

Present : Sri Amitabha Das , J.O. Code -WB00926  
Addl. Dist. & Sessions Judge,  
Fast Track, 1st Court  
Diamond Harbour.

Order No. 22

Date : 07.04.2023

As fixed the record is taken up for passing Exparte order. The instant case was initiated on 08.05.2023 on the basis of an application filed by the Petitioner/Wife Sulekha Kanji (hereinafter referred to as the Petitioner) U/S 13(i)(ia)/(ib) of Hindu Marriage Act 1955 against one Bholanath Kanji (hereinafter referred to as the Respondent).

Subsequently notices were sent upon the said Respondent Bholanath Kanji by post and the Respondent had made appearance on 14.12.2024 by filling Vokatnama. But no written statement has been filed by him. Subsequently on 13.11.2024 the respondent has failed to take any steps even no written Statement has been filed by him as such finally on 29.03.2025 the date was fixed for exparte hearing.

The conspectus of the case of the Petitioner, as delineated in the application U/S 13(i)(a)/(ib) of Hindu Marriage Act 1955, is that the Petitioner is married wife of the Respondent by virtue of the marriage being solemnized in between them as per Hindu Rites and Customs on 29.01.2015. the said marriage was also Registered. After marriage, the Petitioner started residing at the house of the Respondent where the marriage was duly consummated. One male Child namely Subhra Kanji was born in the said wedlock on 24.11.2018.

It has been alleged by the Petitioner that just after the marriage, she came to know that her husband is a habitual Drunker and used to assault her mercilessly when he returned home in drunken condition. It has been alleged further that the respondent used to demand money from her father and when he refused the respondent used to commit torture and also neglected to provide food to her and her child. And finally on 04.03.2022 the respondent assaulted the petitioner mercilessly and drove her out of her matrimonial house along with her minor son. Since then she is residing at her father's house with her son. It has also been stated by the petitioner that several attempts were made to settle the dispute but the respondent refused and also threatened that in the event if she tried to return he will kill her.

The petitioner therefore is constrained to file the instant case seeking Dissolution of marriage by a Decree of Divorce as both the parties have been residing separately since 04.03.2022 without having any matrimonial relationship in between them.

The Petitioner in order to prove her case has examined two witnesses. The Petitioner Sulekha Kanji has examined herself as PW1 and has also exhibited the Adhar Card as Exbt-1. The mother of the Petitioner Namita Bayen has been examined as PW2.

On careful perusal of the evidence on record, it appears to me that the Petitioner has reiterated what she has narrated in her application that the Respondent being her husband on the basis of the marriage being solemnized on 29.01.2015, has perpetrated severe mental and physical torture upon the Petitioner when she protested against the ill habit of consuming liquor. And she was finally driven out of her matrimonial house along with her minor son Subhra Kanji. This fact has been corroborated by Namita Bayen (PW2) during her Examination in Chief. She is found to have stated that the Petitioner who happens to be her relative has been residing at her fathers house since 04.03.2022 as she was driven out of her matrimonial house along with her minor son. In the present facts and circumstances of the case and in the absence of any evidence to the contrary no inference adverse to the interest of the Petitioner can be drawn. This Court has no other alternative but to hold the contention of the Petitioner to be true and that the marriage in between the Petitioner and the Respondent was solemnized on 29.01.2015 as per Hindu Rites and Customs and the said marriage was also registered. And after marriage, the Petitioner started residing at her matrimonial house with the respondent where she was subjected to physical and mental torture.

As discussed above the fact which has come to light is that the Petitioner since marriage on 29.01.2015 was subjected to physical and mental torture. And that she gave birth to a male child named Subhra Kanji on 24.11.2018. The respondent used to commit torture upon the petitioner and also neglected to provide food to them and that since 04.03.2022 the Petitioner is residing separately with the respondent along with her son at her parental house as she was driven out of her matrimonial house. And they have no relationship in between them. It can therefore be construed that as the petitioner was subjected to torture and such conduct itself tantamount to cruelty as such there exist sufficient ground for the petitioner to get a decree of divorce.

In *Shilpa Sailesh vs Varun Sreenivasan (2023) 5 SCR 165* Hon'ble Supreme Court was pleased to hold that in case where marriage has been irretrievably broken Divorce can be granted even if one of the Parties is contesting.

As such I am inclined to allow the prayer of the Petitioner for Dissolution of Marriage, exparte with no order as to the cost.

Hence, it is

ORDERED

That the instant suit be and the same initiated on the basis of an application U/S 13(i)(ia)/(ib) of Hindu Marriage Act 1955, is decreed exparte with no order as to the cost against the Respondent.

The marriage as solemnized on 29.01.2015 in between the Petitioner Sulekha Kanji and the Respondent Bholanath Kanji is hereby dissolved from the date of passing of this Decree.

The instant suit therefore stands disposed of exparte.

Sd/-

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