

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 Subhendu Samanta

FAT 669 of 2018

Jayanta Kumar Roy
Vs.
Jaba Chattopadhyay (Roy)

For the appellant : Mr. Srijib Chakraborty,
Mr. Subhasis Chakraborty,
Mr. Amit Chowdhury,
Mr. Washim Aktair Dafader

For the respondent : None

Heard on : 08.01.2025

Judgment on : 08.01.2025

Sabyasachi Bhattacharyya, J.:-

1. It is found from the previous orders that in view of the repeated absence of the respondent-wife, the appeal was fixed for *ex parte* hearing.
2. Even today, none appears for the respondent. Accordingly, the appeal is being taken up for such *ex parte* hearing today.

3. The present challenge has been preferred by the appellant-husband against the refusal of the counter-claim of the appellant-husband seeking divorce on the ground of cruelty.
4. The brief facts of the case are that the parties entered into a marriage under the Special Marriage Act on December 14, 2003.
5. Admittedly, on October 03, 2004, the respondent-wife left the matrimonial home. The wife alleged that she was compelled to leave the home due to immense torture, mental and physical, being perpetrated upon her by her in-laws, in particular, the maternal aunt of the appellant-husband.
6. In his counter-claim and in the written statement against the wife's plaint, the appellant husband also made counter-allegations of several acts of cruelty being allegedly perpetrated by the respondent-wife.
7. Upon a consideration of the materials on record, the learned Trial Judge, in the impugned judgment, however, came to a cryptic conclusion that the petitioner as well as the respondent have both failed to prove their respective cases "on a preponderance of probability" and, as such, the suit and the counter-claim both failed.
8. On a comprehensive perusal of the materials on record, we find no reason to interfere with the said conclusion of the learned Trial Judge, since neither party, by conclusive corroborative evidence, could prove their respective allegations of each other's cruelty.
9. The position, thus, boils down to this:

10. The wife, in her suit for restitution of conjugal rights, has failed to prove her allegations of torture being perpetrated by the appellant-husband and/or his family members. However, it is an admitted position that the respondent-wife left her matrimonial home on October 03, 2004. Thus, in the absence of any proof as to cruelty by the husband or his family, the wife's act of leaving the matrimonial home is rendered denuded of any justification.
11. Moreover, there is nothing on record to show that there was *animus revertandi* on the part of the wife to return to her matrimonial home at any point of time.
12. Even if we do not enter into the details of the allegations and counter-allegations of the parties, and proceed on the premise that the husband otherwise failed to prove the allegations of cruel acts of the wife by compelling her mother-in-law to do all household chores, it is evident from the records that the wife, after leaving the matrimonial home on October 03, 2004, has not attempted to return there for the inordinately long period of 24 years till date.
13. It is also rightly pointed out by learned counsel for the appellant that the P.W.1/respondent (wife), in her cross-examination dated July 24, 2014, admitted that after coming to her father's place in the year 2004, she made no written correspondence with the husband till the date of such evidence.

14. Also, we find that there was no complaint, contemporaneous or otherwise, lodged by the respondent/wife before any law enforcement authority regarding the alleged perpetration of torture on her.
15. Thus, the very act of the wife leaving her matrimonial home without justified reason and not resuming conjugal life with the appellant-husband for long 24 years tantamounts to mental cruelty against the husband.
16. Learned counsel for the appellant-husband cites a coordinate Bench judgment of this court in the matter of *K. Mageshwari vs. P. Ganeshan*, reported at 2024 SCC OnLine Cal 5973, where, under similar circumstances, the court had relied on the judgment of *Samar Ghosh vs. Jaya Ghosh*, reported at (2007) 4 SCC 511, in support of the proposition that in case of a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. In the cited judgment, the court had recorded that although it was alleged by the appellant therein that torture was inflicted upon her by her husband and his family, there was not a single piece of evidence to indicate that she ever lodged any complaint before any forum/authority in that regard.
17. It was further observed that the appellant/wife therein had not called in any second witness to corroborate her contentions and relied on her own assertions. Further, the court recorded that from the records the court was unable to ascertain any evidence being adduced by the appellant/wife as to her *animus revertandi* and thus, in the absence of

any justification of leaving her matrimonial home, the learned Trial Judge was completely justified in arriving at the conclusion that the appellant had willfully and deliberately deserted her husband.

18. Although specific allegation of desertion has not been made by the husband in the present case, the long abstention on the part of the wife from her conjugal life over a prolonged period of 24 years without any reason itself amounts to cruelty sufficient to form a ground of divorce.
19. The learned Trial Judge, in the impugned judgment in the present case, had also observed that the wife and husband are now antagonistic to each other and have vigorously reiterated their respective contentions pleaded by them.
20. In such view of the matter, not only has the marriage between the parties broken down irretrievably, an element of cruelty on the part of the wife and absence of justification for abstention from conjugal life, sufficient to constitute cruelty against the husband, is found in such irretrievable breakdown.
21. In such view of the matter, we are of the opinion that the learned Trial Judge ought to have decreed the counter-claim of the appellant for divorce. In fact, the dismissal of the suit for restitution of conjugal rights for lack of evidence on the part of the respondent-wife also constituted sufficient reason to grant a divorce decree instead of prolonging the agony between the parties, when the shelf-life of their marriage has long expired.

22. In such view of the matter, FAT 669 of 2018 is allowed, thereby setting aside the impugned judgment and decree dated August 07, 2018 passed by the learned Additional District Judge, First Court at Sealdah, District: South 24 Parganas in Matrimonial Suit No. 72 of 2010 insofar as the same turned down the counter-claim of the appellant-husband for divorce.
23. Accordingly, the matrimonial tie between the parties is hereby severed by granting a decree of divorce to the appellant-husband.
24. It is, however, made clear that this court does not interfere with the part of the impugned judgment and decree whereby the respondent-wife's suit for restitution of conjugal rights was dismissed and the said portion of the impugned judgment and decree stands affirmed.
25. Interim order, if any, stands vacated.
26. There will be no order as to costs.
27. A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Subhendu Samanta, J.)