



**IN THE COURT OF
ADDITIONAL DISTRICT JUDGE, 1ST COURT
DAKSHIN DINAJPUR AT BALURGHAT**

PRESENT : Ansuman Chattopadhyay
Addl. District & Sessions Judge-1
Dakshin Dinajpur at Balurghat
JO Code : WB00-820.

MATRIMONIAL SUIT NO. 265 OF 2024
Computer Registration No. 265 of 2024
CNR : WBDD01-002307-2024

PETITIONER/WIFE	RESPONDENT/HUSBAND
SASWATI SARKAR DAS D/O. Sitesh Chandra Das Village : Saheb Kachari(Hatkhola) P.O & P.S. Balurghat Dist. Dakshin Dinajpur	ASIM SARKAR S/O. Late Ajit Sarkar Village : Saheb Kachari(Hatkhola) P.O & P.S. Balurghat Dist. Dakshin Dinajpur

Advocates on record : Sri Subendu Sarkar..... For Petitioner/Wife
Sri Siddhartha DeFor Respondent/Husband

Dates of Hearing : 06.11.2025, 06.12.2025, 15.01.2026, 20.02.2026, 05.03.2026 & 16.05.2026.
Judgment delivered on : Tuesday, the 9th day of June, 2026.

J U D G M E N T

The instant suit has been instituted by the petitioner/wife, namely, Saswati Sarkar Das under sec.13(1)(i-a)(i-b) of the Hindu Marriage Act, thereby praying for dissolution of her marriage with the respondent/husband by way of a decree of divorce.

The gist of the petitioner’s case, as it transpires from the plaint dated 29/08/2024, bereft of all unnecessary details, is that the marriage between herself and the respondent/husband was solemnised as per Hindu rites and customs on 26/11/2002 (corresponding to the 9th day of Agrahayan,1410 B.S as per Bengali calendar). The said marriage is claimed to have been solemnised at the house of the father of the petitioner in village Saheb Kachari, within Balurghat P.S in the territorial jurisdiction of this court.

It has further been claimed by the petitioner/wife that after marriage, she went to the house of the respondent/husband for leading her conjugal life. Their marriage was duly consummated and in the wedlock, on 03/03/2005, she gave birth to a male child, namely, Abhilash Sarkar, who was presently residing with herself only.

The petitioner further averred that at the time of her marriage, her father gave Rs.70,000/-in cash, 3 bhories of gold ornaments and utensils towards dowry as per the demand of the respondent and inmates of his house. It is contended that initially after marriage, the petitioner spent a few days happily and peacefully at her matrimonial home but thereafter the behaviour of the petitioner towards her gradually started changing and he allegedly began to ill-treat and neglect the petitioner. She averred that day by day, said ill-treatment of the respondent/husband soon converted into physical and mental torture upon her. The petitioner came to learn that the respondent/husband was a man of bad character, lascivious nature and was also a habitual drunkard. He was also alleged to be addicted to gambling, alcohol and Ganja.

It has been alleged further that being a habitual drunkard, the respondent/husband destroyed all the ornaments of the petitioner by disposing them off and started inflicting torture upon her physically and mentally on the demand of bringing further money from her parental home. Upon her refusal to do so, the petitioner/wife was often brutally and mercilessly assaulted by the respondent/husband. She repeatedly requested the respondent to give up all those vices in his nature but to no avail. The respondent/husband purportedly turned a deaf ear to the requests of the petitioner. Even the other members of the family, in spite of knowing about the drawbacks in the nature of the respondent, did not take any step or never made any effort to rectify the same.

It has been specifically asserted by the petitioner/wife that the respondent did not provide her with the basic amenities required even for a marginal sustenance, viz. square meals, minimal clothings and other daily requirements. He ignored his responsibilities towards the petitioner and their child and frequently used to assault her in drunken condition. Despite all, the petitioner/wife tolerated the atrocities and continued with her marital relationship with the respondent only with the hope of revival and expectations of a better future. Initially, she did not disclose about her said pitiable matrimonial plight to anybody else, but when things reached an

extreme, she was compelled to inform about all the said incidents of torture to her guardians and relatives, who, in turn, tried to convince the respondent/husband and reach a compromise, but the respondent/husband did not pay any heed towards their advice.

The pressure for money exerted upon the petitioner got aggravated on daily basis. On protest and failure of the petitioner to bring money from her parental home and meet the said demands, the respondent/husband became furious and violent.

The petitioner/wife further contended that her matrimonial life had become painful and without any mental peace, her physical health also deteriorated over the time.

It has been alleged by the petitioner that finally, on 16/01/2023, the respondent/husband came home at night in a drunk condition and started hurling abuses to the petitioner/wife in filthy languages. Upon protest by her, the respondent/husband assaulted the petitioner and extruded her from his house. Being left with no other alternative, petitioner/wife took shelter at her father's home.

Subsequently, on several occasions, her parents and guardians approached the respondent for resolution of the disputes by way of an amicable settlement and restoration of the petitioner/wife in her matrimonial home, but the respondent purportedly disclosed in unequivocal terms that he would not continue his conjugal relationship with the petitioner/wife. In addition, he also allegedly threatened the petitioner with dire consequences, if she ever dared to return to his house.

The petitioner specified that since the date of her extrusion on 16/01/2023, the parties to the suit have been living separately from each other and there has been no physical or conjugal relation between them during the said period. She contended that there was no possibility of any reconciliation or reunion between them. The petitioner has further clarified that the present application for dissolution of marriage has not been presented by collusion between the parties.

On the basis of the aforesaid contentions and averments, by way of plaint dated 29/08/2024, the petitioner/wife has prayed for dissolution of her marriage with the respondent/husband by way of a decree of divorce on the grounds of cruelty and desertion as laid down in secs.13(1)(i-a)(i-b) of the Hindu Marriage Act,1955.

After institution of the suit, upon being served with the summons, the respondent/husband entered his appearance and submitted Written Statement on 25/06/2025,

thereby categorically denying and disputing all the material contentions of the paint and allegations labeled by the petitioner against him.

He refuted to have ever received any dowry to the tune of Rs.70000/- in cash or gold ornaments, furniture or utensils from the father of the petitioner at the time of his marriage with the petitioner. He agitated the aspersions of being a man of bad character, lascivious nature or being addicted to drugs and drinks. He denied to have avoided his responsibilities as a husband or a father. He negated the allegations of having abused or assaulted the petitioner in any manner whatsoever or to have ever demanded money to be brought from her father's house.

However, the respondent/husband in his said Written Statement, had duly admitted the factum of his marriage with the petitioner/wife as solemnised on 26/11/2002 (9th Agrahayan, 1411 B.S.) and the birth of a male child on 03/03/2005 in their said wedlock.

It is the counter-allegation of the respondent/husband that after passage of some time into their marriage, the petitioner/wife changed her attitude and conduct. She refused to perform any domestic work and used to react violently whenever the respondent asked her anything. She allegedly abused the respondent and his parents in filthy language. It has been asserted by respondent/husband that the petitioner/wife as well as her parents used to misbehave with the respondent. They used to torture the respondent/husband physically and mentally. Respondent/husband labeled the petitioner/wife as an ill-tempered woman. It has been specifically mentioned that since the respondent/husband was employed in a contractual job with poor earnings, the petitioner never respected him as a husband and often used to humiliate him in all possible manners. She always demanded more money to lead a lavish lifestyle but whenever the respondent failed to provide her with the same, the petitioner purportedly expressed her unwillingness to continue with the matrimonial relationship with her husband.

The respondent/husband stated that on 16/01/2023, the petitioner wife went back to her parental home without informing anything to the respondent or his family members. Subsequently, it was discovered that the petitioner/wife had taken away all her clothes, jewelleryes and other personal belongings. The respondent claimed to have gone to the house of the petitioner to bring her back but neither herself nor her family members paid any heed or attention to the requests of the respondent/husband to restore the petitioner/wife in her

matrimonial house. Finally, the respondent/husband expressed his readiness and willingness to lead a happy conjugal life with the petitioner as he was in love with her.

Based on the said contentions, by say of the Written Statement, the respondent/husband prayed for dismissal of the suit and rejection of the prayer for divorce as contained therein.

Upon consideration of the plaint, Written Statement and hearing the submissions made by Ld. Advocates for both the sides, for the purpose of adjudicating all the disputes involved in the suit, the following issues were framed on recast.

I S S U E S

1. Is the suit maintainable in its present form and prayer ?
2. Has the petitioner/wife any cause of action to institute the suit ?
3. Has the respondent/husband subjected the petitioner/wife to cruelty physically or mentally, in any manner, whatsoever ?
4. Has the respondent deserted the petitioner/ wife ?
5. Is the petitioner/wife entitled to get the decree as prayed for ?
6. What other relief/reliefs, if any, the petitioner is entitled to ?

EVIDENCE ON RECORD

For the purpose of establishing her case, the petitioner/wife had adduced evidence as P.W-1.

In addition to that, she has produced the following documents, which were marked as Exhibits :-

- i. Self-attested photocopy of her Voter's ID card.....Exhibit-1
- ii. Original Marriage Invitation card relating to the marriage between the parties.....Exhibit-2.
- iii. Acknowledged copy of the written complaint dt. 06/02/2024 lodged by the petitioner at Gangarampur P.SExhibit-3.
- iv. Acknowledged copy of the written complaint filed by the petitioner on 19/01/2025 addressed to the I/C Balurghat P.S.....Exhibit-4.

On his part, the respondent/husband did not adduce any verbal or documentary evidence. However, the petitioner/wife was duly cross examined by Ld. Advocate for the respondent/husband.

DECISION WITH REASONS

Issue Nos. 1 and 2.

The instant suit has been initiated by the petitioner/wife for dissolution of her marriage with the respondent/husband by decree of divorce U/s 13(1) of the Hindu Marriage Act, 1955.

The subject marriage between the parties remains both admitted and established by way of cogent documentary evidence being the marriage invitation card produced as Exbt.2.

The statute prescribes the provision of such divorce on the grounds specified therein and also lays down the procedure for obtaining the said relief.

Accordingly, it cannot be said that the suit is not maintainable.

It also transpires from the materials on record that the cause of action signifying the bundle of facts required to be proved by the petitioner/wife for getting the relief as per her prayer are also duly mentioned in the plaint.

The date of marriage and the subsequent alleged incidents of cruelty and torture inflicted upon her by the respondent/husband physically or mentally comprise of the cause of action of this case and those are incorporated in details in the pleadings.

Accordingly, the suit cannot be said to be hit by non-maintainability or lack of cause of action.

As such, both the instant issues are decided in favour of the petitioner/wife.

Issue Nos. 3 and 4.

The entire bone of contention in the suit revolves around the aforesaid two issues.

For the sake of convenience and brevity and for the purpose of avoiding undue repetition, both the aforesaid issues are taken up together for simultaneous discussion in the light of evidence and other materials on record.

Prior to appreciating the merits of the case, let us scrutinise the evidence adduced by the sole witness of this case as mentioned above.

In her written examination in chief on affidavit the petitioner/wife as P.W-1, reiterated the contents of the plaint as already narrated in details above. On dock, she tendered the said affidavit in chief and produced the documents which are marked as Exhibits-1 to 4 in this suit.

When subjected to cross-examination the said witness denied that at the time of her marriage, her father did not give the respondent/husband a cash amount of Rs.70000/-, gold ornaments weighing 3 bhories and utensils. She further denied the suggestion that the averments made in her affidavit in chief were false and incorrect.

As already mentioned above, no evidence was adduced by or on behalf of the respondent/husband.

In the course of hearing argument, Ld. Advocates for both the sides reiterated the contents of their pleadings.

In addition, Ld. Advocate for the petitioner/wife drew attention of the Court to the corroboration achieved by and between the averments made in the plaint and the evidence on record as adduced by the P.W-1. He further harped upon the documents marked as Exhibit-3 & 4 and claimed the same to be duly supporting the allegations of cruelty and consequential desertion, as labeled against the respondent.

Considered the submissions made by Ld. Advocates for both sides and carefully perused the materials on record including the plaint, Written Statement, affidavit- in chief of the P.W-1 and documents exhibited.

At the very inception, it is hereby observed that even after being granted ample opportunities, the respondent/husband did not bother to adduce any evidence in this suit. He did not even produce himself unto the witness box. Accordingly, the statements and averments made by him in his Written Statement were never transformed into cogent evidence. Counter-allegations made by him against the petitioner/wife, without any corroboration from admissible evidence, remain unsubstantiated.

As held by *the Privy Council and the Hon'ble Supreme Court in a plethora of decisions viz. Sardar Gurbaksh Singh VS. Gurdial Singh & Anr, as reported in AIR 1927 PC 230 and Vidyadhar Vs, Manikrao [(1999) 3 SCC 573]*, “where a party does not appear into the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct....”.

A logical corollary of such an adverse presumption axiomatically leads us to the hypothesis about a tacit admission of the said party regarding the averments and contentions of the other side.

It is also curious to note that even the cross-examination of the petitioner/wife as P.W-1 was conducted in a cryptic manner. The challenge posed by way of cross-examination remained restricted and confined to merely two questions, that too, in the form of suggestions that the respondent/husband did not receive any dowry in his marriage and that the averments made in the affidavit of P.W-1 were all false -- both of which suggestions were specifically refuted by the petitioner/wife as P.W-1.

On the other hand, the respondent/husband did not make any endeavour to transform his pleadings and counter allegations contained therein into cogent evidence. In the absence of any iota of evidence, said averments remain unestablished.

Moreover, so far as the ground of cruelty is concerned, it appears that by way of documents marked as Exhibits-3 & 4, the petitioner/wife had shown that time and again, she had to approach the law enforcement agencies repeatedly for taking recourse against the atrocities, cruelty and mal-handling perpetrated upon her.

Since, the probative value of the said documents could not be rebutted on behalf of the respondent/husband and as he did not furnish any scrap of paper or trustworthy evidence to prove that the petitioner/wife had voluntarily left his house, I am of the considered opinion that the ground of cruelty has been sufficiently established by way of preponderance of probabilities.

However, I am constrained to hold that the ground of desertion is hit by a statutory bar. As per her own claim, the petitioner had been extruded by the respondent on 16.01.2023, while she instituted the suit on 29.08.2024, before the lapse of the statutory period of two years. Thus, the relief of divorce cannot be granted on the said ground.

In the absence of any evidence to the contrary and a virtually ineffective cross-examination, I do not find any justification to disbelieve the almost unchallenged testimony of the petitioner/wife as PW-1.

In view of above, I am in no hesitation to hold the present issue no. 3 in favour of the petitioner/ wife, while the issue no. 4 is decided against her.

Issue Nos. 5 and 6.

In the result, I am in no hesitation to hold that the petitioner/wife had adequately proved her case by way of evidence, which could not be in any manner demolished by the respondent/husband. Accordingly, I find it safe to conclude that the petitioner/wife is entitled to get the decree as prayed for.

In light of the aforesaid discussion and considering the fact that the pivotal issue nos. 3 have been adjudicated in favour of the petitioner/wife, I am of the considered opinion that the present suit may well be decreed to grant the reliefs as prayed for.

In the result the suit merits success.

C.F. paid is correct.

Hence, it is,

Ordered.

that the instant proceeding bearing Mat Suit No. 265 of 2024 be and the same is hereby decreed on contest, but in the attending facts and circumstances, I pass no order as to cost.

The marriage between the petitioner/wife, Saswati Sarkar Das and the respondent /husband, Asim Sarkar, as solemnised by rituals on 26/11/2002, is hereby dissolved from this date by way of a decree of divorce passed on the ground of cruelty as envisaged under sec.13(1) (ia) of the Hindu Marriage Act ,1955.

B.C-II to draw up the decree at once.

Dict.& Corr by

**Addl. District Judge -1st Court
Balurghat,
Dakshin Dinajpur.**

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