and documentary evidence it appears that when the petitioner claims to have consumed the pills he was residing alone at his official accommodation. None has come forward to corroborate the fact regarding consumption of pills. The only document relied upon is the draft discharge info. There is nothing to show that he was referred by the hospital at Sandeshkhali where he was posted, to the Calcutta National Medical College and Hospital, which has issued the draft discharge info. From the draft discharge info. it further appears that the petitioner was admitted at this hospital at 01.19 a.m. on 06.04.2021 and was discharged the very same day at 04.51 p.m. While admitted he was administered intravenous fluid and one injection. The draft discharge info., therefore, does not manifest any severe or critical situation as it is apparent that the petitioner being a doctor has left the hospital on the very same day against medical advice. The draft discharge info., however shows that the petitioner has been diagnosed to have come with Benzo Diazepines overdose. In his evidence, however, he has claimed that he had taken more than 50 pills of Clonazepam and Diazepam. In his deposition, he has further

claimed that the overdose was lethal for human life and could have caused respiratory depression. The draft discharge info., however, does not corroborate such severity as claimed in the oral deposition. From the draft discharge info. it does appear that there has been overdose but only of Benzo Diazepines and not of the two medicines as claimed by the petitioner in his oral deposition. The overdose also does not appear to be lethal as the assertion of the overdose is not corroborated by any specific quantity either divulged by the petitioner in his evidence or by the draft discharge info. as the treatment manifest from the draft discharge info. does not indicate any aggressive/lifesaving treatment. This evidence, therefore, be viewed keeping in background the fact that the petitioner himself is a doctor. We are, therefore, of the opinion that the incident of 05.04.2021 as claimed by the petitioner does not lay the basis to infer that he has been subjected to cruelty as claimed by the petitioner.

Another aspect casting shadow of doubt on this incident, to establish cruelty is the fact that the father of the petitioner has lodged a criminal case before the Noapara police station more than 2 months later i.e. on 10.06.2021. The evidence, therefore, does not support the cruelty as claimed by the petitioner on 05.04.2021.

Another aspect of the matter destroying credibility of this entire incident is the fact that apart from himself the husband has examined one witness PW2, who happens to be the owner of a

pathological clinic. In his deposition he has clearly stated that he has no knowledge about the personal life of other doctors, but surprisingly he knows about the personal life of the petitioner. He claims to have heard the respondent/ wife uttering harsh words towards her husband and pressurising him, but this evidence is not with reference to any particular incident. The evidence, therefore, is not direct and not as an eye witness to any incident. The petitioner appears to have a commercial relationship with the PW2, who was constantly benefiting from the references being made to his pathological clinic by the petitioner. In this circumstance the evidence given by him without reference to any details or a specific incident, therefore, in our opinion lacks credibility and his evidence cannot be relied upon.

Insofar as the deposition of the father-in-law PW3 in support of the petitioner, we find that he was not having cordial relation with the respondent (daughter-in-law). In fact, from perusal of exhibit-A/1, letter dated 08.06.2021 written by the father of the husband addressing the father of the wife, adduced by the wife it becomes obvious that he was hostile towards his daughter-in-law because she could not bear a child. In the exhibit A/1 he has stated the following:

“Je goru dudh dai, tar lathi sojjho kora jay. Kintu je goru dudh o dai na, bachha o deoar kono somvabona nei,

*kebol singh nare o dhun mare, lathi chore, take ami
pushte parbo na”*

Translated version : *“One can tolerate a cow which gives milk but a cow which neither gives milk nor is capable of giving birth to an offspring and which only goes cannot be nurtured.”*

From this document it is apparent that the father-in-law was opinionated and hostile to the wife/ respondent. It is only expected that he would make statements to support the petitioner’s claim for divorce. This aspect is also apparent from the fact that he has been filing cases including the criminal case bearing Noapara P.S. case No. 176 of 2021 under Section 448/506 I.P.C. on 10.06.2021, i.e. more than 2 months after the consumption of pills on 05.04.2021.

It may be relevant to take into consideration here the deposition of the petitioner during cross-examination on 12.04.2022, on that day 9 copies of medical investigation report pertaining to the wife (respondent) were tendered as Exhibit-B Series. The deposition of the husband upon seeing the medical investigation is relevant and we consider it apposite to reproduce the same:

“From the report dated 31.12.2020 of Sparsha Diagnostics it appears that the level of Anti Mullerian Hormone of my wife was sufficiently satisfactory. If the level of Anti Mullerian Hormone is at normal level then

a lady does not face any problem in conceiving. Witness volunteers: In case of my wife Anti Mullerian Hormone is not normal."

It is thus apparent that the father-in-law has deposed in support of the divorce on extraneous consideration.

12. The wife has filed criminal case under Section 498A /406/307 I.P.C. dated 07.05.2019 on the ground of cruelty and domestic violence.
13. Insofar as the issue of cruelty is concerned, we find that no convincing material has been brought before the Trial Court in support of the allegations made in the pleadings. Under similar circumstances this Court in the case of **Sri Ananth Bandhu Adak vs. Smt. Anita Adak (Patra) (F.A. 140 of 2022)** recently decided on 19.12.2024 has held that it is trite law that cruelty is required to be established both by pleading and proof so as to constitute a ground for dissolution of marriage/ divorce. In the present case as noted above there is not an iota of material to substantiate the same. It has been repeatedly held by the Courts that cruelty has many facets and may differ from person to person depending on the social context, economic strata of the parties to the marriage and such other factors. Be that as it may whatever may be the bench mark for assessing cruelty there must be some incident

of cruelty proved by the party alleging it, which in the present case is lacking.

The law also in this regard is well-settled by several decisions of the Apex Court. We intend to refer and rely upon a celebrated decision of the Hon'ble Apex Court in ***Samar Ghosh vs. Jaya Ghosh reported in (2007) 4 SCC 511***. The Apex Court considering the various earlier judgments on the issue of cruelty as a ground for dissolution of marriage, has held that there can be no fixed comprehensive definition of mental cruelty. What is cruelty in one case may not amount to cruelty in another case and the subject of cruelty differ from person to person depending upon the upbringing level of sensitivity, educational qualification, family and cultural background, the financial position, social status, customs, traditions etc. Having observed so the Apex Court has laid down the law that it would be prudent and appropriate to adjudicate a case by evaluating the peculiar facts and circumstances keeping in background the above noted considerations by way of illustration. Some instances of human behaviour which may be relevant in dealing with the case of mental cruelty have also been enumerated therein in Paragraph 100 of the judgment in the case of Samar Ghosh (supra). We find that in the present case the plaintiff has failed to substantiate that the allegations levelled against the respondent, falls within any of the illustrations contained in

the judgment of the Apex Court in the case of Samar Ghosh (supra). True it is that the illustration is not exhaustive and it is not required that the case must fall within only one of those circumstances as enumerated in the judgment of the Apex Court, but in the present case the allegation of cruelty is devoid of any substance whatsoever. Apart from an allegation of cruelty, there is no convincing proof of cruelty corroborated by any material whatsoever.

14. Considering the evidence on record it is clear that the husband has tried his level best to prove the allegation which has been brought by him that is cruelty, but the same does not inspire any confidence.

15. The judgment referred on behalf of the petitioner, published in **AIR 2023 SC 2144** does not help the cause of the petitioner/husband. In the said case there has been long separation, absence of co-habitation and complete breakdown of all meaningful bonds and existence of bitterness between the two parties. Relying on the aforementioned facts and circumstances the Hon'ble Apex Court exercising jurisdiction under Article 142 of the Constitution of India has severed the tie. In this instant case the wife has deposed that she is inclined to live together with her husband because she believes in conjugal relationship and thinks that the days of sufferings will end. So the circumstance of the case is not similar to the one which is being dealt with.

The judgment referred to being published in **2024 (1) ICC 288** (S.C.) also does not support the case of the appellant. In the said case referred there has been twelve years of separation and continued bitterness and dead emotions which have been construed as a case of irretrievable breakdown of marriage. The Hon'ble Apex Court in the said case has granted decree of divorce under Article 142 of the Constitution of India as there being irretrievable breakdown of marriage.

The other judgment cited on behalf of the petitioner/husband being **AIR 2023 SC 4920** also does not come in aid to the petitioner/husband. On the contrary the referred judgment supports the case of the respondent herein. In the referred judgment the Hon'ble Judges of the Apex Court have been inclined not to pass an order of divorce under Article 142 of the Constitution of India. Respecting the sentiments of the wife the Hon'ble Apex Court has been of the view that passing an order of divorce under Article 142 would not be doing complete justice to the parties and would rather be doing injustice to the respondent/wife.

Another judgment been referred to published in **AIR 2023 MP 38** also does not come in aid to the petitioner/husband as the issue dealt in the said judgment is as regards to permanent alimony which is not the issue being dealt in this present case.

The judgment passed by the Hon'ble Three Judges Bench of the Hon'ble Apex Court in the case between Naveen Kohli

and Neelu Kohli reported in **AIR 2006 SC 1675** has been relied upon by the petitioner/husband. While passing the said judgment the Hon'ble Apex Court in exercise of its jurisdiction under Article 142 of the Constitution of India has considered the facts and circumstances of the said case to be a fit case of irretrievable breakdown of marriage. As irretrievable breakdown of marriage is not as yet a statutory ground for divorce and having regard to the appellant being exercised by this Court the judgment is of no help to the petitioner/husband.

In the judgment referred on behalf of the respondent being published in (2015) 11 SCC 539 the Hon'ble Apex court has stated that the expression cruelty has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13(1)(i-A) is to be taken as a behavior by one spouse towards the other which causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental. In case of mental cruelty matter of inference is to be drawn from the facts and circumstances of the case. It is settled law that instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse.

The judgment published in (2010) 14 SCC 301 and the judgment published in (2017) 11 SCC 539 are on similar lines. These judgments are also applicable to the facts and circumstances of the present case wherein the petitioner appellant has failed to prove any facts and circumstances based on any convincing material from a cumulative effect of which the Court may draw a fair inference of the petitioner being subjected to cruelty.

16. Thus, we are of the considered opinion that the Ld. Trial Court has dealt with the issues in the correct perspective and the impugned judgment does not require any interference.

17. Thus the instant appeal being **F.A.T. 211 of 2022** is **dismissed without any cost.**

18. IA No. CAN 2 of 2023

In view of the final order being passed in the present appeal the application praying for alimony *pendente lite* under Section 24 of the Hindu Marriage Act, 1955 stands disposed of. The respondent /wife shall be at liberty to take recourse of law in appropriate proceedings as regards to arrears which have been mentioned in the supplementary affidavit to the said application. In this context it is worth mentioning that as the application was filed at the stage of final hearing of the appeal. *Vide* two orders passed earlier in these proceedings dated 05.09.2024 and 05.10.2024, Rs. 1,25,000/- (Rupees one lakh

twenty five thousand) [one lakh and thereafter twenty five thousand] was directed to be paid to the wife on ad-hoc basis, which was paid by the Appellant.

19. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

20. Urgent certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree,

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)