

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

P R E S E N T :-

The Hon'ble Justice **Nishita Mhatre**

The Hon'ble Justice **Tapash Mookherjee**

F.A. No. 72 of 2008

Sunita Saha

Versus

Chandan Kumar Saha

For the Appellant :- Mr. Bhaskar Ghosh, Advocate,
Mr. K. A. Bhaduri, Advocate,
Ms. Aakansha Acharyya, Advocate.

Heard on : 05.04.2016

Delivered on: 16.05.2016

Tapash Mookherjee, J:

1. The present appeal is against the judgment and decree dated 26.07.2005 passed by the learned Additional District Judge, 3rd Court, Barasat, North 24 Parganas, in Matrimonial Suit No. 24 of 2001.
2. It was a Suit for dissolution of marriage under Section 13 (1) (i a) and (i b) of the Hindu Marriage Act, 1955. The Suit was filed by the Petitioner/Wife and it was dismissed on contest. Hence, the appeal is preferred by the Petitioner/Wife.

3. The Petitioner/Wife's case in the Suit was that the Petitioner and the Respondent were married on 29.11.1990 according to Hindu Rites and Customs. The marriage was duly consummated and a son was born on 28.07.1996 in the marriage. It was alleged by the Wife that within a short period after their marriage she was subjected to various kind of physical as well as mental torture by her Husband and other members of her Husband's family, in different ways and her Husband used to often threaten her of divorce due to which she started living separately in her parental home but, the torture continued. It was further alleged by the Wife that after she started living separately in her parental home her Husband used to come to her parental home on weekends and her Husband used to abuse her mother and herself as well, for which they caused entries in the General Diary of the local Police Station on two occasions, but the Petitioner silently tolerated all those humiliations and tortures with hope for further peace but her Husband did not amend himself and she was ultimately deserted by her Husband. It was further alleged by the Petitioner that all her attempt for a peaceful marital life failed and she apprehended danger to his life and security in case of continuation of her marital tie with her Husband and hence she was compelled to file the Suit for dissolution of marriage on the ground of desertion and cruelty.

4. The Husband/Respondent filed written statement and contested the Suit. In his written statement the Husband denied all the material allegations against him and it was his specific case that he as well as his parents had all kinds of love and affection towards his Wife and it was at their encouragement and active cooperation his Wife continued her higher studies and built up her carrier in teaching at first in a School and thereafter in Colleges. It was the further case of the Husband that he always fulfilled all the demands of his Wife and that he invested time to time huge money in shares and other securities in the name of his Wife and with those funds his Wife purchased a flat according to her choice but treacherously the flat was purchased in the name of his mother-in-law. It was his further case that after his Wife had shifted to the aforesaid flat he used to visit there regularly at the weekends from his place of posting which was at Assansol at that time and he used to discharge all his duties as a Husband but his visit to that home was stopped by his Wife and mother-in-law. The gist of the defence of the Husband was that he never subjected his Wife to any kind of torture and that it was his Wife who at her free will tried to sever their matrimonial knot at the ill advice of his mother-in-law. Thus, denying the allegations in the plaint the Husband prayed for the dismissal of the Suit.

5. On the basis of the pleadings of the parties five issues were framed by the Trial Court. Both the parties adduced evidence and considering

the evidence thus produced on record the Trial Court decided all the issues against the Petitioner/Wife and hence dismissed the Suit. Being aggrieved by such decisions the Petitioner/Wife filed the present appeal.

6. It has been alleged by the Appellant/Wife that the Trial Court wrongly dismissed the Suit and failed to appreciate the evidence in proper perspective.
7. The Respondent/Husband appeared in person and received the paper book as well, on 12.03.2014 but he did not appear thereafter and in consequence, the appeal has been heard ex parte.
8. Mr Ghosh, learned Advocate appearing for the Appellant has frankly admitted that the Appellant has failed to prove that he has been deserted by her Husband. Mr Ghosh has also admitted that the manner of alleged torture on the Appellant has not been described anywhere either in the plaint or in the evidence of the Appellant which is a lacuna in the Appellant's case in the trial. But, the main thrust of argument of Mr Ghosh is that the Respondent in his written statement as well as during evidence has raised certain allegations assailing the morality and character of the Appellant which themselves amount to cruelty to the Appellant and for such reasons alone a decree for divorce should have been passed in favour of the Appellant by the Trial Court. Mr Ghosh has further submitted that the

parties are living separately for about fifteen years and the marriage has irretrievably broken down and hence the matrimonial tie between the parties is nothing but an unwanted burden on both the parties now and so it would be reasonable and good for both the parties to end such a dead relationship forever by law.

9. Mr Ghosh has referred two decisions in support of his contentions one reported in AIR 2003 Supreme Court 2462 (Vijaykumar Ramchandra Bhat- versus - Neela Vijaykumar Bhat) and the other reported in AIR 2013 Supreme Court 2176 (K. Srinivas Rao - versus - D. A. Deepa).

10. The Appellant prayed for divorce on the ground of desertion and cruelty.

11. It was the case of the Appellant that she was driven out of her matrimonial home on 01.04.1998 and since then she had been deserted by her Husband. But, during evidence she admitted that up to 28.06.2000 her Husband used to visit the house where she was residing in, on all the weekends and other holidays. The case was filed on 12.07.2000. the Trial Court has, therefore, rightly held that the Appellant's case of desertion is not proved at all.

12. The Appellant has alleged in her plaint as well as in her evidence that she has been subjected to torture and harassment by her Husband. Neither in the plaint nor during her evidence the

Appellant narrated how and in which manners she has been thus tortured or harassed by her Husband. On the other hand, the Appellant during her cross examination admitted that initially after marriage she was treated well by her parents-in-law like their own daughter but subsequently the situations changed. But she has not explained what are those changes of situations. Be that as it may, the Appellant has further admitted that she continued her higher studies after marriage staying in her matrimonial home and that her Husband had borne all the expenses for her higher study. She has further admitted that her Husband has invested good amount in securities in her name. Such admissions indicate that the relationship between the Appellant and her Husband was good. But in para 18 (h) of his W.S. the Respondent alleged that on an occasion of the birthday of their son he paid Rs. 1,000.00 (rupees one thousand only) to his wife for celebration of the birthday of their son but the "ungrateful", "deceitful" and "wily" Appellant spent the money for the purpose of sending a legal notice to him. In para 18 (i) in the W.S. the Respondent has further alleged that the Appellant if divorced will try for a second marriage and make a bargain similar to that made with him. The Respondent in the same paragraph has also described the Appellant as "ungrateful", "selfish", "treacherous" and "stupid".

13. The Respondent picked up a case in the trial that the Appellant is maintaining an extra marital relationship with a man. But

when the allegation was raised during the cross examination of the Appellant the Appellant honestly admitted that she had a relationship with a boy during his student life and prior to her marriage and she severed the relationship after marriage. But, still at the concluding part of the cross examination of the Appellant a suggestion was put to the Appellant from the Respondent's side to the effect that the Appellant wanted divorce for such extra marital relationship. Even thereafter in para 21 of his examination-in-chief the Respondent repeated the allegations and attributed illegal and immoral acts to the Appellant.

14. It is needed to be mentioned that the Respondent has miserably failed to prove any of his allegations against his Wife described above. So, all those allegations of the Respondent against the Appellant are considered as baseless and vexatious. In para 21 of his examination-in-chief the Respondent has asserted that in spite of illegal and all immoral activities he is ready and willing to lead happy conjugal life with his Wife. According to the learned Trial Judge, such an offer of the Respondent is a generosity and reflects a very broad mind of the Respondent. But in our considered view learned Trial Judge is wrong on the point.

15. In the decision reported in **AIR 2003 Supreme Court 2462** it has been laid down that unfounded allegations by the Husband

assailing the moral character and chastity of the Wife in his written statement amount to worst form of insult and cruelty sufficient by itself to pass a decree of divorce in favour of the wife. It should be also noted that in that case although the Husband had withdrawn such allegations by subsequent amendment of his written statement but still Hon'ble Apex Court came to the aforesaid view. A similar view has been reiterated also in the case reported in AIR 2013 Supreme Court 2176. In another case reported in 2004 (3) CHN 516 (Kakali Das - versus - Asish Kumar Das) this High Court also expressed the view that unfounded allegations against the moral character of a spouse by the other spouse in the written statement amount to mental cruelty.

16. It has been discussed earlier in detail that the Respondent in his written statement as well as during the evidence has assailed the character of the Appellant by describing her "ungrateful", "selfish", "treacherous" and "stupid". It has also been asserted by the Respondent that the Appellant has been maintaining an extra marital relationship because of which she wants divorce. All such allegations are baseless as held above. The Appellant is a highly educated woman and she is a lecturer of a College. It is definitely very difficult for her to digest such kind of insult, humiliation and accept the mental pain and agony resulting from them. The parties are living separately and fighting the litigations for about fifteen

years. The marriage has totally broken down beyond repair. In fact, attempt for reconciliation by the Trial Court failed as found from the order sheet in the record of the Trial Court. So, in our view, a decree of divorce should have been passed in the case by the Trial Court. Hence, the appeal is allowed. The judgment and order dated 26.07.2005 passed by the learned Additional District Judge, 3rd Court, Barasat, North 24 Parganas, in Matrimonial Suit No. 24 of 2001 is hereby set aside. The marriage between the parties solemnised on 29.11.1990 is hereby dissolved by decree of divorce on the ground of cruelty.

17. Urgent certified photocopy of this judgment, if applied for, be supplied to the learned Counsels for the parties upon compliance of all formalities.

(Tapash Mookherjee. J)

(Nishita Mhatre.

J)