

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

**F.A. No. 103 of 2023
IA No: CAN 1 of 2023
CAN 2 of 2023**

**Smt Sarbani Mazumdar @ Sarkar
alias Sarbani Sarkar Mazumdar
Vs.
Sri Prabhat Majumdar alias Pravat Mazumdar**

For the appellant	:	Mr. Surya Prasad Chattopadhyay, Mr. Arjun Samanta, Mr. Ankit Chatterjee, Mr. Trishtrya Mancherji, Mr. Samudranil Nandi
For the respondent	:	Ms. Amrita Panja, Mr. Syed Julfikar Ali, Ms. Pramita Banerjee
Heard on	:	11.12.2025, 18.12.2025 & 23.12.2025
Reserved on	:	23.12.2025
Judgment on	:	08.01.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred by the wife against a divorce decree obtained by the respondent-husband on the ground of desertion.

2. The marriage between the parties was contracted as per Hindu rites and customs on July 12, 2001 and a son was born of the said wedlock on October 13, 2003, who has since attained majority. The husband had previously filed two successive suits for divorce against the appellant-wife, which were dismissed as withdrawn respectively in the years 2005 and 2007. The present suit for divorce was instituted thereafter in the year 2017, on the grounds of cruelty and desertion. The learned Trial Judge turned down the ground of cruelty but granted divorce on the ground of desertion, *inter alia* holding that the marriage between the parties has broken down irretrievably.
3. Learned counsel for the appellant contends, by relying on a co-ordinate Bench judgment in *Kamalika Majumdar Nee Das v. Subhapriya Majumdar*, reported at 2025 SCC OnLine Cal 4835, that divorce cannot be granted at the instance of the husband if the husband himself is guilty of constructive desertion. It is argued that in the present case, the respondent-husband himself deserted the appellant-wife and, thus, cannot take advantage of his own wrong. It is submitted that the husband has not come with clean hands before the Court.
4. By placing the impugned judgment, it is argued by the appellant that the learned Trial Judge committed a legal and factual error in observing that there are sufficient materials for coming to the conclusion that the wife has caused, by her conduct, desertion to

the husband and as such there is remote possibility to live together as husband and wife “with all the anguish in their respective minds”.

5. Learned counsel submits that irretrievable breakdown of marriage, by itself, is not a ground for divorce in Indian Law, particularly under the Hindu Marriage Act. It is contended that all the judgments cited by the respondent, the Supreme Court granted divorce on the ground of irretrievable break down of marriage under Article 142(1) of the Constitution of India in its discretion, which provision is not applicable to the Districts Courts or the High Courts.
6. In the unreported judgment of *Samar Bijoy Roy v. Mukul Roy*, the Hon’ble Supreme Court, it is argued, adopted the principle of irretrievable break down of marriage in the facts and circumstances of the case, which is argued to be different from the present case, where the husband has not come with clean hands. It is reiterated that it was the husband who deserted the wife in the present case, which is also borne out by the police report lodged by the husband in the year 2007. Learned counsel for the appellant/wife argues that the respondent/husband deliberately abstained from leading conjugal life with the appellant/wife and deserted the appellant/wife and her son. Thus, there was no desertion on the part of the appellant-wife at all and the impugned judgment ought to be set aside.

7. In reply, learned counsel for the respondent/husband cites *Rakesh Raman v. Kavita*, reported at (2023) 17 SCC 433, where it was held by the Hon'ble Supreme Court that if the marital relationship between the parties has broken down irretrievably, it does nothing but inflict cruelty on both sides and to keep the facade of the broken marriage alive would be doing injustice to both parties. The Hon'ble Supreme Court further observed that such a situation spells cruelty to both parties and comes within the purview of Section 13(1)(ia) of the Hindu Marriage Act.
8. That apart, learned counsel appearing for the respondent/husband points out that there were several discrepancies in the stand taken by the appellant/wife in her pleadings, read in conjunction with her evidence, which go on to show that no justification for staying apart from the husband was furnished by the appellant-wife.
9. It is further argued on behalf of the respondent that the withdrawal of the two previous divorce suits of the respondent does not imply that there was no desertion on the part of the wife. In fact, the respondent-husband waited for ten long years after the dismissal of the last suit in 2007 before instituting the present suit in 2017. During the entire period, there was no conjugal life led between the parties, nor was there any effort on the part of the appellant/wife to resume conjugal relationship. Even D.W.2, the sister of the appellant-wife, admitted in her evidence that the

parties last resided together in the year 2007, which corroborates the stand taken in the written statement by the wife herself.

10. It is argued that in *Rinku Baheti v. Sandesh Sharda*, reported at (2025) 3 SCC 686, the Hon'ble Supreme Court passed a divorce decree on the ground of irretrievable break down of marriage under Article 142 of the Constitution of India; however, the proposition laid down in *Rakesh Raman (supra)*¹ was not distinguished or overruled.
11. In *Samar Bijoy Roy (supra)*², it was held by the Hon'ble Supreme Court that the parties were living separately and the wife was not able to deny the husband's claim of prolonged lack of cohabitation, on which ground divorce was granted. Thus, it is argued that the learned Trial Judge was justified in passing the impugned judgment.
12. Upon hearing learned counsel appearing for the parties, this Court cannot be oblivious to the fact that the cardinal principle in adjudicating a civil suit is preponderance of probabilities, which is the yardstick on which the impugned judgment has to be examined. It is trite law that the appellate court does not interfere with the judgment of the court of first instance merely because, in its opinion, a different view is possible on the same set of facts. A judgment can only be set aside by the appellate court if the same

1. *Rakesh Raman v. Kavita*, reported at (2023) 17 SCC 433

2. *Samar Bijoy Roy v. Mukul Roy*

is legally wrong or is otherwise vitiated by contravention of any statute or a patent misappreciation on the evidence record. Seen from such perspective, the following two issues arise for consideration before this Court:

- (i) *Whether the learned Trial Judge was justified in granting a divorce decree on the ground of desertion;*
- (ii) *Whether the marriage between the parties has broken down irretrievably; if so, whether such fact can be a ground for divorce.*

13. Since the ground of cruelty, *per se*, has been turned down by the learned Trial Judge and not challenged by any cross-objection by the respondent/husband, the same is a non-issue, apart from the limited question as to whether irretrievable breakdown of marriage can come within the purview of cruelty, if otherwise established.

14. Accordingly, this Court proceeds to adjudicate the present appeal on the following issues:

- (i) *Whether the learned Trial Judge was justified in granting a divorce decree on the ground of desertion***

15. The appellant/wife admitted in Paragraph No. 13 of her written statement that the parties have been living separately since the year 2007. The said fact was corroborated by the evidence of D.W.2, the sister of the appellant/wife.

- 16.** Despite several allegations, the appellant/wife has not been able to prove, by cogent evidence, any act of cruelty on the part of the husband or any other fact justifying her abstinence from the company of the respondent/husband at least since the year 2007. It is an admitted position that the parties are living separately from the said year. The learned Trial Judge found in the impugned judgment that the sudden withdrawal of the appellant-wife from her maternal home was quite unnatural and that the wife never lodged any complaint of cruelty by the husband. It was admitted by the wife in her evidence that she had never lodged any complaint before any authority or law enforcement agency against the respondent/husband. Also, as rightly observed by the learned Trial Judge, there is not a scrap of paper on record to show any complaint having been ever filed by the wife against her husband.
- 17.** The appellant/wife has relied on *Kamalika Majumdar Nee Das (supra)*³ for the argument that the respondent/husband was guilty of constructive desertion by his own acts, due to which no divorce decree ought to have been granted against the appellant-wife on the ground of desertion.
- 18.** However, the facts of *Kamalika Majumdar Nee Das (supra)*³ are completely different from the present case. In the said judgment, it was observed that in view of the prior conduct of the husband,

3. *Kamalika Majumdar Nee Das v. Subhapriya Majumdar*, reported at 2025 SCC OnLine Cal 4835

granting a divorce decree in his favour would constitute a grave miscarriage of justice. It was observed by the Division Bench that the husband in the said case had himself engaged in a fundamental breach of trust and perpetrated severe initial cruelty upon the wife, thereby being the principal architect of the marital distress. It was held in the said report that the husband's conduct of deliberate deceit at the outset of the marriage, by suppression of his prior marriages, was a substantial factor that profoundly outweighed the alleged cruelty of the wife, when viewed in proper context. On the ground of such "foundational deceit" concerning the marital history, it was held that the husband did not come with clean hands and was not entitled to a decree of divorce.

- 19.** In the present case, however, no such allegation against the husband has been pleaded or established at all. Thus, the argument of constructive desertion is a mere moonshine and not established by any cogent evidence. Moreover, such alleged constructive desertion was neither pleaded nor proved nor argued before the learned Trial Judge and cannot be permitted to be taken for the first time as an afterthought before this Court.
- 20.** It is to be noted further that there is no evidence on record to establish that the wife had exhibited any *animus revertendi* at any time, let alone filing any suit for restitution of conjugal rights. This, coupled with the utter lack of evidence of any conduct or cruelty of the husband justifying the long absence of the wife for

almost a decade between the withdrawal of the second suit of the husband in 2007 and the institution of the current suit in the year 2017, clearly shows that the wife had deserted the respondent-husband without any rhyme or reason, which constitutes desertion as contemplated in Section 13(1)(ib) of the Hindu Marriage Act.

- 21.** Furthermore, the appellant/wife has failed to prove any *animus decirendi* on the part of the husband himself. There is not an iota of evidence on record to establish that the wife ever tried to return to her maternal home to lead a regular conjugal life with her husband. Thus, the allegation of desertion has been proved against the appellant/wife.
- 22.** Apart from the above, there are several discrepancies in the pleadings and evidence of the appellant/wife, which go on to further strengthen the presumption that her attempts to justify the desertion of her husband were concocted.
- 23.** In Paragraph No.13 of the written statement, for instance, the appellant/wife stated that the respondent/husband tortured her physically and mentally and forced her to abort a child. In the self-same paragraph of the written statement, however, the wife admitted that the respondent/husband had brought her from her parental home to Kolkata, where her maternal home is located, for the purpose of delivery of her only son at the Ramakrishna Mission Hospital at Tollygunge. The expenses of such treatment were also admittedly borne by the husband.

- 24.** Secondly, in the same paragraph, that is, Paragraph No.13, the wife alleged that the husband never looked after her and her son and she had to virtually beg for money for her maintenance. However, in her cross-examination as D.W.1, the appellant/wife admitted that the husband used to send money for the son, although such amount was stated to be insufficient.
- 25.** Again, the husband filed Act-VIII Case No. 101 of 2015 before the learned District Judge of Alipore for custody of his son, then a minor, which was marked as Exhibit-8 in the suit. A money order receipt was also marked as Exhibit-9 in the suit, evidencing that the husband used to send money for his son. Other money order receipts were also produced by the husband and are part of the record but, not being formally exhibited, cannot be looked into.
- 26.** Hence, the allegation that the respondent/husband failed to look after the wife and his son cannot be fully substantiated, at least to the extent that it justified the wife living away from her husband for more than a decade.
- 27.** Again, in Paragraph No.13 of the written statement, the wife alleged that the husband filed the suit for divorce with an ulterior motive to marry some other lady.
- 28.** Even otherwise, remarriage by one of the spouses after obtaining a divorce decree is not an offence, in the event the prior marriage did not work out. That apart, such so-called ulterior motive of the husband is not substantiated by his conduct in waiting for as long

as a decade between 2007 and 2017, that is, after withdrawal of his second suit for divorce and filing the current and third suit in 2017. The husband's conduct, rather, shows that twice he had to file divorce suits but had the good sense of withdrawing the same, in a bid to sustain the marital relationship between the parties. However, there is nothing on record to show that between the withdrawal of the second suit and the institution of the current suit, the wife ever made any attempt to resume conjugal life with the husband.

- 29.** Thus, such allegation of ulterior motive is also baseless.
- 30.** As such, this Court does not find any perversity or illegality in the learned Trial Judge having come to one of the plausible conclusions on a preponderance of probabilities, on the basis of the materials available on record, to hold that the wife is guilty of desertion to the husband, thus entitling the husband to a decree of divorce on the ground of desertion under Section 13(1)(ib) of the Hindu Marriage Act.

(ii) Whether the marriage between the parties has broken down irretrievably; if so, whether such fact can be a ground for divorce

- 31.** As per the above discussion, it cannot be denied that from 2007, when admittedly the parties went apart, never to return to each other, there has been no attempt on the part of either of the

parties, as per the evidence on record, to reunite in conjugal bliss. Even apart from the fact that for ten years after 2007, before the filing of the present suit, there was no such attempt, even after the institution of the suit, about more than 8 years have elapsed, during which the spouses are living separately. Thus, for the last 18 years, during which the minor son of the parties attained majority, there has been no visible sign of the parties having any intention to reunite. Hence, there is substance in the findings of the learned Trial Judge to the effect that the marriage between the parties has broken down irretrievably.

- 32.** The question which arises, thus, is whether such irretrievable breakdown of the marriage can furnish a ground for divorce. It is not in doubt that irretrievable breakdown, by itself, is not a ground for divorce under the Hindu Marriage Act or, for that matter, under any Indian Law. However, in the path-breaking judgment of *Rakesh Raman (supra)*⁴, the Hon'ble Supreme Court took into consideration the practical realities of life and incorporated irretrievable breakdown as a component of cruelty, bringing it within the fold of Section 13(1)(ia) of the Hindu Marriage Act. It was observed that irretrievable breakdown of a marriage may not be a ground for dissolution of a marriage under the Hindu Marriage Act, but cruelty is.

4. *Rakesh Raman v. Kavita, reported at (2023) 17 SCC 433*

- 33.** In the considered opinion of the Hon'ble Supreme Court in *Rakesh Raman (supra)*⁴, a marital relationship which has only become more bitter and acrimonious over the years does nothing but inflict cruelty on both the sides. It was further held that to keep the facade of the broken marriage of the broken marriage alive would be doing injustice to both parties. In the opinion of the Hon'ble Supreme Court, a marriage which has broken down irretrievably spells cruelty to both the parties, as in such a relationship each spouse is treating the other with cruelty. Conspicuously, it was therefore held to be a ground for dissolution of marriage under Section 13(1)(ia) of the Act.
- 34.** The above ratio clearly was an enunciation of the law that irretrievable breakdown, although not by itself, but as a component of cruelty, is a ground for dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act. From the above narration of the pronouncement of the Supreme Court, it is clear that the said decision was not rendered under Article 142 of the Constitution of India, to do complete justice between the parties, which would have been stated by the Hon'ble Supreme Court if the intention was to invoke article 142. On the contrary, the intention of the Hon'ble Supreme Court in *Rakesh Raman (supra)*⁵ was clear, to the effect that the law was laid down that irretrievable breakdown, as a component of cruelty, comes within the fold of

5. *Rakesh Raman v. Kavita, reported at (2023) 17 SCC 433*

Section 13(1)(ia) of the Hindu Marriage Act and tantamounts to cruelty, justifying the ground of dissolution of marriage. Since the said issue specifically fell for consideration and was decided by the Hon'ble Supreme Court, the judgment partakes of the character of a binding precedent under Article 141 of the Constitution.

- 35.** In *Rinku Baheti (supra)*⁶, the said proposition was not deviated from nor overruled, either by implication or expressly.
- 36.** A judgment is only to be treated to be a precedent for the ratio which is laid down in the facts and circumstances of that case, on the issues which were argued specifically and decided by the court in the said case. It is well-settled that a judgment cannot be taken as a precedent for any derivative ratio, which can be indirectly deduced from the original pronouncement, but is a precedent only for the actual proposition of law laid down on the facts of the case. In such context, the Hon'ble Supreme Court, in *Rinku Baheti (supra)*⁶, was dealing with a transfer application under Section 25 of the Code of Civil Procedure and not on the issue whether irretrievable breakdown is a ground of divorce.
- 37.** While considering such application, the Hon'ble Supreme Court examined the question as to whether in such an application, a divorce could be granted under Article 142 of the Constitution of India. Thus, the factual premise and the perspective of *Rinku Baheti (supra)*⁶ were completely different from the issue at hand in

6. *Rinku Baheti v. Sandesh Sharda*, reported at (2025) 3 SCC 686

the present case. While so adjudicating, the Hon'ble Supreme Court took into consideration various judgments and, while specifically mentioning several cases where it was stated that the power under Article 142(1) of the Constitution of India was exercised, notably, while discussing *Rakesh Raman (supra)*⁷, it was not specifically stated by the Hon'ble Supreme Court in *Rinku Baheti (supra)*⁸ that it had, in *Rakesh Raman (supra)*⁷, granted divorce under Article 142. The silence of the Hon'ble Supreme Court as regards under which provision *Rakesh Raman (supra)*⁹ was rendered, as opposed to the other cases in which it was specifically held that Article 142 was invoked, makes it abundantly clear that the Hon'ble Supreme Court did not deviate from the proposition laid down in *Rakesh Raman (supra)*⁷ under Article 141 of the Constitution of India insofar as irretrievable breakdown of marriage as a ground for divorce under Section 13(1)(ia) of the Hindu Marriage Act is concerned.

- 38.** Hence, after *Rakesh Raman (supra)*⁷, it is the law of the land that irretrievable breakdown of marriage, if established, comes in as a component of cruelty within the ambit of Section 13(1)(ia) of the Hindu Marriage Act, being cruelty by the parties to each other, and entitling the parties to a decree of divorce.

7. *Rakesh Raman v. Kavita*, reported at (2023) 17 SCC 433

8. *Rinku Baheti v. Sandesh Sharda*, reported at (2025) 3 SCC 686

- 39.** Another aspect of the matter cannot be totally overlooked, although not dealt with in *Rakesh Raman (supra)*⁹. In the said report, the Hon'ble Supreme Court was considering irretrievable breakdown in the context of cruelty. However, on a careful reading of the line of judgments passed by the Hon'ble Supreme Court in recent times, it cannot be denied that the clear trend of the Apex Court's view is to dissolve a marriage, albeit under Article 142 of the Constitution, to do complete justice between the parties where the marriage has irretrievably broken down. Thus, taking a pragmatic view, it cannot be gainsaid that the consistent judicial trend has been to honour the differences between the parties and not compel them to stick to each other despite acrimony having built up by long and continuous severance of the matrimonial tie. Seen from such perspective, irretrievable breakdown of marriage between the parties not only entails cruelty but also substantiates the ground of desertion. In fact, irretrievable breakdown of marriage for a prolonged period between the parties has more elements of desertion than cruelty, since the parties have, for all practical purposes, deserted each other without any intention to restore conjugal life between themselves.
- 40.** Viewed in the factual backdrop of the present case, thus, the ground of desertion was also established by the irretrievable breakdown of marriage between the present parties for a long period of about 18 years.

- 41.** Accordingly, this Court is of the opinion that, within the limited context of an appeal, there is no scope of interference with the exercise of judicial discretion by the learned Trial Judge on the basis of the materials available before the said court, by accepting one of the plausible views on preponderance of probabilities, thereby granting divorce on the ground of desertion.

CONCLUSION

- 42.** In view of the above discussions, seen through the lens of an appellate court, this Court finds no legal or factual error and/or perversity on the part of the learned Trial Judge in granting a divorce on the ground of desertion, by taking into account the fact that the marriage between the parties have broken down beyond repair. Moreover, the only son of the parties has also attained majority a few years back, which further dilutes the justification for sustaining a dead marriage. Accordingly, the appeal fails.
- 43.** Hence, FA No. 103 of 2023 is dismissed on contest, thereby affirming the impugned judgment and decree dated March 4, 2023 passed by the learned Additional District Judge, Second Court at Krishnanagar, District: Nadia in Matrimonial Suit No. 370 of 2017, and decreeing the said divorce suit, granting a decree of divorce in favour of the respondent/husband against the appellant/wife.
- 44.** There will be no order as to costs.
- 45.** Interim orders, if any, stand vacated.

- 46.** Consequentially, CAN 1 of 2023 and CAN 2 of 2023 are disposed of as well.
- 47.** It is made clear that nothing in the above judgment shall create any impediment on the part of the parties, if otherwise entitled to in law, to apply for permanent alimony in the jurisdictional court.
- 48.** A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)