

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FAT 264 of 2022

For the appellant : Mr. Angshuman Chakraborty,
Mr. Shivaji Mitra

Heard on : May 22, 2025.

Judgment on : May 22, 2025.

Sabyasachi Bhattacharyya, J.:

1. The present appeal has been preferred by the appellant/husband against the ex parte dismissal of the appellant's suit for divorce on the ground of cruelty and desertion.
2. None appears at the time of call on behalf of the respondent.
Accordingly, we take up the appeal for hearing ex parte.

3. By the impugned judgment, the learned Trial Judge overlooked the fact that the respondent/wife did not adduce any evidence of her own despite having filed a written statement and also did not cross-examine PW1 (the plaintiff/husband). That apart, it transpires even on a cursory perusal of the impugned judgment that the learned Judge proceeded entirely on a tangential perception of his own, without advertng at all to the materials on record.
4. In fact, this Bench has previously come across similar judgments by the same learned Trial Judge, and in the opinion of this court, the learned Trial Judge is in the habit of using the same words and same syntax in judgments passed in respect of different matrimonial suits. Such possibility is also borne out by the language used by the learned Trial Judge and we are sure that if an enquiry is conducted, it will be found that the self-same language has been used in matrimonial matters by the learned Trial Judge in several other suits as well. Some of the words used by the learned Trial Judge are entirely *de hors* the pleadings of both the parties and creates a *Deja vu* in the mind of the court, since we have come across the same

phrases in other matrimonial judgments as well, authored by the same Judge.

5. For example, the learned Trial Judge, in his judgment, observes that “no doubt, the wife is fond of making derogative and ugly remarks against her husband which amounts to mental cruelty justifying the decree of divorce” but that “it was the helpless lamentation of the lady urging for a blissful happy life.” The learned Trial Judge further observed that to his mind, the husband who was not so careful to rectify the “frailty conduct of his own, then certainly it is open to criticism by his wife”. The learned Trial Judge goes on to hold that may be the lady was somewhat discourteous, rude and abusive in the matter of criticism of the “crooked” conduct of her husband but it cannot be termed as unruly attitude with the sole object to cause genuine annoyance to her husband.
6. Again, the learned Trial Judge observed that “no doubt the lady did file complaint” as a “progressing action”. However, it is surprising that such comment is even beyond the pleadings of the husband, since the appellant/husband only alleged in his plaint that threats of initiating criminal cases were issued by

the respondent/wife but never alleged, either in his pleadings or in his evidence, that the wife ever actually filed a complaint.

7. The learned Trial Judge held that “how far it is ironical to the lady or it is so fortunate to the husband” he was “not prepared to comment”. He further observed that “what was being the task of the husband was to pacify the rage and anger of his wife indeed as a matter of fact from the evidence of her husband no where it has been distinctly and clearly proved that he was really conscious to be tracked properly” (whatever it means).
8. The learned Trial Judge further gives his solicitous advice to the effect that although it is quite reasonable and sensible to appreciate even in a trifling difference of opinion the parties can desert themselves voluntarily “transactional period” but that in such circumstances there must be reasonable and sensible role from the side of the husband to bridge the gap.
9. The entire mindset of the learned Trial Judge appears to spring up from a patriarchal and condescending approach, thereby attributing a condescending role to the husband, to advice his wife properly and also to condone cruel acts of the wife by trying to “bridge the gap” between the parties.

10. Such observations have nothing to do with the law on the subject. The settled law in matrimonial disputes is that the court has to look at the conduct of the parties from their perspective and to come to a finding as to whether there is any cruelty, either mental or physical, perpetrated by either of the spouses against the other so as to make it impossible for normal conjugal life to be led together by them.
11. The learned Trial Judge, not stopping there, further observed that “it is a fair expectation that the marriage has irretrievably broken down so a decree of divorce is being the legitimate claim of the petitioner”. The learned Trial Judge held in his judgment that the husband is “conspicuously silent what kind of nobility or morality he had rendered to his wife during separation period leaving apart wife from her husband should not be the impurity with the aim and object of the conjugal life but it can be safely concluded that separation of the lady was a compulsion as her husband is guilty of his lustful attitude”. Such “lustful attitude”, unfortunately, is not reflected even from the pleadings of the wife.
12. The learned Trial Judge goes on to say that practically speaking the husband was never “haunted by any

compunction”, thereby putting to shame any fiction writer of note.

13. The learned Trial Judge further observes that there might be certain “auspicious principles”, which he discovers could “glorify the concept of a successful marriage in its optimum success”. The learned Trial Judge even formulates such “auspicious principles”, the first of which is that “transcendental efforts to keep a perfect relation based on austerity of the spouse for achieving purity of the relation is to be maintained”. The second dictum conceptualized by the learned Trial Judge is “paying honour to our traditional belief”. Thirdly, the learned Trial Judge puts forth an edict that there should be “sincere interest in cultivating fidelity”. The learned Trial Judge, fourthly, says that there must be “unmotivated and uninterrupted urge to completely satisfy each other”.
14. There are several other literary jargon used inappropriately and merely to flash the vocabulary of the judge without fitting in the flowery terms in their proper place. The learned Trial Judge even says that, looking at the demeanour of the wife, he thinks “it is not impossible to realize that the relief of feministic instinct what is still left after decay has every chance of

reunion with the husband if he is awakened from his sleeping stage of doing vices and vulgarity". The learned Judge holds that at this stage refusal of it would be "unsagacious and impractical".

15. The learned Trial Judge discovers that the "relentlessness of the husband is prominent" and he is doing so under a "cognitive dissonance" and he intends to "preserve this corrosive conflicts with his wife to have an order of divorce by hook and crook". The learned Trial Judge found that no doubt many years have elapsed from the inception of the suit; so, despite "elapsation of long time" the Judge did not feel it justified that an order of divorce would be "positive solution for an efficacious relief when indeed the ground of cruelty is based on surmise and conjecture".

16. As such, he felt it quite "pragmatic and rational not to tilt the marriage knot". Ultimately, the learned Trial Judge, prophetically we may say, observes that upon evaluation of the evidence and materials available on record and an "objective assessment of reality" in the backdrop of the established facts, there cannot be "any pinch of doubt that the husband has sought for this kind of remedy" out of his "erotic passion" and

that is why, his prayer for divorce” is refused when indeed this problem is a sequence of his incorrigible attitude”. “Realistically speaking”, according to the Judge, “the mind of the lady has been mutilated yet she does not wish to relinquish her dream, the feeling of love to her husband and till now she has perceived that her husband will come to fetch her”. That is the last line of so-called logic in support of the impugned judgment, immediately followed by the ordering portion whereby the divorce suit was dismissed.

17. Coming back from wishful and delirious fiction to the facts of the case, we find that the plaintiff has categorically alleged several instances of cruelty. Out of those, the germane allegations pertain to the respondent/wife insulting and defaming the husband in public and imparting within the son of the parties ill-feeling about the appellant/husband.
18. The husband has categorically alleged that the respondent stopped visiting the matrimonial house since the third week of June, 2012. However, subsequently on occasions, it has been alleged that the respondent/wife took information.
19. Despite stopping coming to the matrimonial home, the wife had come, according to the plaint pleadings, for a period of ten

minutes when the appellant/husband's mother had a cerebral attack on September 14, 2014 and was admitted to the R.G. Kar Hospital. After discharge, it is alleged in the plaint, the mother of the appellant/husband was kept in the appellant's maternal uncle's house since there was none to look after her at home. There was a single visit at that point of time, according to the plaint case, by the respondent/wife with the son for a few minutes.

20. The wife, allegedly, despite being informed of the critical stage of the mother, only sent an SMS (Short Messaging Service) about the condition of the mother on October 20, 2014. The appellant's mother met her demise on April 21, 2014, after which the respondent/wife stayed at the Sradh ceremony. As per the plaint allegation, however, the wife thereafter refused to cohabit and meet matrimonial obligations with the appellant/husband and left for her paternal house at Salt Lake on November 19, 2014. On November 23, 2014, according to the plaint allegation, the wife came back but left with her baggage and belongings forever.

21. Certain other allegations have also been made in the plaint, one of which is that the wife issued threats of initiating criminal cases against the husband.
22. We do not agree with the pleading of the husband that the wife having a hysterectomy operation without the appellant's consent was an act of cruelty, since the respondent/wife has full autonomy in respect of her person.
23. However, regarding the other germane allegations constituting cruelty, the wife merely made bald denials. Such denials in the written statement are not coupled with any positive assertion or explanation and are found to be evasive in nature. The only positive assertion made by the wife is that she was made to do domestic work even during her pregnancy, for which she was taken to her parental house by her parents.
24. However, no explanation whatsoever was forthcoming in the written statement as to why she stayed back at her parental home and did not return to the matrimonial home and lead a conjugal life with her husband thereafter.
25. Certain other important aspects also are required to be gone into. First, the wife did not lead any independent

evidence in support of her defence case. Also, the wife did not cross-examine the husband, who examined himself as PW1. The examination-in-chief of the husband fully corroborates the plaint case and, as held above, certain instances of mental cruelty sufficient to compel the parties to live separately and have their separate ways have been made out. In the absence of cross-examination and independent evidence being led by the wife, the allegations should have been accepted by the learned Trial Judge as sacrosanct by application of the doctrine of non traverse.

26. We further find from the conduct of the wife that the element of *animus revertandi* on her part is entirely missing.
27. The wife did not participate in conciliation proceedings and did not participate in the suit after filing her written statement before the court of first instance.
28. Not only that, there was a previous order of this court whereby the parties were sent for mediation. Surprisingly, the wife abstained from mediation, which prompted a coordinate Bench, in its order dated April 10, 2023 passed in the present appeal, to observe that the Bench may penalize the respondent for not participating in the mediation proceedings

in spite of the order of the Bench and the report filed by the learned Mediator in that regard.

29. Despite the same, the respondent/wife had been repeatedly absent when the matter was called on for hearing and even today.

30. It clearly shows that the marriage between the parties has broken down irretrievably.

31. As per the current view of the Hon'ble Supreme Court, in cases where the marriage between the parties has broken down irretrievably beyond repair and there is no animus displayed by either of the parties to return to their matrimonial life, the same should be treated to be cruelty by each of the spouses against the other and if such a relationship is perpetuated with the blessings of the court, it would tantamount to cruelty being perpetrated on both spouses.

32. Taking into consideration such view of the Hon'ble Supreme Court and on our above assessment of the evidence on record, we are convinced that the impugned judgment is not only perverse for having relied on extraneous circumstances, but also for not having adverted to the relevant considerations germane for adjudication of the suit, as discussed above.

33. Hence, we find that in view of the uncontroverted allegations of the husband having been duly proved in his evidence, the appellant/husband is entitled to a decree for divorce, if not on desertion, on the ground of cruelty.
34. Accordingly, FAT 264 of 2022 is allowed ex parte, thereby setting aside the impugned judgment and ex parte decree dated February 17, 2018 passed by the learned Additional District Judge, First Court at Sealdah, District – South 24 Parganas in Matrimonial Suit No. 227 of 2015. A decree of divorce on the ground of cruelty is hereby granted to the plaintiff/appellant against the defendant/respondent.
35. A formal decree be drawn up accordingly.
36. Interim order, if any, stands vacated.
37. We intend to observe here that we are just stopping short of making any serious adverse comment against the learned Trial Judge, merely because such comment could have an adverse effect on the service career of the learned Judge. However, we expect that the learned Judge concerned shall be aware in future about copy-pasting his previous judgments and in going on his own tangential curve of wishful imagination instead of advertng to the facts and materials on record in the particular

case before him. If any future instance of such act on the part of the learned Trial Judge is noticed, the same may be directed to be entered into his service book.

38. Urgent photostat certified copy of the order, if applied for, be supplied to the parties at an early date.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)