

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble **JUSTICE ARINDAM SINHA**

And

The Hon'ble **JUSTICE SUVRA GHOSH**

F.A. 134 OF 2016

WITH

I.A. NO. CAN 1 OF 2017 (OLD CAN 3609 OF 2017)

Chiranjib Bag

Versus

Smt. Suchandra Bag

For the Appellant : Mr. S.T. Mina, Adv.
Mr. Amajit De, Adv.
Mr. Pratick Sardar, Adv.,

For the Respondent: Mr. Dipak Kr. Mookerjee, Adv. Heard on :

02nd March, 2021

Judgment on : 10th March, 2021

SUVRA GHOSH, J. :-

1. This is a tragic story of a woman who is eager to fulfil her dreams of a happy and peaceful married life despite denial and refusal by her husband.
2. The respondent is the wife of the appellant by virtue of marriage

solemnised as per Hindu rites and customs on 10-08-2009. Disputes and differences cropped up between the parties which led the appellant/ husband to file a suit praying for decree of divorce under section 13(i) (a) of the Hindu Marriage Act, 1955 before the Learned Additional District Judge, Fast Track Court, Durgapur. The contention of the appellant/husband in the said petition was that the respondent misbehaved with the appellant and his family members and also developed extra marital relationship with many persons. She turned a deaf ear to the request of her husband to lead a moral life and cooperate with him in maintaining cordial relation. It was further alleged that the respondent insisted that the appellant should stay separately from his family and refused to lead a conjugal life with the appellant, besides torturing him physically and mentally. The respondent left the appellant's house voluntarily in January, 2011 and was residing in her parental home since then. Several efforts of the appellant to bring her back failed and there was no scope for reconciliation between the parties which compelled the appellant to file suit for divorce on the grounds of adultery, cruelty and desertion.

3. The respondent/wife contested the suit by filing written statement wherein she denied the contention of the appellant and stated that the appellant married her after obtaining a decree of divorce against his first wife Rina Bag alias Manna on 02-02-2009. She also averred that the appellant was a primary school teacher under the State Government, posted at Harishpur near Purbasthali in district Burdwan which was far

away from his residence at Durgapur which he visited every weekend. The appellant and his family members were unhappy with the gold ornaments, furniture, utensils and cash of Rs. 1, 60,000/- given by the widowed mother of the respondent during their marriage and demanded further cash and other valuables from her. The inability of the respondent's mother to meet the said demand resulted in subjecting the respondent to physical and mental cruelty by the appellant and his family. The appellant also insisted on staying in the respondent's parental home as "Ghar Jamai". The respondent further stated that the appellant was incapable of leading conjugal life whereas she had no medical problem at all. The respondent was taken to her parental home by the appellant on 03-06-2010 and left there, never to be allowed in her matrimonial home again. The respondent has been receiving interim maintenance to the tune of Rs. 3,000/- per month from the appellant by virtue of an order granted by the Learned Judicial Magistrate, Second Court, Durgapur in Miscellaneous Case No. 186 of 2011. The respondent is ready and willing to reconcile with the appellant and lead a peaceful marital life with him. She prayed for dismissal of the suit.

4. Upon taking evidence of the parties and considering the entire material on record, the learned trial court, by judgment impugned, dismissed the suit on contest.
5. Being aggrieved by such dismissal, the appellant has come up before this court in appeal, praying for a decree of divorce in his favour.
6. Learned counsel for the appellant has submitted that he does not intend

to press the grounds of adultery and desertion and shall confine his argument to the ground of cruelty.

7. At the outset, it has been pointed out on behalf of the appellant that though the respondent filed a proceeding praying for maintenance, she did not approach the court for restitution of conjugal rights which indicates that she has no intention of resuming marital life. Referring to the averment of the respondent in her written statement as well as her evidence before the learned trial court, learned counsel has submitted that the allegations of demand of dowry and cruelty thrust upon the appellant are out and out false and the allegation of the respondent with regard to sexual incapability of the appellant amounts to mental cruelty. The allegations made out against the appellant by the respondent are baseless, false and fabricated. In support of his contention, the appellant has placed reliance upon the authority in Smt. Santana Banerjee v/s. Sachindra Nath Banerjee reported in AIR 1990 CAL 367 and Amarendranath Sannyal v/s. Krishna Sannyal reported in (1993) 1 CHN 213.
8. Learned counsel appearing on behalf of the respondent/wife has supported the impugned judgment and has submitted that the respondent was driven out of her matrimonial home by the appellant and his family members and was constrained to stay in her parental home. Several false allegations have been made against the respondent by the appellant who refused to accept her when she returned to her matrimonial home. The respondent is ready and willing to reunite with

her husband and has also not taken any coercive step against him despite being subjected to cruelty and being deprived of marital life. Learned Counsel has referred to a decision of a coordinate bench of this court in Suparna Dalui v/s. Bidhan Mondal reported in 2016 (5) CHN (CAL) 429.

9. We have considered the submissions made on behalf of the parties as well as material placed on record.
10. Admittedly the parties were married as per Hindu rites and customs on 10-08-2009 and led a marital life together for some time. Other admitted facts are that the respondent's sister is married to the appellant's brother and reside separately from the rest of the family. Also, the appellant married the respondent after obtaining a decree of divorce against his first wife Rina.
11. As envisaged in section 13(i) (a) of the Act of 1955, marriage under this Act can be dissolved by a decree of divorce on a petition presented by either the husband or the wife on the ground that "the other party has, after the solemnisation of the marriage, treated the petitioner with cruelty". The term "cruelty" takes within its sweep any act which may cause physical, mental or other violation and should be something more than ordinary wear and tear of a marriage.
12. In the instant case, the appellant has urged that he was subjected to physical and mental cruelty by the respondent who refused to cooperate with him in his conjugal life and was unwilling to live in her matrimonial home. He has also stated that the statement of the respondent in her written statement as well as evidence before the learned trial court

amounts to mental cruelty. Such statement of the respondent in her written statement is set out:

“That the statement of the petition made in paragraph No. 4 is false and denied by the respondent. It is the actual fact the petitioner is unable for intercourse properly with his wife his behaves like an animal”.

The statement refers to paragraph 4 of the petition filed by the appellant which is reproduced below.

“That the respondent in the absence of the petitioner grew up extra marital relationship with many persons which the petitioner came to know from the month of August, 2010.”

13. It is evident that the statement made by the respondent is in retaliation to the allegation thrust upon her by the appellant. The appellant has taken the pain to place reliance upon the authority in Smt. Santana Banerjee (supra) wherein it has been observed by a coordinate bench of this court that disparaging remarks about the husband and false allegations affecting his peace and honour must be construed to be acts of cruelty. The authority in Amarendranath Sannyal (supra) also says any imputation against the character of a spouse which is unfounded and baseless and on mere suspicion would amount to mental cruelty.
14. In the case in hand, it was the appellant who filed the suit for divorce on a vague allegation of cruelty which was neither explained, nor elaborated. It was the appellant who went to the extent of assassinating the

character, morality and sexual capability of the respondent. If this is not cruelty, then what is it? It was only in reply to the allegations thrust upon her that the respondent tried to place her case before the court. In other words, the cruel and impolite gesture of the appellant was retaliated to by the respondent in a manner best suited to her. Therefore the authorities referred to by the appellant do not come to his aid in the present case.

15. Per contra, the attitude of the appellant and his comments touching the chastity and womanhood of the respondent are glaring examples of torture/cruelty meted out upon her.
16. The appellant has pointed out that the respondent did not take any step for restitution of conjugal rights which indicates that she has no intention of returning to the appellant. It is a fact that no case praying for restitution of conjugal rights has been filed by the respondent. But at the same time the respondent was/is all throughout ready and willing to reconcile with the appellant and return to her matrimonial home. In fact, the respondent attempted to resume her marital life by going to the appellant's house on 24-11-2013 but was driven away therefrom by the appellant as admitted by him in his evidence. The appellant has very clearly stated that he is not willing to lead a conjugal life with the respondent. The appellant's father who adduced evidence before the learned trial court has also stated that he does not want the appellant to live with the respondent. Therefore it is crystal clear that despite all efforts by the respondent to return to her matrimonial home and resume

conjugal life with the appellant, she was not accepted by the appellant and his family and was compelled to return to her parental home. Merely because the respondent did not formally pray for restitution of conjugal rights before a court of law, under no stretch of imagination can it be inferred that she had no intention of resuming conjugal life with the appellant.

17. Allegation of cruelty has not been substantiated by cogent evidence and even if it is held that there were certain differences between the couple, the definition of cruelty cannot be stretched to such an extent as to include such petty disputes and differences which are part and parcel of a normal married life. While trying to make out a case of cruelty against the respondent, the appellant has exposed his cruel and impolite attitude towards his wife which seriously affects the dignity and honour of a woman.
18. Upon consideration of the entire material on record, we are left with no alternative but to come to the conclusion that the appellant has miserably failed to prove his case and there is no illegality or irregularity in the judgment impugned that calls for inference by this court.
19. In the result, the appeal fails.
20. F.A. 134 of 2016 is dismissed.
21. Connected application being I.A. No. CAN 1 of 2017 (OLD CAN 3609 OF 2017) is disposed of.
22. Judgment dated 17-09-2015 passed by Learned Additional District Judge, Fast Track Court, Durgapur, Burdwan in Matrimonial Suit No.

217 of 2011 is affirmed.

23. There will however be no order as to costs.
24. A copy of this judgment be sent to the learned trial court for information and necessary action.
25. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)