IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Aryak Dutt

FA/387/2025

Amitava Sardar
VS
Mrs. Luma Mondal (nee Sardar)

For the Appellant : Mr. Kaushal Paul, Advocate
Mr. Saptarshi Dutt, Advocate
Mr. Kajal Mukherjee, Advocate

For the Respondent :Mr. Prantick Ghosh, Advocate
Ms. Shabana Hasin, Advocate
Ms. Paulumi Saha, Advocate
Ms. Samima Akter, Advocate

Heard & Judgment on: October 5, 2026

Debangsu Basak, J.

1. Appeal is directed against the judgment and order dated May 6, 2025 passed in Mat Suit No. 207 of 2016 by the 1st Court, Barasat, North 24 Parganas.
2. By the impugned judgment and order, learned Trial Judge, dismissed a petition under Section 27(1)(b) read with Section 27(1)(d) of the Special Marriage Act, 1954.

3. Learned advocate appearing for the appellant submits that, the marriage between the parties was solemnized under the Act of 1954 on April 12, 2004. Hindu rituals were performed on November 22, 2004. The marriage was never consummated. In fact, the respondent left the matrimonial home one month after the marriage.
4. In support of the contention that the marriage between the parties were not consummated, learned advocate appearing for the appellant relies upon the evidence led by the respondent in the written statement before the learned trial Judge. He also refers to the cross-examination of the respondent before the learned Trial Judge. He submits that on reading of such pleading in the written statement coupled with the statement in the cross-examination, the inevitable conclusion is that, the marriage between the parties never stood consummated.
5. Learned advocate appearing for the appellant submits that, neither the statements made by the appellant nor any statement of any witnesses of the appellant examined at the trial, establish that, there was cohabitation between the parties or that, the marriage between the parties stood consummated.
6. Learned advocate appearing for the appellant submits that, the word 'cruelty' is not defined under the Act of 1954. He relies upon **(2007) 4 SCC 511 (Samar Ghosh vs. Jaya Ghosh)** in support the proposition that, continued desertion is an act of cruelty and a ground for divorce. He points out that in the facts and circumstances of the case, since one month after the marriage was solemnized on April 12, 2004, the parties were not living as husband and wife. He points out that there was an interim period in which the parties were required to live as husband and wife

pursuant to an order of the High Court. He submits that, the parties never cohabited nor was the marriage consummated even then. He submits that, during such period of time the appellant was not residing at the house with the respondent.

7. Learned advocate appearing for the appellant relies upon **(2023) 17 SCC 433 (Rakesh Raman vs. Kavita)** in support of the proposition that long separation is cruelty and is a valid ground for divorce.

8. In the facts and circumstances of the present case, learned advocate appearing for the appellant submits that, the marriage was solemnized on April 12, 2004. The respondent left the matrimonial house one month after marriage. The divorce proceedings were filed on July 29, 2016. In his usual fairness he submits that, the time period for desertion to come into play under Section 27(1)(b) of the Act of 1954 does not exist. However, according to him, the appellant was able to prove the cruelty meted out by the respondent for grant of divorce.

9. Learned advocate appearing for the appellant refers to various observations made by the learned Trial Judge in the impugned judgment and order. He submits that, the non-consummation of marriage is sought to be dealt with by the learned Trial Judge by holding that there was no application for restitution of conjugal life. He submits that non-consummation of marriage and restitution of conjugal rights are different. Learned Trial Judge erred in holding that, the appellant was at fault in not applying for restitution of conjugal life.

10. Learned advocate appearing for the respondent refers to the pleadings of the parties and the evidence led at the trial. He submits that, the appellant did not give any particulars of the

alleged cruelty. Appellant also did not give any particulars as to the dates when the alleged non-consummation of the marriage took place. Attention of the Court is drawn to the observations made by the learned Trial Judge in the impugned judgment and order, particularly to paragraph 19 onwards.

11. Learned advocate for the respondent submits that, every finding rendered by the learned Trial Judge is correct. He submits that, the appellant did not furnish any particulars of cruelty or the alleged non-consummation of marriage. In the absence of such particulars, the appellant is not entitled to a divorce. In support of such contention, he relies upon **AIR 1989 Cal 74 (Tapankumar Chatterjee vs. Smt. Kamala Chatterjee) , (2010) 4 SCC 476 (Ravi Kumar vs. Julmidevi), AIR 1989 Cal 327 (Broja Kishore Ghosh vs. Smt. Krishna Ghosh) and (2005) 2 Cal LT 567 (Smt. Kajal Roy vs. Prasanta Kr. Roy).**

12. Learned advocate appearing for the respondents draws the attention of the Court to the provisions of Order VI Rule 4 of the Code of Civil Procedure, 1908 to contend that, absence of particulars with regard to cruelty, desertion or non-consummation of conjugal rights is fatal to the case of the appellant.

13. We find from the records that the marriage between the parties before us was solemnized under the provisions of the Act of 1954 on April 12, 2004. Hindu rituals with regard to such marriage were performed on November 24, 2004. Marriage between the parties is therefore, governed by the Act of 1954 with the marriage being solemnized thereunder.

14. Appellant as the petitioner applied for divorce of such marriage invoking Section 27(b) and (d) of the Act of 1954. For the sake of convenience, such petition is referred to as the plaint.

15. Respondent filed her objection to such plaint. Such objection for the sake of convenience is referred to as the written statement.
16. At the trial, learned Trial Judge framed several issues. Parties adduced oral and documentary evidence at the trial. Appellant examined three witnesses in support of his case while the respondent examined herself in the defence.
17. In paragraph 2 of the plaint, the appellant claimed that the respondent refused to consummate the marriage showing the reason that she was not interested about intercourse as her figure will get shapeless and that nobody will notice her due to such shapeless figure.
18. While dealing with such averments made in paragraph 2 of the plaint, respondent in her written statement in paragraph 8 denied such allegation. However, in her written statement, she stated in paragraph 15 that the appellant never cohabited with the respondent and that the appellant never liked to procure a child although best efforts were made by the respondent.
19. In the evidence-in-chief, appellant repeated his stand with regard to the averments in paragraph 2 of the plaint. Appellant was cross-examined at the trial. The respondent filed evidence-in-chief at the trial. She was cross-examined.

20. In her cross-examination, respondent admitted that there was no cohabitation between her and the appellant since marriage.
21. In view of such materials on record, we find that the appellant is able to establish conclusively that the marriage between the parties was not consummated.
22. Issue, therefore, remains is whether or not, non-consummation of marriage would be a ground for granting divorce under the Act of 1954.

23. Under Section 34 of the Act, 1954, it is the duty of the Court to undertake such an exercise in order to prevent the complete breakdown of marriage. In discharge of such duties, Coordinate Bench from time to time directed mediation between the parties. Such mediation efforts failed at least twice.

24. Before us, we took up the efforts of trying to save the marriage. Initially, we interacted with both the parties to arrive at an amicable resolution of the disputes between them. We suggested various manners and mechanisms of settlement. However, the parties could not agree to settle their disputes. We hastened to add that we are not approaching any blame on any of the parties before us in not arriving at a settlement between them. All that we place on record is that we made sincere efforts to settle the disputes between the parties. We tried our best to discharge our duties cast upon us under Section 34 of the Act of 1954.

25. In this regard, we also place on record the cooperation extended to us by the respective set of advocates appearing for the respective parties. We place on record that both the sets of advocates tried their best to settle the disputes and in fact they went out of their way in order to ensure that an amicable settlement could be arrived at between the parties.

26. As noted above, all efforts in this regard failed.

27. **Samar Ghosh (supra)** considered the provision of Hindu Marriage Act, 1955. It noticed that cruelty was not defined therein. It is of the following view:-

> "101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty".

The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:-

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and d neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset

may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the

> feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

28. **Samar Ghosh (supra)** in paragraph 101 (xii) is of the view that unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.
29. **Samar Ghosh (supra)** was followed and applied in **Rakesh Raman (supra)**. In **Rakesh Raman (supra)**, the couple was living separately for last 25 years. No child was born out of the wedlock. However, they cohabited as husband and wife for four years and repeated efforts by the Court for reconciliation/settlement resulted in failure.
30. In the facts and circumstances of the present case, the parties before us lived as husband and wife barely for a month. We noticed above, both the parties agree that marriage between them was not consummated. Appellant's version is that he was denied any physical relationship on the ground of the respondent losing her shape of the body while the respondent's version is that the appellant refused to cohabitate. The admitted basic minimum position between the parties is that no cohabitation took place. Consummation of marriage, therefore, did not take place.
31. There is no valid reason for the marriage not being consummated. There is no material on record suggesting that any of the parties were incapable of consummating the marriage. The materials on record suggest that they voluntarily withdrew from the society of the other.
32. No child was born out of the wedlock as the marriage did not stand consummated. Marriage was solemnized on April 12, 2004 and the parties are living separately since then except for the first

one month that they lived as husband and wife and an interregnum of a month. When the parties were required to stay together by an order of Court. Even in the second portion when the parties were required to stay as husband and wife by an order of the Court, appellant did not stay in the same house as that of the respondent.

33. Ingredients for divorce on the ground of cruelty as enunciated in **Rakesh Raman (supra)** stands satisfied in the facts and circumstances of the present case. Appellant, in our view, therefore is entitled to a decree for divorce on the ground of cruelty.
34. The authorities cited on behalf of the respondent, namely **Tapan Kumar Chatterjee (supra), Ravi Kumar (supra), Broja Kishore Ghosh (supra) and Smt. Kajal Roy (supra)** are on account of non-furnishing of particulars of cruelty meted out. In the facts and circumstances of the present case, there is an irretrievable breakdown of marriage. The cruelty which was occasioned in the facts and circumstances of the present case emanates out of denial of conjugal rights and non-consummation of marriage.
35. Appellant relied upon an order dated June 20, 2022 passed in FAT 407 of 2015 (Smt. Sathi Roy nee Biswas vs. Sri Sajal Roy) for the proposition that a permanent alimony of Rs.8 lakhs may be awarded subject to grant of instalments to pay the same to the appellant.
36. Learned advocate appearing for the respondent submits that in **Smt. Sathi (supra)** one of the parties was a fish monger and such lower figure of permanent alimony was awarded. He submits

that in the facts and circumstances of the present case, a higher amount should be fixed.

37. Taking into account the quantum of assets that are available to the appellant, we deem it appropriate to grant a permanent alimony of Rs.10 lakhs payable in four monthly instalments commencing on and from November 15, 2026 and payable on the 15th of each of next month. In default of payment of any instalments, respondent is at liberty to execute the same. We arrive at the figure of permanent alimony finding that the respondent is gainfully employed.

38. FA 387 of 2025 is **disposed of**.

(Debangsu Basak, J.)

39. I agree

(Aryak Dutt, J.)

Dd/SD

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