

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 Subhendu Samanta

FAT No. 309 of 2024

Smt. Pinki Sahoo
-vs-
Shri Ram Chandra Sahoo

For the appellant : Mr. Debrup Chowdhury,
Mr. Syed Murshid Alam,
Mr. Subrata Ghosh,
Ms. Amrita Sen,
Mr. Nobiul Islam

For the respondent : Mr. Monoranjan Jana,
Ms. Mitali Jana.

Heard on : January 8, 2025.

Judgment on : January 8, 2025.

Sabyasachi Bhattacharyya, J.:

1. The affidavit of service filed in Court today be kept on record.

2. The present appeal has been preferred against a decree of divorce granted in favour of the respondent-husband.
3. We find from paragraph no. 38 of the written statement of the wife, which was relied on by the learned trial Judge, that the appellant-wife stated therein that she does not want to lead conjugal life with the husband after taking her back in her matrimonial home and does not intend to carry on such unpleasant marital relationship with the petitioner any further. It was further stated that, as such, the present appellant had got no objection if the learned Trial Court be pleased to grant a decree of divorce in favour of the present respondent/husband after dissolving the marriage and in the event of passing of such order by the learned trial Court in her absence, the present appellant/wife would never raise any objection in the said order for a decree of divorce in favour of the husband.
4. Learned counsel for the appellant, however, contends that in the other paragraphs of the written statement, the appellant-wife had controverted the allegations of cruelty levelled against her.
5. It is submitted that although the learned trial Judge recorded that the plaintiff's witness (PW) no. 1 was not cross-examined

by the appellant's advocate, the appellant cannot be saddled with such liability of error on the part of her learned Advocate in the trial Court.

6. That apart, it is submitted that the divorce decree was ultimately granted on the basis of the alleged consent of the present appellant.
7. It is submitted that it is well-settled that no divorce decree can be passed within the contemplation of Order XXIII of the Code of Civil Procedure unless the appropriate procedure for getting a divorce by mutual consent is adopted.
8. Learned counsel for the respondent submits that the husband, adducing evidence as PW1, was not cross-examined by the respondent.
9. In any event, in view of the wife having given unqualified consent to grant a divorce decree even in the event of her absence, the learned trial Judge was justified in passing the divorce decree.
10. Upon hearing learned counsel for the parties, we find that although it was recorded in the impugned judgment that the PW1 was not cross-examined, the divorce decree was ultimately passed on the basis of the alleged admission of the

appellant-wife, without entering in detail into the legal effect and evidentiary worth of such evidence. Thus, the learned trial Judge proceeded to grant the divorce decree not on merits as such, but primarily on the premise of the alleged admission/consent of the appellant-wife.

11. However, on a careful scrutiny of paragraph no. 38 of the written statement, we do not find any admission of the wife as to the allegations of cruelty allegedly perpetrated by her.
12. Hence, read in proper perspective along with the entirety of the written statement, we find that although the appellant-wife agreed to a divorce decree being granted in view of the marriage obviously having become stale, she did not admit, rather, controverted the allegations of cruelty against her.
13. Thus, it cannot be said that the “admission” or “consent”, on the basis of which the divorce decree was granted, was unqualified, since if such a divorce decree is granted on the allegations made in the plaint, the appellant-wife would carry a social stigma with regard to the allegations of cruelty.
14. Even otherwise, the law is well-settled that a divorce decree cannot be passed on compromise and/or by way of a judgment of admission, unless a proper application under Section 13B of

the Hindu Marriage Act, 1955 (in short, “the 1955 Act”) is filed by both parties and the timelines stipulated in the said provision are adhered to by the parties.

15. Hence, on such count as well, the impugned judgment and decree is bad in law.

16. Insofar as there was no cross-examination of the PW1, we find it recorded in the impugned judgment that it was the learned Advocate for the respondent who did not cross-examine the witness. Even without casting any aspersion on the learned Advocate, we feel that merely because of the lack of cross-examination, the learned trial Judge could not have granted a decree of divorce automatically without assessing the evidentiary worth of the deposition of PW 1 independently. In any event, the impugned judgment was ultimately passed on the basis of the purported consent of the appellant-wife and not on merits upon an independent discussion on or assessment of the evidence on record.

17. During arguments before this Court, learned counsel for both sides submit that their respective clients are agreeable to have a divorce by mutual consent before the learned trial

Court by jointly filing an application under Section 13B of the 1955 Act.

18. Learned counsel for the appellant-wife also submits, on instruction, that if such an application is filed, the wife shall not resile from her stand and shall abide by the timelines stipulated in Section 13B to ensure that divorce by mutual consent is granted.
19. In such view of the matter, FAT No. 309 of 2024 is allowed, thereby setting aside the judgment and divorce decree dated January 24, 2024 passed by the learned Additional District Judge, Fast Track Second Court at Contai, District- Purba Medinipur in Matrimonial Suit No. 676 of 2023 and granting leave to the parties to file a petition for divorce by mutual consent.
20. Accordingly, the parties shall file a joint petition for divorce by mutual consent under Section 13B of the 1955 Act in the trial Court within February 15, 2025.
21. Thereafter the parties shall, as per their specific assurance given before this Court, abide by the timelines as prescribed under Section 13B of the 1955 Act to facilitate grant of a decree of divorce by mutual consent.

22. It is, however, made clear that in the event the divorce by mutual consent between the parties fails, the learned trial Judge shall revive the suit and take up the same for contested hearing afresh.

23. In view of disposal of the appeal, the connected pending application, bearing CAN 2 of 2024, is also disposed of.

24. There will be no order as to costs.

I agree.

(Subhendu Samanta, J.)

(Sabyasachi Bhattacharyya, J.)