

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Sabyasachi Bhattacharyya

And

The Hon'ble Justice Subhendu Samanta

FAT No.370 of 2018

With

CAN 3 of 2024

Smt. Sharmila Sengupta alias Sintu

Vs.

Sri Kalidas Sengupta

For the appellants	:	Mr. Asit Kumar Chakraborty,
For the respondent	:	Mr. Krishnendu Bera
Hearing concluded on	:	02.01. 2025
Judgment on	:	07.01.2025

Sabyasachi Bhattacharyya, J.:-

1. The instant appeal has been preferred by the plaintiff/wife against the dismissal of her suit for divorce, filed on the grounds of cruelty and desertion.
2. Learned counsel for the appellant-wife argues that several expressions used in the written statement of the respondent-husband by way of allegations against the appellant-wife, being unsubstantiated in

evidence, should be treated as baseless allegations which amount to cruelty. For instance, the expression “habitual liar” and the wife’s “crime” were used in the written statement but could be substantiated in evidence.

3. That apart, the appellant argues that the respondent-husband did not pay alimony to the wife, for herself and their son, before an order was passed under Section 125 of the Code of Criminal Procedure which by itself, it is argued, amounts to cruelty.
4. It is submitted that the husband also perpetrated mental and physical cruelty on the appellant-wife and, as such, a divorce decree ought to have been granted against the respondent-husband on the ground of cruelty alone, if not also on desertion.
5. The respondent-husband, in his affidavit-in-chief, admitted that he did not agree to the appellant-wife opening a musical school, thereby depriving the wife of her independent livelihood, although she had advanced degrees in music. The above act also ought to have been construed, it is contended by the wife, as ‘cruelty’, which is a ground of divorce.
6. Insofar as desertion is concerned, it is alleged by the appellant-wife that the respondent-husband left the wife at her matrimonial home without any reason on April 28, 1996, and admittedly did not contact to the wife for three days thereafter. Under such circumstances, the appellant-wife was compelled to leave the matrimonial residence. The

husband, it is alleged, never took the wife back, which tantamounts to *animus deserendi*.

- 7.** Learned counsel for the appellant argues that the purported receipts showing the stay of the husband in Kolkata during the relevant period of his absence were not marked as exhibits and cannot be looked into by the court. Although a covering letter of a subsequent date, issued by the employer of the husband showing his attendance in a meeting at Kolkata during the relevant period, was exhibited, the minutes of the meetings, which were referred to in the said letter, were never produced. Thus, the reason of the respondent-husband's absence, that is, alleged official work, was never established.
- 8.** Learned counsel for the respondent-husband refutes the allegations of the wife and contends that the pleadings in the written statement ought to be read as a whole. The husband having not assassinated the character of the wife in his pleadings or evidence and/or not having levelled any serious allegations against her which are unsubstantiated, it cannot be said that such allegations by themselves amount to cruelty.
- 9.** In any event, it is submitted that the wife having failed to substantiate the allegations made by her against the husband, the allegations made by the husband against the wife in his written statement, regarding her having resorted to lies, were justified.
- 10.** It is argued that the wife claimed alimony primarily for the son of the parties. The husband not only admittedly paid for the advance musical

lessons of the wife but also met necessary expenses for the advanced education of their son. However, the respondent-husband was not even invited to his own son's marriage, which was conducted by the appellant-wife.

- 11.** It is argued that the appellant-wife has admitted that the spouses were living happily and had toured several places, including their honeymoon at the Andaman & Nicobar Islands. That apart, the wife was encouraged to take musical lessons and the family was happy. Thus, the baseless allegations of physical and mental torture were rightly disbelieved by the learned Trial Judge.
- 12.** Regarding the allegation of desertion, it is the appellant-wife who deserted the husband without reason while he was absent for official work only for three days. Sufficient documents have been produced in evidence by the respondent-husband, it is argued, to substantiate the reason for his absence during the relevant three days, which was official work.
- 13.** Thus, it is the wife herself who deserted the husband, taking advantage of the latter's absence for a few days for his official work, without any rhyme or reason. The wife never agreed to return to the matrimonial home despite all efforts on the part of the respondent-husband, thereby herself deserting the respondent-husband.
- 14.** It is, thus, argued that the divorce suit was rightly dismissed by the Trial Court.

- 15.** In order to adjudicate the issues involved herein, we are to look at the two-pronged allegations of cruelty and desertion levelled by the appellant-wife against the husband.
- 16.** Insofar as the allegation of desertion is concerned, we are unable to convince ourselves that the husband was guilty of desertion at any point of time. The husband duly exhibited a letter dated June 4, 1996 issued by the Steel Authority of India Limited (SAIL), the employer of the respondent-husband, which was a covering letter to the minutes of the 'Heads of Safety' meeting of the Company held at Calcutta (now Kolkata) on April 29, 1996, marked as Exhibit-'D'. Annexure - I thereto is a list of the members who were present in such meeting. Item No.21 of the said list of members features the name of the respondent-husband, indicating clearly his presence in the said meeting on April 29, 1996. Even without taking into consideration the travelling expenditure bills of the husband, which were not exhibited but merely marked as "X" for identification, we find from the records that the letter dated June 4, 1996 issued by the employer of the respondent-husband along with the list of members present shows clearly that the husband was in Kolkata during the relevant period of alleged desertion for official work.
- 17.** The husband has stated categorically in his evidence that he came to Kolkata to participate in the pre-scheduled annual meeting of all plants and units of SAIL held on April 29, 1996 at Ispat Bhavan, Kolkata. For such purpose, he left his matrimonial home (quarters) at Ranchi on

April 28, 1996. On April 30, 1996, several jobs such as preparation of action plans and minutes were undertaken by him. He stayed in the Park Hotel at Kolkata during April 28 to April 30, 1996 and returned to his quarters on May 1, 1996 in the morning. Even if the husband did not contact his wife during the said three days, the same could not have been a justified stimulus for the appellant-wife to assume that the husband had deserted her and their son for good and having taken the drastic step of leaving her husband with her son and belongings forever. In any event, the appellant-wife admittedly left her matrimonial home with her child and a number of luggage on April 29, 1996 along with her relatives. Thus, on the very next day after the husband left, the appellant-wife deserted her matrimonial home with her luggage and her son. Hence, the alleged non-communication by the husband of his whereabouts over the next two days becomes irrelevant. It is absurd that if a person leaves his home for official work for a single day, his spouse would automatically assume that he has deserted her forever. That is precisely the case that the appellant-wife has tried to make out. The respondent-husband left on April 28, 1996 and the wife left her matrimonial home on the very next day.

- 18.** The husband has, in several places of his examination-in-chief, stated that thereafter he made earnest efforts to bring back the appellant-wife and his son, but to no avail. Such evidence stands unshaken in his cross-examination.

- 19.** Importantly, the appellant-wife has failed to plead or prove by cogent corroborative evidence that she ever made any effort to return to her matrimonial home after deserting the same on April 29, 1996 without any justification. Hence, there is utter lack of *animus revertendi* on the part of the wife, which itself belies the allegation of desertion by her husband. On the contrary, *animus deserendi* cannot be attributed to the husband from the facts of the case, due to his having left his home merely for three days on official work and having attempted to bring back his wife and son thereafter.
- 20.** Learned counsel for the appellant-wife has insinuated that although the post-dated covering letter of June 4, 1996 issued by the employer of the husband and the list of members present in the meeting of April 29, 1996 were exhibited, those ought not to be looked into since the copies of the minutes themselves were not produced. However, we find no justification in such argument, since there was no necessity for the husband to produce the minutes of the internal meeting of his employer, the SAIL, which would obviously pertain to the internal affairs and might touch upon the business decisions/secrets of SAIL. It was sufficient for the respondent-husband to furnish and have exhibited the covering letter issued by his employer to justify his absence due to official work over the relevant period, along with the members' list of the meeting of April 29, 1996. Thus, the reason for the absence of the husband was sufficiently explained. Hence, the issue of

desertion was rightly decided by the learned Trial Judge against the plaintiff/appellant/wife.

- 21.** Insofar as non-payment of alimony prior to an order being passed under Section 125 of the Code of Criminal Procedure is concerned, the same, by itself, does not amount to cruelty. The husband alleges he had been paying maintenance to his wife and son all along and there is nothing to disbelieve the same. In any event, documents have been produced by the husband to show that due payments were regularly made by him in terms of the order of maintenance passed by the Criminal Court, as also affirmed by the civil court under Section 24 of the Hindu Marriage Act. Exhibit-B is the bank statement of the husband to that effect. Thus, the husband amply looked after his wife and son at all points of time.
- 22.** It is an admitted position that the expenses for advanced music lessons being imparted to the appellant-wife were borne by the husband at all points of time. The wife acquired several diplomas and degrees in music, which is also borne out by Exhibit-C, a certificate issued by one Amiya Sangeet Sadhana, a musical institute, which shows that the wife took her Fourth year Bhav Sangeet (vocal), Fifth year vocal (classical) and Sixth year vocal (classical) examinations from the said institute and acquired a Sangeet Prabhakar Certificate and a diploma in Bhav Sangeet. It is a further admitted position, borne out by the appellant-wife's evidence, that while at Ranchi, she used to sing on different occasions. Thus, during the conjugal life of the parties, the husband

not only supported and encouraged the appellant-wife to have advanced music lessons but also met the expenses for the same. The respondent-husband has asserted in his evidence that he also paid for the higher education of his son and ensured that the latter was established in life.

- 23.** Photographs have been exhibited to show the happy family life of the parties. It is a further admitted position that the respondent-husband took the appellant-wife for tour to several places, including their honeymoon at the Andaman & Nicobar Islands.
- 24.** Hence, the learned Trial Judge correctly arrived at the conclusion that the matrimonial life of the parties was happy till the wife left the husband. Thus, the allegations of mental and physical torture by the respondent-husband, levelled by the appellant-wife, are entirely baseless.
- 25.** Another facet of the matter which is required to be considered is that the wife, either in her pleadings or in her evidence, failed to enumerate a single date or instance of any specific cruel act, either mental or physical, allegedly perpetrated against her. Also, it is well-settled that the burden of proof is on the plaintiff, who stands or falls on her own case. In the instant case, the wife has failed to bring any corroborative witness apart from herself to support her contentions of mental or physical cruelty.
- 26.** On the contrary, we find from the evidence of the husband that he has taken care of the advanced education of the son of the parties, who

underwent a Hotel Management Course at IHMCT & AN, Chennai and served with the Taj Group of Hotels, subsequently going to Miami, Florida. The entire expenses were borne by the husband. There is no contrary rebuttal evidence to demolish such stand of the respondent-husband.

- 27.** Hence, the respondent-husband has all along taken care of his wife and son and also looked after their welfare and catered to the wishes of the appellant-wife to have advanced lessons in music, which was her field of interest.
- 28.** Learned counsel for the appellant-wife has alleged that merely because the husband admittedly did not agree to the appellant-wife opening a musical school at his quarters, such act should be deemed to be cruelty. Such contention, however, is absurd. Admittedly, the husband supported the musical lessons of the wife and the appellant-wife performed classical programmes in many places, all during her conjugal life, which was also supported by the husband. Sometimes such programmes were performed during the whole night, to which the respondent-husband did not object, which is also borne out by the husband's examination-in-chief, which could not be demolished in his cross-examination by any specific contrary suggestion. It was well within the rights of the respondent-husband to disagree with the appellant-wife opening a musical school at the official quarters of the husband, which was allotted to him by virtue of his employment. Such

disagreement, *per se*, cannot tantamount to cruelty by any stretch of imagination.

- 29.** All the above aspects and more were considered by the learned Trial Judge in his considered judgment which has been impugned before us.
- 30.** It has also been considered in the impugned judgment that the wife, in paragraph no.12 of her plaint, alleged that the respondent-husband threatened her of murder. Such serious allegation, however, is not borne out even by the affidavit-in-chief filed by the appellant-wife, let alone by any other evidence. Hence, it is not the husband but rather the wife who made wild allegations which are not backed up by evidence.
- 31.** Much stress has been laid by the learned advocate for the appellant-wife on certain stray words used in the written statement of the husband. For example, it has been stated in paragraph no.9 of the written statement that to appreciate the contention raised by the respondent-husband in right perspective, a brief of history of the facts and “crime” of the petitioner-wife needs to be stated. Such statement cannot be taken in isolation. The sub-paragraphs of paragraph no.9 which follow clearly disclose the several acts committed by the wife against the husband. Mere use of the word “crime” in the husband’s written statement, to define the conduct of the wife, does not incriminate her in the legal sense, nor can be construed to be so derogatory as to constitute cruelty.

- 32.** It has been alleged in the written statement that a drastic change took place in the behavioural pattern of the wife in course of her development in the musical field including “impudicity” in her utterances after certain unethical incidences which brought in disharmony in normal marital life due to involvement of outsiders. “Impudicity” or lack of modesty is an allegation which, in the context of the pleadings of the husband that the wife perpetrated acts of cruelty, abuse, ridicule and disrespect including vulgar abuses to the mother of the respondent-husband, cannot be said, when taken in proper perspective, to be by itself an act of cruelty.
- 33.** In paragraph nos.13 and 14 of his written statement, the husband alleged that the wife was a “habitual liar” and had “presented blatant lies for ulterior motives”, which is backed up by further pleadings and evidence adduced by the husband. In the absence of anything else, such allegations by themselves do not amount to cruelty on the part of the husband, particularly in the backdrop of the serious allegations made by the wife herself, such as the respondent-husband having threatened her of murder, which was not even substantiated by the examination-in-chief of the wife.
- 34.** This, taken in conjunction with the fact that not a single particular or specific instance or date of cruelty has been disclosed by the wife in her pleadings or evidence, leads to the inevitable conclusion that the allegations of mental and physical cruelty levelled by the appellant-wife against the respondent-husband were untrue, which justifies the

allegation of the husband that the appellant-wife resorted to lies in her bid to obtain a decree of divorce.

- 35.** An argument of irretrievable breakdown of marriage has been advanced before the learned Trial Judge as well as before this Court on behalf of the appellant-wife. However, the learned Trial Judge, quite correctly, came to the conclusion that the appellant-wife cannot take advantage of her own wrong in alleging that the marriage between the parties has broken beyond repair. It is the appellant-wife who left the respondent-husband without cogent reason and chose never to return. The allegations of cruelty against the respondent-husband are also unsubstantiated by evidence. On the contrary, the evidence-on-record goes on to show that the couple lived happily during their life together and also went on tours and the musical pursuits of the appellant-wife and the maintenance of the family and academic career of the son was taken care of sufficiently by the respondent-husband. Hence, there is utter lack of evidence to support the allegations of cruelty and desertion against the respondent-husband.
- 36.** Irretrievable breakdown of marriage, by itself, is not a valid statutory ground for obtaining divorce in our country. Of course, in certain cases the Supreme Court has resorted to its powers under Article 142 of the Constitution of India to grant divorce on the ground of irretrievable breakdown of marriage. However, decisions taken or orders passed under Article 142, unlike the *ratio decidendi* of judgments which have

binding force under Article 141 of the Constitution, cannot be treated to be binding precedents.

- 37.** In any event, if elements of cruelty of the respondent-spouse in a matrimonial suit are found to exist, such cruelty can be read into a situation of irretrievable breakdown of marriage to grant a divorce decree in certain cases. In the instant case, however, the plaintiff-wife having failed to establish cruelty on the part of the husband but herself being guilty of deserting the husband without any rhyme or reason, such a procedure cannot be adopted.
- 38.** Thus, on a comprehensive study of the materials and evidence on record, we are of the opinion that the learned Trial Judge was justified in refusing the divorce decree sought by the appellant-wife both on the grounds of cruelty and desertion.
- 39.** In fact, the impugned judgment is written well and deals extensively with the entire range of issues raised by the parties. Hence, there is no occasion for this Court, sitting in appeal, to interfere with the same.
- 40.** Accordingly, FAT No.370 of 2018 is dismissed on contest, thereby affirming the judgment and decree dated April 17, 2018 passed by the learned Additional District and Sessions Judge, Third Court at Alipore, District: South 24 Parganas in Matrimonial Suit No.88 of 2013, whereby the divorce suit of the appellant-wife was dismissed.
- 41.** There will be no order as to costs.
- 42.** A formal decree be drawn up accordingly.

In RE: CAN 3 of 2024

- 43.** The present application was filed by the appellant-wife for “appropriate order” so that the appellant-petitioner is not “harassed by” alleged “intentional laches on the part of the husband in the process of trial”, on the strength of an order passed on May 15, 2023 by a coordinate Bench. In the said order, it was recorded that the parties had, in principle, arrived at an opinion that divorce by mutual consent between them was possible, for which the matter was adjourned to enable the parties to work out future maintenance amount. The matter was accordingly adjourned for four weeks for the parties to resolve their disputes.
- 44.** A liberty was also given to the parties to file an application for divorce on mutual consent in the meantime.
- 45.** However, since the said endeavour between the parties failed and the parties have chosen to argue the appeal at length, there is no scope of passing any orders in that regard. In any event, the liberty granted by the coordinate Bench cannot be construed to be a direction or an order of the Court mandating the parties to file an application for divorce by mutual consent. Hence, the said observations in the order are not implementable in law.
- 46.** Accordingly, CAN 3 of 2024 is dismissed without any order as to costs. However, nothing in this order shall prevent the appellant-wife, if she is otherwise entitled in law, to seek appropriate orders of maintenance/alimony and/or enhancement of maintenance/alimony

before the appropriate forum/court. In the event such an approach is made, it will be open to the respondent-husband to oppose the same on cogent grounds and the forum/court taking up such application of the appellant shall decide the matter independently on its own merits upon giving opportunity of hearing to both parties.

(Sabyasachi Bhattacharyya, J.)

I agree

(Subhendu Samanta, J.)