

Calcutta High Court

Jyotsna Mukherjee (Smt.) vs Utpal Mukherjee on 10 December, 1997

Equivalent citations: I (2000) DMC 477

Author: T Chatterjee

Bench: T Chatterjee, B Panigrahi

JUDGMENT Tarun Chatterjee, J.

1. The wife in a matrimonial suit is the appellant before us. The husband sued for divorce on the ground that the wife was guilty of cruelty and desertion. The case of cruelty and desertion was, however, denied by the wife. Parties adduced evidence in support of their respective cases. The Trial Court found that the case of desertion was not proved by the husband, but held that the husband was entitled to a decree for divorce on the ground of cruelty. Feeling aggrieved by this judgment and decree of the Trial Court this appeal has been preferred.

2. In the plaint the case of cruelty and desertion as made out by the husband / respondent may be stated in a nutshell which is as follows :

The marriage between the wife/appellant and the husband/respondent was solemnised according to Hindu rites on 10th March, 1984. After the marriage the wife went to her matrimonial home and there the Boubhat ceremony was held on 12th March, 1984. On the 15th March, 1984, the wife fell seriously ill and she was vomiting blood accompanied with prolonged cough. The husband called a doctor, who attended her and within 7 days she partly recovered from the acute stage of her ailments. As the wife insisted on for taking her to her father's place so that she could be under the treatment of their family physician, the husband on 25th March, 1984 accompanied her to her father's house and made all arrangements for her treatment. He used to visit his in-law's house frequently and pay all expenses for her maintenance and treatment. But even after her recovery she was not inclined to return to her matrimonial home at Panihati on the plea that she was in the family way and when the said fact was brought to the notice of her parents, they assured the husband that they would send her back to the matrimonial home within a fortnight following. But the said assurance was found to be a big hoax. In the following months also she was not sent back to her matrimonial home, nor had she any intention to come back there. In spite of repeated requests she on some pretexts or other avoided returning back to her matrimonial home. In spite of the aforesaid conduct of the wife, the husband used to meet her in his in-law's house and as she was in the family way, he used to bear all expenses for her maintenance. A female child was born out of this wedlock on 21st March, 1985. In spite of the aforesaid conduct of the wife, the husband used to meet her at his father-in-law's house and tried to bring her back to her matrimonial home. An offer was, however, made by the parents of the wife to the husband to stay in his in-law's house as Gharjamai, which the husband could not agree. In spite of all attempts by the father of the husband, the wife did not return to Panihati. The father of the husband on 17th April, 1985 went to the residence of the in laws of the husband in order to bring back the wife in her matrimonial home. But, the father of the husband was insulted by the father of the wife. On 17th April, 1985 again the husband went to his father-in-law's house to bring back the wife, but to no effect. He was even threatened with dire consequences, if he would try to come to the in-law's house once again. These acts of physical and mental torture perpetrated on Utpal which told upon his health severely and his physical

constitution was very much reduced. He wanted to lead a happy conjugal life with his wife, but the latter without reasonable excuse and with a view to breaking the matrimonial home withdrew herself from his society and deserted the matrimonial home on 25.3.1985. Due to the habitual, wilful, motivated and deliberate acts of the wife in not coming back to her matrimonial home and in not offering the husband her association and keeping the husband deprived of the usual physical and mental comforts, the wife was guilty of the acts of desertion and cruelty. It was further alleged that the wife instituted a petition for maintenance under Section 125 of the Criminal Procedure Code in the Court of the Sub-Divisional Judicial Magistrate, Barrackpore in the year 1985. The husband also instituted a suit for divorce in the Court of the District Judge, 24 Pgs. for restitution of the conjugal rights which was allowed to be dismissed for default in view of the fact that there was a talk of amicable settlement between the parties. In spite of the fact that the v/wife agreed to come back to her matrimonial home and eventually she did not come back to her matrimonial home, nor did she withdraw the proceedings under Section 125 of the Criminal Procedure Code at Barrackpore, the present suit had to be filed by the husband for divorce this time on the ground of desertion, cruelty in the year 1987.

3. The wife in her written statement, however, denied the case of cruelty and desertion as made out by the husband. She alleged in her written statement that from the very beginning of her marriage, her husband and his sister as well as her father-in-law jointly and separately assaulted her and used to abuse her with filthy 'language. She was also tortured both physically and mentally. According to the wife, the husband had never been fair to her nor did he try to keep peace in the marriage life. The husband used to create pressure on her in various ways to bring more money from her father and also demanded money from her father for the purpose of purchasing a plot of land in his name. According to the wife, as she did not carry out the said proposal, she was assaulted by the husband and was driven out of her matrimonial home. According to the wife, she took shelter in the house of a relative of the husband, who sent her to her father's place at Kalyannagar. The wife, however, asserted in the written statement, that even after the birth of the child in spite of repeated requests, her husband or any of his relatives did not come to her or to her father's house to see the new baby and ultimately the new baby expired on 28th January, 1986. It was also asserted in the written statement that the husband was addicted to liquor and drinks everyday. Accordingly, she denied the case of cruelty as made out by the husband in the plaint. In the written statement, it was further alleged that even after the birth of the child, in spite of her repeated requests, her husband or any of his relatives did not go to the hospital or to her father's house to see the new born baby and ultimately the new baby expired on 28.1.1986. It was further alleged in the written statement that after the death of the baby, neither the husband, nor any of the family members of the husband ever visited her father's house. It was also denied that there was any amicable settlement on the basis of which she was to go back to her matrimonial home. It was the husband who never took her to the matrimonial home, although she expressed her intention several times before the husband of going back to the matrimonial home. But, she was never taken by the husband to her matrimonial home. Accordingly, she denied that any case was made out by the husband for grant of decree of divorce on the ground of cruelty and desertion.

4. So far as the ground of desertion is concerned, the Trial Court came to a conclusion that the husband/appellant was not entitled to a decree for divorce on the ground of desertion as specified in

Section 13(l)(ib) of the Hindu Marriage Act as, according to the Trial Court, in view of the admission of the husband himself that he had connection with his wife at least up to 28.1.1986, the date on which their female child had expired, no decree could be passed on the ground of desertion.

5. So far as the ground of cruelty is concerned, the Trial Court came to a conclusion that neither of the parties was successful in establishing by production of evidence before it the allegations made by them in their respective pleadings. However, the ground of cruelty was accepted by the Trial Court on a finding that the Court did not find any reasonable excuse for the wife's not coming back to her matrimonial home for which a suit for restitution of conjugal rights was filed by the husband. The Trial Court has further found that the fact remains that the wife has neglected to live with the husband/respondent for which the latter has been deprived of the enjoyment of the married life and also of the company of the wife which is nothing but an act of cruelty on his physique and mind. The Trial Court has further drawn an adverse inference against the wife for not showing any reasonable excuse by her in the matter of her not coming back to her matrimonial home and, therefore, the Trial Court has held that because of her continuous absence in the matrimonial home, the husband/respondent definitely suffered both mentally and physically which fact certainly constituted mental cruelty on the part of the wife/appellant. It was further found that in view of the fact that the wife had levelled a serious allegation against the husband that he was a drunkard and having failed to prove such allegations, the husband was entitled to say that such unproved allegations had definitely affected his social prestige. For the aforesaid findings arrived at by the Trial Court on the materials on record, a decree for divorce only on the ground of cruelty was passed by it.

6. On behalf of the wife/appellant, Mrs. Mutsuddi contended that in view of the findings of the Trial Court that the case of cruelty could not be established by the husband/respondent, the Trial Court could not have passed a decree for divorce on the ground of cruelty only on a finding that the wife had no intention to go back to her matrimonial home in spite of repeated requests from the side of the husband/respondent which had affected the husband/respondent mentally and physically. Mrs. Mutsuddi, however, contended that in the absence of any corroboration of the husband's bare statement, it was not open to the Trial Court to pass a decree for divorce on the ground of cruelty as corroboration to the bare statement of the husband/respondent was necessary for the purpose of granting a decree for divorce on the ground of cruelty. In support of this contention, Mrs. Mutsuddi relied on a Division Bench decision of this Court in the case of Smt. Sulekha Bairagi v. Kamalakanta Bairagi, . Reliance was also placed to another Division Bench decision of this Court in the case of Smt. Santana Banerjee v. Sachindranath Banerjee, . Mrs. Mutsuddi further contended that even assuming that the wife/appellant could not successfully prove that she had the real intention to go back to her matrimonial home, even then it was not open to the Court to grant a decree for divorce on the ground of cruelty when the case of cruelty could not be successfully proved by the husband/respondent. The submissions of Mrs. Mutsuddi were hotly contested by Mr. Abhijit Banerjee appearing on behalf of the husband/respondent.

7. Having heard the learned Counsels for the parties and after giving our anxious considerations to the submissions made on behalf of the respective parties, we are of the view that in the facts and circumstances of this case and on the materials on record, we are not inclined to interfere with the

ultimate conclusions reached by the Trial Court. The admitted position is that the parties got married on 10th March, 1984 and the wife went back to her father's house on 25th March, 1984. Since then, the wife has been staying in her father's house. From the evidence on record, it appears that the husband used to visit her occasionally in the house of the father of the wife/appellant. It is also not in dispute that a daughter was born on 21st March, 1985, but unfortunately the daughter had expired in the year 1986. It is also an admitted fact that the husband had no chance to get the child treated by him by taking necessary steps. It does not appear convincingly from the evidence of the wife/appellant that any intimation was given to the husband regarding the illness of the child before her death, nor any intimation was given to the husband/ respondent after the death of the child. If this position is accepted, then the irresistible conclusion would be that the husband/respondent experienced mental shock for the conduct of the wife not informing him about the illness and subsequent death of their child which constituted, in our view, an incident of mental cruelty on the husband/respondent. Apart from that, there is no escape from saying that the wife/appellant had a moral duty to maintain the conjugal life which could only be done by coming back to the matrimonial home even after the death of the child. But, we must not forget the fact that the wife stayed in her matrimonial home for about 15 days after her marriage and since then she has been residing in her father's house. Except a bare statement in the written statement or in the evidence that she was ready and willing to go back to her matrimonial home, nothing could be shown before the Court that the wife/appellant, in fact, had any intention to go back to the matrimonial home, she could have produced her parents as witnesses to corroborate her statement that she had all the intention to go back to the matrimonial home. In order to prove that the wife wanted to go back to the matrimonial home, but, it was the husband who had not brought her back, reasons best known to the wife as to why the parents of the wife were not called upon by the wife to come to the witness-box and say that although attempts were made either by the parents or by the parents or by the wife to go back to her matrimonial home, but, it was the husband or his father who did not allow the wife to join them in her matrimonial home. Therefore, it is open to the Court to draw an adverse inference against the wife for non-production of her parents to substantiate the case of the wife. Apart from that we do not find any material from the records from which it can be concluded that any request was made by the wife either by written letter to her father-in-law or to her husband asking either of them to take her back to the matrimonial home. There is another aspect of this matter. It appears that a Lawyer's letter was sent on behalf of the plaintiff/respondent to the wife/appellant on the address of her father at Kalyannagar on 9th of May, 1985 which was admittedly sent by registered post with A.D. and also under certificate of posting. There is no denial of the fact that the said letter was received by the wife /appellant. This letter was marked as Exhibit '1' in the Trial Court. From the said Exhibit '1' it appears that the allegations were made on behalf of the husband/respondent, through his learned Advocate that in spite of repeated efforts to bring her back the wife did not come back to the matrimonial home. On the other hand the parents of the wife expressed their desire that he must live in the house of the wife's father as a Gharjamai. There is no dispute that this Exhibit '1' was received by the wife/appellant. The Court can draw an adverse inference against the wife/appellant for not replying to this letter of the learned Lawyer for the husband/respondent and also by not saying that she was ready and willing to come back to the matrimonial home. From the said letter it appears that it was written in the same that if the date of return was intimated to the husband, the husband could bring her to the matrimonial home. Therefore, we are of the view that the wife/appellant had no real intention to come back to the

matrimonial home. It is an admitted position that the husband is the only son of his parents. Admittedly the mother of the husband is long dead. The husband has got two married sisters who are residing in their respective matrimonial homes. That being the position, the Court can legitimately draw an inference that it was expected from the wife that she will live with her father-in-law and husband in her matrimonial home. From the materials on record, it is evident that only for 15 days after the marriage the wife stayed with the husband in her matrimonial home. From the evidence on record, the case of the wife that she did not leave the matrimonial home voluntarily, could not be proved by the wife, as rightly found by the Trial Court. In order to prove cruelty, the general rule in the case of cruelty is that the entire matrimonial relationship must be considered and the Court should bear in mind the physical and mental condition of the parties as well as their social status and should also consider the impact of the conduct of one spouse in the mind of the other. It is now well settled law that where a divorce is sought on the ground of cruelty, the plaintiff must prove that the defendant has treated him with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for him or her to live with the defendant. [See *Dr. N. G. Dastane v. Mrs. S. Dastane*, I (1981) DMC 293 (SC)]. The incident that the wife had returned to her father's house and continued to stay there even today cannot be taken as too trivial. In the present case, the admitted position is that since the marriage which took place in the year 1984, the wife had been staying apart from her husband. In view of such conduct of the wife, the husband might feel irritated. In our view, the conduct of the wife in the present case must be considered to be 'cruel' within the meaning of Section 13(1)(a) of the Hindu Marriage Act. Admittedly within 25 days from the date of marriage, the wife left the matrimonial home and since then has been residing with her father without showing any intention of coming back. It is on record that it was the wife who first filed an application for maintenance under Section 125 of the Code of Criminal Procedure. From the evidence of the wife as well as from the materials on record, we are not convinced that the wife had ever intended to go back to her matrimonial, nor had she any intention to stay with her husband's family in the matrimonial home. On behalf of the wife, even her parents did not depose to the effect that they really intended to send her daughter back to the matrimonial home, but the husband or his family did not take her back. We do not find any material on record from the side of the wife to show such intention of the wife or of her parents. Therefore, the learned trial Judge was justified in holding that the wife was guilty of not coming back to her matrimonial home for a long time without any reasonable excuse and, therefore, in our view, this long absence of the wife in the matrimonial home may lead us to hold that this conduct of the wife amounted to mental cruelty on the husband. The wife had also admitted in her deposition that after leaving the matrimonial home within 15 days of marriage, she never went back to her matrimonial home. In this connection another important aspect needs to be referred. Before filing the present suit for divorce, in the year 1985, a suit was filed by the husband for a decree for restitution of conjugal rights. By the filing of this suit for restitution of conjugal rights, it may be said that the husband intended to take back the wife although the wife had not shown any intention at that point of time to come back to her matrimonial home. It can be legitimately concluded even after the filing of the suit for restitution of conjugal rights in the year 1985 by the husband, the wife could have easily agreed to come to her matrimonial home and if such step was taken by the wife, they could have merrily enjoyed their conjugal life since then. Unfortunately, this could not happen. The case of the husband that in view of the reconciliation of the parties, the suit for restitution of conjugal rights was allowed to be dismissed by him for default, cannot be thrown out on the ground that if there was

no reconciliation between the parties during the pendency of the earlier suit which was filed for restitution of conjugal rights by the husband, that suit could have been continued by the husband and that suit might have been ended by a decree from the Court directing the wife to join the husband in her matrimonial home. We fail to understand why the husband shall allow his suit for restitution of conjugal rights to be dismissed for default, if there was no reconciliation reached by the parties. Therefore, the filing of the suit for restitution of the conjugal rights and subsequently, its dismissal for default and continuance of the application under Section 125 of the Code of Criminal Procedure by the wife against the husband, would clearly prove that the wife had no intention to join her matrimonial home. From the above discussions made hereinabove, we can, therefore, safely hold that the Trial Court was right in holding that the wife had neglected to live with the husband for which the husband was deprived of the enjoyment of the married life which is and was nothing but an act of cruelty not only on his physique but also on his mind by the wife.

8. The case of the wife that the husband was a drunkard could not also be proved by the wife as rightly pointed out by the Trial Court.

9. Therefore, in our view, in the absence of any cogent reason given by the wife before the Court, as to why the wife could not come back to her matrimonial home and in view of the fact that the wife was continuously staying with her father Without any intention of going back to her matrimonial home is a ground which certainly affects the mind of the husband and, therefore, it can be safely held that the husband was entitled to a decree on the ground that mental cruelty was inflicted due to long absence of the wife in the matrimonial home and, accordingly, a decree should be passed on such a ground under Section 13(1)(ia) of the Hindu Marriage Act.

10. Therefore, considering the above aspect of the matter and from the materials on record and considering the fact that the marriage between the parties and irretrievably broken down although the ground of irretrievable breaking down of marriage is not a ground of divorce under the Marriage Laws, it should certainly be held that no useful purpose could be served if the parties are not separated by a decree of divorce when admittedly, still today, in the years 1997, the parties would be able to settle their life in their own way. From the materials on record and from the conduct of the parties particularly, considering the intention of the wife not to go back to her matrimonial home, we have no other alternative, but to hold that the marriage is dead and has irretrievably broken down mentally and practically. The continuance of such marital alliance for name's sake is prolonging agony and affliction. It cannot be disputed that the wife has not been dutiful and conscious of her responsibilities either to her husband or to her father-in-law. She had no intention to live with the husband in the matrimonial home. Therefore, we are of the opinion that when the marriage is dead, the continuance of it certainly would be a mental cruelty for the husband specially when the wife has been staying separately from the husband in her father's house for more than 13 years of their marriage. During the hearing of this case, the wife, however, expressed before us that she had the intention of staying with the husband in her matrimonial home. The husband, however, submitted before us that it is not possible for him to bring back the wife in his house when admittedly 13 years have elapsed and the marriage had irretrievably broken down. What useful purpose would be served if this marriage is kept on paper when the parties have separated long back and one of the spouses is not willing to take back the other at the present moment ? Reliance was

placed on a recent Division Bench decision of this Court in the case of Sukhomoy Bag v. Mrs. Jaya Bag, 1996 (1) CHN 210. In that decision, the Division Bench of this Court at paragraphs has observed as follows :

"Persuaded by the above view, since consistently flowing through the Judicial armoury, it will be legitimate to effect a divorce by using the weapon that the marriage has broken down irretrievably between the parties. Can a Court say even after that, that the marital bond should remain alive ? The answer will be in the negative."

11. Before parting with this judgment, the decision cited at the Bar on behalf of the appellant may be dealt with. The first decision is a decision reported in Smt. Sulekha Bairagi & Anr. v. Kamalakanta Bairagi & Anr. (supra) Relying on paragraph '15' of the aforesaid decision, the learned Counsel for the appellant contended that for the purpose of getting a decree on the ground of cruelty under the Hindu Marriage Act, it was necessary for the person claiming such decree to prove that the cruelty was of such a character as to cause a reasonable apprehension in his or her mind that it will be harmful or injurious for her or him to live with the other party. Relying on this decision, therefore, the learned Advocate for the appellant contended that no decree could be passed on the ground of cruelty as the husband had failed to prove that the cruelty was of such a character as to cause a reasonable apprehension in his mind that it will be harmful or injurious for him to live with the other party, In our view, the principles laid down in the aforesaid decision of this Court cannot be applied to the facts and circumstances of this case. The said decision was delivered according to Section 10(l)(b) of the unamended Act. In that decision also it has been held that it is possible in a particular circumstance even for a single act of grossly violent character to constitute a legal cruelty. In this case also the continuous absence of the wife in her matrimonial home which, in our view, had affected mentally and on the physique of the husband, it must be construed to be a legal cruelty within the meaning of Section 13(l)(a) of the Act. The next decision which was cited on behalf of the appellant is a decision in the case of Smt. Santana Banerjee v. Sachindranath Banerjee (supra). This decision, in our view, does not help the wife. But, in reality it helps the husband in proving the case of cruelty. It has been held in that decision that the law is well settled that cohabitation at time and/or living together in an attempt to repair the fissures in the relationship of husband and wife by themselves may not amount to condonation. To constitute condonation, the offended spouse must accept the offending partner with a spirit of forgiveness and by wiping off the unpleasant memories and start the conjugal life as if on a clean slate. Mrs. Mutsuddi, appearing for the appellant submitted that in view of stay of the husband for many occasions with the wife in her father's house amounted to condonation of cruelty, if there was any. In our view, stay with the wife in her father's house by the husband occasionally in the night or in the evening or in the morning cannot amount condonation of the cruelty of the wife by not staying with the husband in the matrimonial home. From the aforesaid decision, it is clear that the wife had stayed with the husband in her matrimonial home and the couple had gone for pleasure trip outside Calcutta. Therefore, a point was raised in that decision that even if there was any cruelty that was condoned by the husband. The present case is worse. In the present case, the wife since 1984 had not even visited her matrimonial home once. In any view of the matter in that decision, the High Court has held that even in some occasions the parties had lived together even then in a particular case it can easily be said that the cruelty, if any committed by the other party, was condoned. That being the position, we are of the view that this

decision in effect helps the husband and not the wife. The next decision which was cited by Mrs. Mutsuddi, appearing on behalf of the appellant, is a decision of this Court in the case of *Sarda Devi v. Pacific Garments*, . We fail to understand how this decision can be of any help to the appellant. The question that is being decided by this decision was not at all at issue in the aforesaid decision. Therefore, we do not think that any purpose could be achieved by considering the aforesaid decision in detail. Therefore, this decision cited by Mrs. Mutsuddi is of no help to the appellant. From the discussions made hereinabove, it can, therefore, be concluded that the Trial Court was justified in decreeing the suit on the ground of cruelty under Section 13(1)(a) of the Hindu Marriage Act as amended. There is yet another aspect of this matter. There appears no sense for allowing the marriage to continue when the husband and wife were living separately for about 13 years by now. Then the wife was also making serious allegations against the husband which she could not prove by evidence. In such circumstances a conclusion can be drawn by the Court without any hesitation that the marriage has broken down permanently and a situation has reached such a stage, that it can be said to be irretrievable. The Law Commission in its first report on the Hindu Marriage Act has made the following observations regarding irretrievable break-down of the marriage' which by itself has been recognised by the Courts as a good ground for divorce."

"Moreover, the essence of marriage is a sharing of common life, a sharing of all the happiness that life has to offer and all the misery that has to be faced in life, an experience of the joy that comes from enjoying, in common, things of the matter and of the spirit and from showering love and affection on one's offspring. Living together is a symbol of such sharing in all its aspects. Living apart is a symbol indicating the negation of such sharing. It is indicative of a disruption of the essence of marriage 'breakdown' and if it continues for a fairly long period, it would indicate destruction of the essence of marriage 'irretrievable breakdown'."

12. The Supreme Court in the case of *V. Bhagat v. D. Bhagat*, , has noticed that while scrutinising the evidence on record to determine whether the grounds alleged are made out and in determining the relief to be granted the circumstances inviting the Court to hold that the marriage has irretrievably broken down can certainly be borne in mind. In a recent decision of the Supreme Court in the case of *Romesh Chander v. Savitri*, , it was -held that if a marriage was dead and there was no chance of its being retrieved, it was better to bring it to an end. In view of the conduct of the parties and in view of the discussions made hereinabove by which we have already held that the marriage in all respect is dead both emotionally and practically. Continuance of such marital alliance for name's sake is prolonging agony and affliction. In spite of the fact that the wife was not at all willing to join the matrimonial home for the last 13 years and, therefore, the marriage being dead, the continuance of it would be cruelty. In view of the aforesaid decisions of the Supreme Court and in view of our discussions made hereinabove, we do not find any reason to interfere with the ultimate conclusion of the Trial Court in decreeing the suit on the ground of cruelty.

13. Before parting with this judgment, we may at a glance look at the case of the husband for divorce on the ground of desertion. So far as the case of desertion is concerned, we are of the view that the Trial Court rightly held that the case of desertion has not been made out in view of the fact that the wife had deserted the husband in the year 1984 and the present suit has been filed in the year 1987. Mr. Banerjee, appearing on behalf of the husband in support of the cross-objection submitted that



where the wife went away from the matrimonial home voluntarily and stayed away from the matrimonial home for a period exceeding 2 years and filed an application for maintenance under Section 125 of the Code of Criminal Procedure while staying at the father's place, desertion can be spelt out from her conduct. This argument was based on a Division Bench decision of this Court in the case of *Ashim Poddar v. Anusree Poddar*, 95 CWN 235 =II (1991) DMC 441 (Cal.). In our view, this decision cannot be applied to the facts and circumstances of this case. Admittedly, the wife left her matrimonial home on 25th March, 1984 and the earlier matrimonial suit was filed by the husband within two years from the date of leaving the matrimonial home that is on 17th May, 1985. In any view of the matter, in our view, the Trial Court was justified in rejecting the case of desertion of the husband on a finding that the question of desertion cannot arise as it would appear from the record that desertion took place only on the death of the child of the parties which was within two years from the date of presenting the present matrimonial suit. Therefore, in our view, this decision cannot be of any help to the husband. Similarly, the Single Bench decision cited by Mr. Banerjee of the Patna High Court in the case of *Rajkishore Prasad v. Raj Kumar Devi*, AIR 1986 Pat. 362, is distinguishable on facts as in that decision the parties were living separately for more than 2 years before the presentation of the application for divorce by the husband. As noted hereinabove, in this case, the wife left her matrimonial home on 25th March, 1984 and the husband filed the suit on the ground of desertion earlier on 17th May, 1985 which was subsequently dismissed for default. Accordingly, this decision of the Patna High Court cannot be said to be applicable in the facts and circumstances of this case. Accordingly, on the ground of desertion, no decree could be passed against the wife. We, therefore, reject the cross-objection filed by the cross-objector/husband on the ground of desertion.

14. For the reasons aforesaid, the judgment and decree passed by the Trial Court is affirmed.

15. Accordingly, the appeal fails and is hereby dismissed.

16. There will be no order as to costs. Xerox certified copies of this judgment if applied for by the parties, be given as expeditiously as possible.

Basudeva Panigrahi, J.

17. I agree.