

First Appeal No. 4 of 2020

Against the judgment and decree dated 06.12.2019 and 17.12.2019 respectively passed by Smt. Sanjeeeta Srivastava, Additional Principal Judge, Additional Family Court, Dhanbad in Original Suit No. 74 of 2019.

Dr. Anand ... Appellant

Versus

Dr. Isha Pandita ... Respondent

For the Appellant : Mrs. J. Mazumdar, Advocate
For the Respondent : None

Present:

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE DEEPAK ROSHAN

R. Mukhopadhyay, J.

Heard Mrs. J. Mazumdar, learned counsel for the appellant.

None appears on behalf of the respondent.

2. This appeal is directed against the judgment and decree dated 06.12.2019 (decree signed on 17.12.2019) passed by Smt. Sanjeeeta Srivastava, Additional Principal Judge, Additional Family Court, Dhanbad in Original Suit No. 74 of 2019 whereby and whereunder the suit preferred by the defendant for dissolution of his marriage with the respondent has been dismissed.

3. For the sake of convenience both the parties are referred to in this judgment as per their status before the learned court below.

4. The plaintiff (appellant herein) had preferred a suit under Section 13 (1) (i-a) (i-b) of the Hindu Marriage Act, 1955 for dissolution of his marriage with the defendant (respondent herein) in which inter-alia it has been stated that the marriage of the plaintiff was solemnized with the defendant on 28.05.2009 as per Hindu rites and customs and thereafter the marriage was registered at Kolkata on 12.10.2009 before the Marriage Registrar. Out of the said wed-lock, a female child was born on 14.01.2012 who is in the custody of the plaintiff. It has been stated that due to incompatibility, the plaintiff and the defendant could not align

with each other and both are living separate since 30.10.2013 and there has been no relationship between them since then. On mutual consent, a suit for divorce was filed being Original Suit No. 174 of 2018 which however was withdrawn by the defendant on 10.10.2019. As per the mutual consent, the plaintiff had agreed to pay Rs. 6,000/- per month to the defendant till her re-marriage and the plaintiff had to pay the balance due amount against the flat of Vastu Vihar Developer at Asansol (W.B.) and accordingly the plaintiff has paid Rs. 6,000/- per month to the defendant till November 2018 and an amount of Rs. 3,40,000/- was also transferred to the account of the defendant towards the dues of the flat apart from making payment of Rs. 2,00,000/- to the defendant through demand draft. The defendant has grabbed the entire amount of Rs. 6,50,000/- and is demanding a further amount of Rs. 30,00,000/- for giving him divorce by mutual consent. It has been stated that the plaintiff has a doubt that defendant is having illicit relationship with one Deepak Pritam Khakha of Asansol.

5. The defendant in spite of service of summons did not appear to contest the suit and the suit was accordingly decided ex-parte.

6. The main points for consideration were whether the plaintiff was subjected to cruelty and was deserted by the defendant.

7. The plaintiff has examined 3 witnesses in support of his case including himself.

P.W. 1 – Dr. Anand is the plaintiff himself who has stated about solemnization of his marriage with the defendant on 28.05.2009 as per Hindu rites and customs which was also registered before the Marriage Officer at Kolkata on 12.10.2009. He has stated about the birth of a girl child on 14.01.2012 who stays with him. After a few days, the behaviour of the defendant towards him became aggressive and she became indifferent to the conjugal relationship between them and the marital relationship ended on 30.10.2013. He had tried his best to restore normalcy in the marital life, but has failed and therefore filed a suit for divorce on mutual consent before the Family Court, Dhanbad which was withdrawn by the defendant. In the said proceeding, Rs. 6,50,000/- was to be given by him to the defendant which even though he had already fulfilled, but as the case neared its completion, the greed of the

defendant led her to demand an amount of Rs. 30,00,000/- which was beyond his means. He has stated that he is a doctor by profession.

P.W. 2 – Dr. Birendra Kumar Sinha is the father of the plaintiff who has reiterated the version of P.W. 1

P.W. 3 – Lalit Paswan has stated in similar terms to that of the evidences of P.W. 1 and P.W. 2.

8. It has been submitted by Mrs. J. Mazumdar, learned counsel for the plaintiff – appellant that act of the defendant in receiving the money for the flat as well as her ornaments and thereafter withdrawing the suit preferred under Section 13 B of the Hindu Marriage Act amounts to cruelty. It has been stated that indifferent attitude of the defendant towards the plaintiff was apparent after a few days of marriage. It has also been stated that defendant without the consent of the plaintiff and without any reasonable cause has left his house and the same would amount to desertion on the part of the defendant.

9. We have heard the learned counsel for the plaintiff – appellant and have also perused the lower court records.

10. Mental cruelty and desertion seem to be primary reasons for the plaintiff to have instituted a suit for dissolution of his marriage with the defendant. In the plaint as well as in the evidence of the witnesses, there does not seem to be the presence of any of the ingredients constituting cruelty and desertion.

11. Cruelty is not defined in the Hindu Marriage Act, 1955. In the case of **“Shoba Rani Vs. Madhukar Reddi”** reported in (1988) 1 SCC 105, the term cruelty has been considered and it has been held as follows:

“4. Section 13(1) (i-a) uses the words “treated the petitioner with cruelty”. The word “cruelty” has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the

complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted."

12. The plaintiff has failed to state any instance which would reveal that the torture committed upon the plaintiff was of such an extent that it was impossible for the plaintiff to reside with the defendant. So far as the withdrawal of the application under Section 13 B of the Hindu Marriage Act by the defendant is concerned, the petition and the order-sheet have been exhibited, but none discloses the genuineness of the claim of the plaintiff that in spite of accepting the amount as agreed upon for the purpose of purchasing a flat, the defendant had resiled from such commitment and had desired a higher amount. There is no document on record regarding transfer of various amount in the account of the defendant as claimed by the plaintiff and cruelty therefore, has not been proved by the plaintiff.

13. So far as the desertion is concerned, the Explanation to Section 13 (1) (i-b) of the Hindu Marriage Act, 1955 defines 'desertion' and it reads as follows:

[Explanation. – In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly].

14. The plaintiff in his plaint or in his evidence has failed to assert that there is willful abandonment by the defendant without a reasonable cause and without the consent of the plaintiff and such abandonment was permanent in nature. In fact, the averments in the plaint and the evidence of the witnesses of the plaintiff are vague and inconsistent with the requirement of Section 13 (1) (i-a) (i-b) of the Hindu Marriage Act, 1955. The non-appearance of the defendant before the trial court would not be of any assistance to the plaintiff as the plaintiff has himself failed to justify his prayer in the suit by not producing any cogent and effective material in support of his case.

15. The learned trial court has rightly considered all the materials available on record while dismissing the suit and we do not find any reason to conclude otherwise and as a consequence thereof, we dismiss this appeal.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

Jharkhand High Court at Ranchi
The 12th day of March, 2024
R. Shekhar/NAFR/Cp. 3