

19-05-2026
ct no. 13
Sl. 31
sp

F.A. 53 of 2026
With
CAN 1 of 2026
Eshita Paul (Ghosh)
-Versus-

Surya Narayan Ghosh

Mr. Jayanta Samanta,
Mrs. Karunamoyee Samanta,
Mr. Sujoy Paul.

...for the appellant.

1. Despite service of notice, the respondent is not represented.
2. The appeal is directed against judgment and order dated 20th January, 2026 passed in Matrimonial Suit No. 245 of 2021. By the said judgment, the suit for divorce under Section 27D of the Special Marriage Act was dismissed.
3. It is submitted by the learned counsel appearing for the appellant that the parties are living separately for more than six years. The suit itself was filed in the year 2021, five years ago. The parties have been living separately and the appellant alleged desertion by the husband for more than a year prior to filing of the suit.

4. Having regard to the fact that the parties are living separately for more than six years, this Court is of the view that the same by itself constitutes cruelty on both the respondent/husband and the appellant/wife.
5. This Court also finds that the reasoning arrived at by the Trial Judge in refusing the decree for divorce is erroneous.
6. Having regard to the dicta of the Hon'ble Supreme Court in the case of Pradeep Bhardwaj Vs. Priya reported in 2025 INSC 852, particularly paragraph no. 23 and that of the Co-ordinate Bench in the case of Subhendu Naskar v. Ramita Naskar reported in 2025 SCC OnLine Cal 1097, this Court is of the view that the marriage between the parties has irretrievably broken down and further continuation of the marriage would constitute irreparable cruelty on both sides. The impugned judgment and decree, therefore, shall stand set aside.
7. There shall be a decree for divorce between the appellant and the respondent. The marriage between the parties shall be deemed to have been dissolved with immediate effect.

8. It is recorded that the appellant has no claim whatsoever against the respondent/husband and learned counsel on instructions submits that his client foregoes any such claims.
9. With the aforesaid observations, F.A. 53 of 2026 is hereby allowed and disposed of.
10. Consequently, all connected pending applications shall also stand disposed of.
11. There shall be no order as to costs.
12. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Rai Chattopadhyay, J.)