

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. OF 2025
(Arising out of SLP (C) No. of 2025)
@ D.No.14978 of 2021
SAMAR BIJOY ROY ...APPELLANT(S)
VERSUS
MUKUL ROY ...RESPONDENT(S)

ORDER

1. Delay condoned.
2. Leave granted.
3. The present appeal assails the order dated 18.02.2021 passed by Single Judge of Hon'ble High Court at Calcutta in F.A.T. 638 of 2015, whereby the High Court allowed the appeal preferred by Respondent wife and set aside the decree of divorce granted by Trial Court.
4. The brief facts leading to present appeal are as follows:

- 4.1 On 19.11.1992, the Appellant-husband Samar Bijoy Roy and Respondent-wife Mukul Roy got married as per Hindu rites and customs.
- 4.2 On 15.12.2008, the Appellant filed an application for divorce under section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955, on the grounds of cruelty and desertion. The husband stated that since the marriage till the date of filing the application, they have cohabited for only four days. They have no physical relation or mental connect for the last six years. Although they reside in the same house but in separate rooms. Recently the wife has purchased a flat in her name without the knowledge of Appellant. She has also expressed that she is not able to give birth to any child due to her body structure and she has refused to get examined by the doctors despite requests by Appellant. Further despite having no cohabitation from the past ten years, for the sake of family and ailing health of his mother, the appellant did not take any

legal steps against the wife. Due to her obnoxious attitude, he has become miserable and isolated from his friends and relatives. Further, on 19.11.2008, on the occasion of marriage anniversary the Appellant gifted her sarees and proposed to live in joint mess but the wife allegedly abused him and said that she wants a divorce. Hence, finally the husband decided to dissolve matrimonial ties by filing for divorce on the grounds of cruelty and desertion.

5. On 11.12.2015, the Additional District Judge (“Trial court”) at Raiganj allowed the application and passed an order for dissolution of marriage. On the issue of wife purchasing a flat, the Trial Court concluded that though the husband says that he was ignorant in the matter, he was aware of the purchase and he stood a guarantor to help her purchase. It noted that the wife is still ready and willing to go back to Appellant but the Appellant is not inclined to take her back. After noting the affidavits submitted by both the parties and testimonies of witnesses, the Trial Court concluded that there were and

there are bitter relations between the husband and wife but the reasons assigned by the husband for this bitterness are not true. It considered the fact that the couple went on trips to different places over the years and it did not appear that they led an unhappy conjugal life. It concluded that there is absence of physical relationship since 2001 and they are living separately. Despite the attempts of reconciliation, they could not be united and thus the marriage has broken down irretrievably. It stated that where a marriage is dead emotionally and practically and there is no chance of it being retrieved, the continuance of such marriage is cruelty. Thus, it held that although the Appellant husband has not been able to prove cruelty or desertion, keeping a dead relation in continuity without any fruitful purpose would not do justice to both the parties. It granted divorce subject to fulfilment of permanent alimony of Rs. Five lakhs. It relied upon the decision of this court in Satish Sitole vs Ganga (AIR 2008 SC 3093) where it was held that continuance of broken marriage in itself amounts to cruelty.

6. The Respondent wife preferred an appeal being F.A.T No.638 of 2015 before the High Court of Calcutta, against this order of Trial Court. She pointed out that the Trial Court passed a decree for divorce despite not believing the husband's allegation of unhappy conjugal life. She also contended that granting divorce on the ground of irretrievable breakdown of marriage was beyond the jurisdiction of Trial Court.
7. On 05.02.2019, the Division Bench of the High Court passed a judgement with difference of opinion. The Presiding Judge affirmed the judgement of the Trial Court. It found that there is evidence to suggest that since the year 2001, the husband had been requesting wife to be physically proximate with him but she repeatedly denied and this amounted to mental torture, entitling the husband for divorce decree. According to the Presiding Judge, the Trial Court was correct in granting divorce but assigned incorrect legal reason. It also noted that the wife is not claiming any alimony.

8. The second Judge, on the other hand, delivered a separate judgement and set aside the decree of the Trial Court. It found that husband failed to prove that wife refused to cohabit with him. There was no cruelty or desertion by the wife. Wife was all along ready and willing to stay with the husband and continue the marital tie. It is the husband who is at fault by deserting the wife and inflicting mental cruelty on her by leaving her alone and making filthy allegations. The Trial Court misdirected by concluding that marriage is broken irretrievably. It is not a valid ground for dissolution of marriage. Thus, the second Judge set aside the decree of Trial Court and directed that the wife was to refund the alimony.

9. Due to difference of opinions in the Division Bench, the case was assigned to the Referee Judge. In the impugned order the Single Judge noted that the only question of fact needed to be appreciated to make the decision is whether there is regular cohabitation or co-habitation had been denied by the Appellant wife to Respondent husband. Relying on the affidavits of both the parties and plaint of the husband,

the Single Judge concluded that Respondent wife loves the Appellant husband. She did not cause him cruelty by not cohabiting with him. Thus, it concurred with the views of Second Judge in Division Bench and allowed the appeal filed by Respondent wife and set aside the decree of divorce granted by the Trial Court.

10. The Appellant husband has preferred this appeal assailing the order of Single Judge. This Court issued notice on 18.03.2024. The service of notice was not complete due to “insufficient address”. Application for substituted service in Bengali and English newspapers was allowed and accordingly service through publication was also completed. Despite the service of notice, no one has entered appearance on behalf of the respondent-wife.

11. We have heard the counsel appearing for the Appellant husband and perused the record. We are of the opinion that the High Court erred in setting aside the order of the Trial Court granting decree of divorce. The Single Judge of the High court has incorrectly appreciated the pleadings and affidavits of the parties. It

incorrectly inferred from the affidavit of husband that the wife was always ready and willing to cohabit with the husband. Further, a letter written by the wife on 29.07.2001 was also considered by the High Court to infer that it is the husband who is at fault as he is not ready to accept the wife. However, none of the documents placed on record sufficiently support these conclusions. The fact remains that parties are living separately and the wife was not able to deny the husband's claim of prolonged lack of cohabitation. It is proven before the Trial Court that they have not cohabited with each other since 2001. The Second Judge in Division Bench order and the Single judge in impugned order have not recorded a finding against this particular fact. There are no children born out of wedlock. All the attempts at reconciliation have failed. The nature of allegations made against each other indicate a broken marriage and thus there is no point in compelling the couple to stay married. The necessary emotional and physical bond of love and affection has been lost over a long period of almost 24-25 years. We must also note

that the Respondent wife has not responded to the notice issued by this Court. No one has entered appearance on her behalf.

12. Therefore, considering the facts and circumstances of the present case, we allow the appeal of the husband and set aside the order of the High Court dated 18.02.2021 and restore the decree of divorce granted by the Trial Court although for the reasons recorded in this order.

.....J.
(VIKRAM NATH)

.....J.
(PRASANNA B. VARALE)

NEW DELHI

JANUARY 03, 2025