IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

THE HON'BLE JUSTICE MADHURESH PRASAD
AND
THE HON'BLE JUSTICE PARTHA PRATIM ROY

F.A.T. 423 of 2023
(Assigned)

Arup Kumar Sur
Vs.
Anandamoyee Sur

For the Appellant	:Mr. Soumit Ganguli, Adv., Ms. Priti Burman, Adv.,
For the Respondent	: Mr. Debrup Choudhury, Adv. Mr. Arkaprabho Roy, Adv.,
Heard on	: 12th August, 2026.
Judgment on	:14th October, 2026.

Partha Pratim Roy,*J.:*

1. The appellant has preferred the present first appeal against the Judgment and decree dated 12th October, 2023 whereby and where under the matrimonial suit filed by the wife has been decreed on contest.

Case of the plaintiff wife:-

2. It is the case of the plaintiff wife that, she got married with the appellant herein according to Hindu Rites and Customs on 14.07.2010 at her

parental home, after marriage she went to her matrimonial home at Bankura. The aforesaid marriage was duly consummated, and on 30.07.2011, she gave birth of a male child, namely Adrij Kumar Sur. Just after the birth of the aforesaid child, the husband started pressuring the wife for bringing money, from her matrimonial home.

3. The financial condition of the father of the wife was not sound, therefore it is not possible for the wife to bring such a huge amount as demandedby the husband.

4. Considering the inability of the wife to bring such amount, the husband started torturing both mentally and physically. The further case of the wife is that the husband used to return home in drunken condition and torture the wife physically. She was neglected and even medical treatmentwas also denied whenever she fell ill.

5. Finally, she along with the son, driven outof her in-laws' house.

6. The husband neither visited the wife at her parental home, not took any steps tobeing her back.He also never paid any maintenance, either to the wife or for his minor child. Considering the aforesaid facts the wife filed the application under Section 13(1)(ia) of the Hindu Marriage Act, 1955 seeking divorce on the ground of cruelty.

The Husband Plea:-

7. The husband contested the aforesaid proceeding and filed written statement and denied all the material allegation made therein in the plaint, the specific contention of the husband is that the statement made in the plaint was false and concocted.

8. It is further the case of the husband that he neither caused any physical or mental torture upon the wife, nor did he demand any money. It was further stated that the wife herself was not willing to reside at her matrimonial home with the husband and though the husband visited the in laws house several times, she refuses to return at her matrimonial home.

9. On the basis of such pleadings the Learned court below formulates the following issues:-

> "I. Is the suit maintainable in its present form?
> II. Did the O.P. treat the petitioner with cruelty?
> III. Is the petitioner entitled to get decree of divorce as prayed for?
> IV. To what other relief/reliefs, if any, is the petitioner entitled to have in this suit?"

10. The wife adduced herself and her elder sister as PW1 and PW2 respectively: whereas on the other hand, the respondent adduced himself as sole OPW."

11. Considering the pleadings and the evidence adduce by the parties, the Learned Trial Court decreed the suit on the ground of cruelty.

Argument of the appellant:-

12. Learned Advocate Mr.Ganguliappearing for the appellant contended that the suit was decreed on the ground 'cruelty', but plaintiff wife could not prove such allegation.

13. He further submitted that during the cross examination of PW1,the wife, herself categorically stated that "I did not lodged any complaint to the police station or to the Panchayat about factum or torture upon me by my husband to bring money from my patents' house","Since Ileaving my matrimonial house I did not lodge any complaint to the police against my husband" therefore the ground for cruelty was not established. Otherwise no incident was brought before the court which can construed to constitute "Cruelty".

14. He further submitted that in view of the admission made by the wife, it is apparent on the face of the record that there is no incident which can construe to be cruelty upon the wife.

15. He further argued that irretrievable breakdown of marriage is not a ground available under the Hindu Marriage Act for granting of divorce.

16. It is the specific contention of the Learned Advocate for the appellant that as the parties are staying separately for a considerable period, it does not mean that defaulting party will get degree for divorce

on the ground of 'irretrievable breakdown', and he accordingly prayed for setting aside of the degree passed by the Learned Trial Court and allowing the appeal accordingly.

Argument of the respondent:-

17. Learned Advocate Mr.Choudhuryappearing for the respondent wife draws attention to this Court in respect of the written statement filed by the husband, he contended that in the written statement the husband made evasive denial in respect of the allegation made by the wife. In absence of any specific denial of the facts, the same amounts to admission of those facts alleged by the wife in her pleading.

18. He further submitsthat from the cross examination of DW-1, it is apparent that he does not know the present whereabouts of the wife.He also does not have any knowledge about name of the school,present status of education and other such details. It is also pointed out from the cross examination that the husband categorically admitted that he did not take any steps for providing support to the child education. It was further pointed out by the Learned Advocate of the respondent by drawing attention to the cross examination of PW1 and submitted that there is no cross examination in respect of the issues regarding behavior of the husband towards the wife and discharging his responsibility towards his family.

19. The failure to put the material allegation to the witness during cross-examination amounts to an admission by the husband regarding the acts of cruelty inflicted upon the wife. It is further submitted that the materials on record clearly demonstrate that no marital relationship exists between the parties in any manner whatsoever. Furthermore, there is no document or evidence on record to suggest that the husband ever intended to resume his matrimonial ties with the wife.

20. In support of his contention he relied upon a judgment reported in ***(2023) 17 SCC 433 Rakesh Raman vs. Kavita*** that irretrievable breakdown ofa marriage may not be a ground for dissolution of marriage under the Hindu Marriage Act, but such cruelty is. In the present case, when the other party after solemnization of the marriage subjected the wifetocrueltya marriage can be dissolve by decree of divorce *inter alia* on such ground.In the present case the marital relationship was rendered bitter and acrimonious by such conduct of the husband over the years. The same amounts to cruelty. The totality of circumstances inflicts cruelty to both the parties.

21. He further submits that the Learned Trial Court after considering the materials on record and considering the submissions made by the parties passed awell-reasoned judgment and it need not to be interfered with.

Analysis:-

22. We proceeded to consider whether the pleadings and evidences adduced by the wife respondent proved the allegation of 'cruelty' as to entitle her to get a degree of divorce on the ground of cruelty.

23. The word **cruelty** is not defined under the Hindu Marriage Act, 1955. The Hon'ble Apex Court; as well as thisHon'ble Court interpreted the word cruelty,whichmeans any physical or mental behavior by one's spouse that makes it unsafe, harmful, or impossible for the other to live together.

24. Cruelty can either be a physical cruelty or mental cruelty.

25. Mental cruelty is more common and harder to prove, but well recognized in Indian Law which includes ignoring emotional needs or withdrawing affection. If behaviorcauses the mental agony or damages, it amount to cruelty.

26. In the present case, it appears from the testimony of this spouse that just after marriage situation was created where the wife was forced to leave the matrimonial home and live separately along with her child. It is also admitted from the deposition of the husband that the he does not know even his son's academic activities,nor even his schools name. It further appears that the husband admitted that he does not know

anything about the respondent/ wife herein though the parental home of the respondent wife is situated in the adjacent village, Bhurkunda.

27. This admission on the part of the husband itself proves that he had no intention to live with the wife and/or to perform his duty either as a husband or as a father.

28. From the deposition of PW1, it appears that no question was put forward by the husband in the cross-examination regarding oral evidence of forceful eviction of the wife. There is no evidence to show that any attempt on the part of the husband to resume the marital tie between the parties.

29. In this context, it will be profitable to mention the judgment of a Division Bench of this Court reported in **AIR 1961 CAL 359 (A.E.G. Carapiet vs A.Y. Derderia)**wherein the Hon'ble Court held as follows:

> *"Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that this is merely a technical rule of evidence. It is a rule of essential justice. It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses. It has been stated on high authority of the House of*

Lords that this much a counsel is bound to do when cross-examining that he must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had any share. If he asks no question with regard to this, then he must be taken to accept the plaintiff's account in its entirety. Such failure leads to miscarriage of justice, first by springing surprise upon the party when he has finished the evidence of his witnesses and when he has no further chance to meet the new case made which was never put and secondly, because such subsequently testimony has no chance of being tested and corroborated."

30. Thus, we are of the firm opinion that that the relationship between the parties has deteriorated to an extent that both cannot stay together. The very fact that there was no conjugal life between the parties and their continued separation for prolong period also points to an irretrievablebreakdown of marriage.

31. We are not unmindful of the law that Irretrievable breakdown of marriage is not a standalone ground under Section 13 of the Hindu Marriage Act, However in the present case, considering the evidence brought before the trial court, on the avail of law declared in the case of ***Rakesh Raman*** (*supra*), we find that continuance of the marital tie would amounts to continuance of the cruelty as a result of bitter and acrimonious circumstances.

32. The Hon'ble Apex Court also considered mental cruelty in another case, i.e. ***Samar Ghosh vs. Jaya Ghosh***, reported in ***(2007) 4 SCC 511***,

wherein it held that when there is a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage. On the contrary, it shows scant regard for the feelings and emotions of the parties. In such a situation, it may lead to mental cruelty separation, it may fairly be concluded that the matrimonial bond is beyond repairable. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage, on the contrary, it shows scant regard for the feelings and emotions of the parties. In such a situation, it may lead to mental cruelty.

33. Considering the above noted facts and findings, we find substance in the reliance placed by the learned Advocate of the respondent on decision of the Hon'ble Supreme court of India in the case of ***Rakesh Raman*** (*Supra*), where the Hon'ble Apex Court has been pleased to observe as follows:

> *"22. Irretrievable breakdown of a marriage may not be a ground for dissolution of marriage, under the Hindu Marriage Act, but cruelty is. A marriage can be dissolved by a decree of divorce, inter alia, on the ground when the other party "has, after the solemnization of the marriage treated the petitioner with cruelty."*
>
> 23. *In our considered opinion, a marital relationship which has only become more bitter and acrimonious over the years, does*

nothing but inflict cruelty on both the sides. To keep the façade of this broken marriage alive would be doing injustice to both the parties. A marriage which has broken down irretrievably, in our opinion spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is therefore a ground for dissolution of marriage under Section 13 (1)(i-a) of the Act."

34. Therefore, analyzing the entire records along with the pleadings and argument advanced by the parties, it appears that the wife was forced by the conduct of the appellant to leave her matrimonial home and both are staying separately for a prolong period i.e for more than 14 years.

35. From the deposition of the husband it is apparent that he had no care or concern for the wife, or his son. He had no intention or eagerness to maintain with his wife or his son.

36. Thus, we are of the opinion that the Learned Trial Court after considering the materials on record and evidences adduced by the parties arrived to a correct findings that the suit is liable to be decreed on the ground of cruelty.

37. In view of the findings above, we find no merit in the present appeal. The judgment and decree dated 12th October, 2023, passed by the learned trial court, are hereby affirmed.

38. F.A.T. 423 of 2023 is dismissed, without any order as to costs.

39. Let the Lower Court Records be sent down along with a copy of this judgment immediately.

40. Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree.

(Madhuresh Prasad,J.) **(Partha Pratim Roy, J.)**