05.10.2026
Court No.07
Item No.2
AP

HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI

FA 11 of 2025

Pallabi Das
Vs.
Pabitra Barman

Mr. Bikramaditya Ghosh
Mr. Mayank Bhandari
Ms. Angana Rakshit
Mr. Binayak Bandopadhyay
... For the Appellant/Wife.

Mr. Swarup Das
Mr. Rohit Prajapati
... For the Respondent/Husband.

1. The appeal is directed against a judgment and/or order dated 25th July, 2025 passed by the learned District Judge, Cooch Behar in Matrimonial Suit No.112 of 2023. By the impugned judgment the application under Section 27(1)(d) of the Special Marriage Act, 1954 filed by the appellant/wife was dismissed.

2. This Court is confronted with a unique set of facts. The admitted position is that the appellant/wife knew her husband since 2010. They got married by registration under the Special Marriage Act on 2nd May, 2016. Respondent/husband's financial condition was stable initially but became poor since he had to bear the expenses of marriages of three of his sisters and treatment of his younger brother, who met with a gruesome incident.

3. It is equally an admitted position that the appellant/wife was never taken to the marital house by the respondent/husband. They never lived together as husband and wife. They only met each other from time to time at hotels and lodges.

4. Learned counsel for the respondent/husband submits that the appellant/wife was desirous of pursuing her education and gave priority thereto. It is argued by the counsel for the respondent/husband that pursuant to a mutual agreement between the parties the respondent/husband permitted the appellant/wife to pursue her studies. The appellant/wife has not visited the marital house, nor was taken there by the respondent/husband, even for a single day. In fact, there is no martial house of the parties at all.

5. It is vehemently denied by the counsel for the appellant/wife that any part or portion of her studies was funded by the respondent/husband. The appellant/wife has completed B.Sc. and has undergone a B.Ed. course and is now a registered nurse. She is gainfully employed elsewhere.

6. Counsel for the respondent/husband submits that the ground on which the application for dissolution of marriage was filed was cruelty. The Trial Judge did not find cruelty on the evidence produced by the appellant/wife. The evidence was in the nature of Whatsapp messages, which in fact at best revealed minor differences of opinion but do not extend to any

cruelty within the meaning of the expression as laid down by the Hon'ble Supreme Court.

7. This Court, however, notices that the basic ingredients of a marriage i.e. living together under one roof and moving socially as husband and wife is not even remotely fulfilled. The appellant/wife and the respondent/husband by their conduct have drifted apart and have been living separately for more than eight years as on the date of filling of the instant suit.

8. Both of them have pursued their respective priorities. The appellant/wife pursued her education and the respondent/husband fulfilled his commitments to his family in the nature of getting three of sisters' married and bearing the medical expenses of his injured brother. The two, appellant/wife and the respondent/husband, have, therefore, being pursuing their respective priorities independent of one another. There is no evidence of a functional marriage between them.

9. One cannot ignore that the Trial Court had struck off the defence of the respondent/husband for admitted non-payment of interim maintenance. Such maintenance was initially ordered to the extent of Rs.7,000/- and subsequently reduced to Rs.5,000/-. This Court has serious doubt as to whether the respondent/husband has borne any expenses of the appellant/wife. Mere consummation of the marriage at intermittent intervals at hotels and lodges by itself and

registration of marriage are not sufficient according to this Court to constitute a functional marriage. There is admittedly no issue borne between the parties. As to whether there was any real or actual functional marriage between the appellant/wife and the respondent/ husband is in serious doubt.

10. In the peculiar facts and circumstances of the case and the fact that the parties have been pursuing their respective priorities independent of one another, this Court is of the view that the registration of marriage between the parties have been reduced to a mere piece of paper.

11. This Court's mind is not free from doubt that both the parties have moved far apart from each other from the very inception of their marriage i.e. in May 2016.

12. The marriage must be deemed to have been a non-starter and/or must be deemed irretrievably broken down from its very inception. This alone may be cruelty on both sides. The continuation of such marriage may itself amount to cruelty on both sides.

13. Having regard to the above discussions, this Court is inclined to set aside the impugned judgment and/or order dated 25th July, 2025 passed by the Trial Court in Matrimonial Suit No.112 of 2023. There shall be a decree for divorce between the appellant/wife and the respondent/husband. The marriage between the appellant/wife and the respondent/husband shall be deemed to have been dissolved from the date of

institution of the Matrimonial Suit No.112 of 2023 before the Trial Court.

14. With the aforesaid observations, FA 11 of 2025 is allowed and disposed of. Consequently, all connected pending applications, if any, are also disposed of.

15. There shall be no order as to costs.

16. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Reetobroto Kumar Mitra, J.)