

**IN THE COURT OF ADDL. DISTRICT & SESSIONS JUDGE 2nd COURT, CONTAI,
PURBA MEDINIPUR.**

Present : Sri Ayan Kumar Banerjee,
Addl. Dist. & Sessions Judge,
2nd Court, Contai,
Purba Medinipur.
J.O Code: WB00881

Mat Suit – 22/2018
CNRNo:-000068-2018

Shri Partha Sakha MaityPlaintiff

Vs.

Smt. Bijali MaityRespondant

{Arising out of an application U/Sec 13(1)(ia) & (ib) of the Hindu Marriage Act,
1955 for a decree of divorce}

Delivery of judgment dt. 04-06-2026

J U D G M E N T

This is a suit for divorce under Section 13(1)(ia) & (ib) of the Hindu Marriage Act, 1955 which was filed by the petitioner husband namely, Partha Sakha Maity against his wife Bijali Maity and as unfolded from the plaint, the parties got married on 29.06.2013 under Hindu rites and customs at the house of the respondent's father which corresponded to 14th Ashar, 1419 B.S. and after marriage she went to her matrimonial home and the marriage was consummated without any issues being born to them and the financial condition of the petitioner was poor which was not accepted by the respondent wife as she had spent a luxurious life before her marriage and was accustomed to valuable sarees, cosmetics, ornaments etc. which could not be provided by the petitioner due to his financial stringency and she pressurized the petitioner to stay as a domesticated son-in-law at her house and apart from that she tortured him because of his financial distress and very often she used to leave her matrimonial home and used to be brought back by the petitioner after reconciliation but on 12.09.2014 she left her matrimonial home along with her belongings and being left with no other option the petitioner has filed this suit and it has been further averred that the respondent has initiated a Criminal Case as well as maintenance proceedings and proceedings under PWDV Act, 2005 and the petitioner prayed for divorce as re-union was impossible and the grounds on which divorce has been prayed are cruelty and desertion.

The respondent wife appeared in this Suit and filed written statement denying all allegations brought against her and categorically denied the allegations brought against her but accepted the factum of marriage and its consummation without having any offsprings from the said marriage and according to her she was driven out of her matrimonial home on 12.09.2014 after being subjected to physical and mental torture and she further stated that the brother of her husband gave illicit proposal to her when her husband stayed at Kolkata and she intimated her in-laws but her complaint fell on deaf ears and apart from that she was pressurized to bring Rs.3,00,00/- from her father which she failed and that ultimately led to her ouster from her matrimonial home on 12.09.2014 and she has contended that her husband intends to marry for the second time after obtaining a decree of divorce and she has prayed for dismissal of the suit.

The issues were adjusted and those considered relevant were framed which are as follows:-

ISSUES

- 1) Is the suit maintainable in its present form and in law?
- 2) Has the petitioner have any cause of action to file the instant suit?
- 3) Whether the petitioner was subjected to cruelty by the respondent?
- 4) Whether the respondent deserted from her matrimonial house on 12.09.2014 without any reasonable cause on her own accord?
- 5) Is the petitioner entitled to get the decree as prayed for?
- 6) To what other relief/reliefs if any is the petitioner entitled to?

To prove the case, the petitioner deposed as PW-1 and his brother Siddhartha Sakha Maity deposed as PW-2 to support the plaint case and no documentary evidence was adduced from his side.

Per contra the respondent wife deposed as DW-1, her father Kanailal Payra deposed as DW-2 and Ramchandra Mali being a neighbour of the father of the respondent deposed as DW-3 and no documentary evidence was adduced from her side as well.

Ld. Advocates representing the parties submitted elaborate arguments and the details of such argument may be jotted down as follows :-

Argument from the side of the petitioner :-

Ld. Advocate of the petitioner submitted that the conjugal life of the parties was brief and the respondent had pressurized her husband to stay at her house as domesticated son-in-law and it has transpired in evidence that the respondent had left Kolkata on 09.09.2014 and the petitioner tried to bring her back on 10.04.2014 and on 12.09.2014 she finally conveyed the message of not resuming her conjugal life with the petitioner and the petitioner waited for more

than 3 years and has become mentally exhausted and the respondent in her written statement has alleged that the brother of the petitioner gave her indecent proposal which could not be substantiated in evidence and she could not mention the dates of such illicit proposals and had his brother behaved in such manner the same would have been strongly objected and he would have not been examined as a witness in this case and it is on record that the said brother has deposed as PW-2 and the evidence of DW-1 shows that in her cross-examination she has failed to mention the exact dates of torture both physical and mental and the dates of such indecent proposal and the evidence of DW-2 is totally irrelevant and DW-3 should be categorized as a stock witness who was brought by the father of the wife and the respondent wife could not establish that she was treated with physical and mental cruelty and there is nothing on record to show that the wife had lodged any complaint/case against the illicit proposal of DW2 and thereafter she lodged the police case u/s 498A of IPC at Patashpur P.S. on 16.09.2014 which are pending and the best way to categorize such case is to mention that the allegations have neither been proved to be true, nor proved to be false and one thing that should be considered by the Court is that the parties are separated by a long duration of time and are indulged in prolonged litigation and the decision of *Shilpa Sailesh Vs. Varun Sreenivasan* was relied upon to appreciate that irretrievable break down of marriage can be a ground of divorce and it was specifically argued that the wife having stated that she is eager to resume conjugal life with her husband should have been prompt in filing a suit for restitution of conjugal rights and the argument was concluded by the submission that cruelty and desertion being proved, the suit should be decreed in favour of the petitioner.

Argument from the side of the respondent :-

Ld. Advocate of the respondent submitted that the petitioner husband cannot take advantage of his own wrong and irretrievable break down of marriage is not a ground of divorce and trial court cannot grant divorce on such ground. The decisions of *Smitha Dilip Rane Vs. Dilip Dutta Ram Rane*, *Arunima Bhattacharya Vs. Shyamaprasad Bahattacharya* and *Swapan Kumar Vs. Smriti Kumar* were relied upon with ardent submission for dismissal of the suit.

Decision with reasons

Point nos.1 and 2 :-

These points are taken up together to make the decision concise. There is nothing in the pleadings of the parties to show that the suit is devoid of cause of action and it has been clearly mentioned in the plaint that the cause of action allegedly arose on 12.09.2014 and hence the existence of cause of action is required to be proved by evidence and it is a bundle of facts to be proved by the plaintiff for entitling him to a decree and accordingly it cannot be said that the suit

is devoid of cause of action and apart from that there is nothing on record to show that the suit is not maintainable as per any law and hence these issues are answered in affirmative and in favour of the petitioner husband.

Point Nos.3 and 4 :-

These issues are taken up together to make the discussion to the point and also because these are inter related and needless to say that these are the burning issues upon which the fate of the suit is to be decided and the finding upon these issues will ultimately determine its fate.

The petitioner husband has prayed for divorce on the ground of cruelty both physical and mental as well as on the ground of desertion which has been vehemently denied and opposed by the respondent wife. The plaintiff alleges that the respondent allegedly came from a rich family and was accustomed to a luxurious life and valuable sarees, cosmetics etc. which could not be provided by the petitioner and hence she subjected him to cruelty but in his evidence the petitioner failed to give the details of the words used by the wife and the manner in which she tortured him and on the basis of such omnibus, vague and bald allegations which are evasive in nature, I am unable to come to the finding that cruelty was inflicted upon the petitioner and in the noted decision *V. Bhagat Vs. D. Bhagat* it was held that mental cruelty must be of such nature that parties cannot be expected to live together and is a conduct which is inflicted upon the other party causing such mental pain and suffering as would make it impossible for that party to live together with the other. In *Naveen Kohli Vs. Nilu Kohli* it was observed that concept of cruelty has changed with advancement of social concepts, standard of living, continuous ill treatment, cessation of marital intercourse and cruelty largely depends upon the kind of life style to which the parties were accustomed and the record in the form of pleadings and evidence reflects that the parties stayed together for little more than one year and there is absolutely no evidence from the side of the petitioner that he was subjected to such cruelty as would be construed to make it impossible for him to stay with the respondent wife.

The issue no.3 is accordingly decided against the petitioner husband.

So far as the ground of desertion its concerns it is settled law that the respondent should have deserted the petitioner two years prior to the presentation of the plaint and it is also on record that the suit was instituted on 16.01.2018 and it is also on record that the respondent wife had initiated criminal case being Patashpur P.S. Case No.194/2014 soon after 12.09.2014 which is the date mentioned as the date on which cause of action arose and thereafter she also initiated maintenance proceedings and proceedings under PWD.V. Act, 2005 against the petitioner husband and quite reasonably she had a reason to stay away from her husband because she had alleged that she was a victim of the offence of Sections 498A of I.P.C. read with 3 & 4 of D.P. Act and hence her separate residence cannot be categorized as desertion and the prayer for divorce on the ground of desertion in my considered view cannot be entertained as the same was

not proved and though proof of cruelty in a matrimonial proceedings need not be proved beyond reasonable doubt and is to be adjudicated on the principal of preponderance of probabilities but it has already been discussed that the allegations of cruelty were vague, evasive and bald and even the desertion as alleged could not be proved and also issue no.4 is decided against the petitioner husband.

Another point that was vehemently highlighted in the argument is that the marriage between the parties has become irretrievable due to prolonged separation with no possibility of reunion and the decision of *Shilpa Sailesh Vs. Varun Sreenivasan* which was relied from the side of the petitioner deals with other aspects and to be precised relates to the power of the Hon'ble Apex Court under Article 142 of the Constitution and under which circumstances the Hon'ble Apex Court can decide that a marriage has become irretrievable and cannot be salvaged and the decision therefore does not apply to the case of the petitioner and it is settled law that irretrievable break down of marriage is not a statutory ground of divorce and can only be exercised by the Hon'ble Apex Court in its power under Article 142 of the Constitution and the Trial Courts have no power to order dissolution of marriage on the ground of irretrievable break down of marriage (*Sivasankaran Vs. Santhimeenal*).

The respondent wife had alleged that her brother-in-law (PW-2) had made illicit proposal to her but divorce on such ground was not prayed and the said allegation came in the form of a Paragraph in the written statement and it was open to the petitioner to amend his plaint to insert such fact as a ground of divorce under the category of cruelty which was not done and even the respondent did not mention the same in her affidavit-in-chief and therefore no evidence was led by her to that aspect and this matter is succinctly discussed only because such plea was taken in the written statement without going into further details.

Point nos.5 and 6 :-

These points are taken up together to make the decision concise. Issues nos.3 and 4 having been decided against the petitioner husband makes it unnecessary to decide issues nos.5 and 6.

It appears from the record that the respondent wife had prayed for permanent maintenance and the same was disposed of in J. Misc. Case No.11 of 2018 and the order was challenged before the Hon'ble Calcutta High Court by two different revisional applications under Article 227 of the Constitution related to the order in respect of maintenance pendente lite and litigation cost and the Hon'ble Court was pleased to pass an Order in C.O.111/2022 with C.O.1071/2022 and the respondent wife was granted maintenance pendente lite vide the judgement of the Hon'ble Court dated 03.05.2024 to the tune of Rs.2,000/- per month and it is on record that prayer for permanent alimony was made by the wife u/s 25 of the Hindu Marriage Act and therefore the same is to be decided as well.

An order of dismissal of suit will be a decree, provided the conditions mentioned in Section 2(2) of C.P.C. are satisfied. However a decree in the proceedings contemplated under Section 23 of the Hindu Marriage Act of 1955 is a narrower concept. It can only be a decree granting one of the reliefs under Sections 9 to 13 of the said Statute and a decree referred to under Section 25 of the Hindu Marriage Act is a decree under Section 23 of Hindu Marriage Act and will not include the decree of dismissal of proceedings (*Sukhdev Singh Vs. Sukhbir Kar*– decided by the Hon’ble Supreme Court).

In a nutshell, the Suit fails.

Court Fee paid is correct.

Hence, it is,

ORDERED

that the suit be and same is hereby dismissed on contest against the respondent but without costs and the prayer of the respondent claiming permanent alimony under Section 25 of Hindu Marriage Act is *rejected*.

Note in the cause list, court diary and update the CIS of this court.

B.C I to comply and report.

Dict. & corrected by me.

A.D.J, 2nd Court
Contai, Purba Medinipur.
04-06-2026

(Ayan Kumar Banerjee)
A.D.J, 2nd court,
Contai, Purba Medinipur.
04-06-2026