In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya

F.A.T. No. 443 of 2023

Pintu Mahata
Vs.
Swarnalata Mahata

For the appellant	:	Mr. D.K. Adhikari, Mr. Tarapada Das, Mr. Debdeep Adhikary
For the respondent	:	Mr. Debrup Choudhury, Mr. Arkaprabho Roy
Heard on	:	19.02.2026 & 26.02.2026
Reserved on	:	26.02.2026
Judgment on	:	09.03.2026

Sabyasachi Bhattacharyya, J.:-

1. The appellant-husband has preferred the instant appeal, assailing the dismissal of his divorce suit against the respondent-wife, filed on the ground of mental cruelty.

2. Learned counsel appearing for the appellant-husband argues that the learned Trial Judge failed to take into consideration the serious allegations made by the respondent-wife against the appellant and his family members

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in her written statement, which were unsubstantiated in evidence. At least three instances of such allegations are specifically pointed out to the Court.

3. The respondent pleaded in her written statement that on February 15, 2019, the family members of the appellant had tried to kill her second daughter, which was the culmination of physical and mental torture perpetrated upon her by the appellant and his family due to the birth of the second female child of the respondent.

4. The respondent also alleged in her written statement that the appellant addressed the respondent in filthy language and instigated other persons to "temper" and to give immoral proposals to the respondent by giving her mobile number to them.

5. Thirdly, the respondent also alleged in her written statement that the appellant had an illicit relation with a lady named Sangita Mahata for the couple of years prior to the filing of her written statement, due to which the respondent was also subjected to physical and mental torture.

6. Alleging such physical and mental torture meted out by the appellant and his family, the respondent also lodged a complaint with the local police station, which gave rise to Simlapal Police Station Case No. 24 of 2020 dated May 19, 2020 under Sections 498A, 307 and 34 of the Indian Penal Code, read with Sections 3 and 4 of the Dowry Prohibition Act.

7. However, learned counsel for the appellant submits that none of the said allegations were corroborated by any material evidence. The criminal case lodged by the respondent, it is submitted, is still pending.

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8. Learned counsel appearing for the appellant takes the court through the evidence of the respondent and her mother, respectively as DW-1 and DW-2. It is pointed out that although the respondent had alleged that her second daughter was sought to be killed by the appellant and his family members on February 15, 2019, she admitted in her cross-examination that she did not return to her matrimonial house after December 15, 2018. DW-2, her mother, stated in her cross-examination, however, that the respondent continued to reside at her matrimonial home after the birth of her second female child till the said child was three months old.

9. The first daughter was born of the parties' wedlock on May 8, 2016 and the second on November 17, 2018, thus taking the said three months' period after the birth of the second daughter to around February 15, 2019. However, the appellant argues that by the inherent contradiction between the said two statements of DW-1 and DW-2, they demolished each other's evidence.

10. With regard to the alleged illicit affair of the appellant, DW-1 had merely stated in her evidence about such affair, without furnishing any further detail. Moreover, no independent witness came forward to establish such alleged illicit relation, apart from the wife herself as DW-1 and her mother as DW-2.

11. Thus, it is argued that the false and baseless allegations of the respondent in her written statement, by themselves, tantamounted to mental cruelty against the husband, on which ground alone the learned Trial Judge ought to have decreed the suit for divorce.

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12. Learned counsel for the appellant cites *Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate*, reported at *AIR 2003 SC 2462*, in support of the proposition that if allegations are made in the pleadings which are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to cruelty, causing profound and lasting disruption in the matrimonial life, such conduct itself amounts to cruelty.

13. Learned counsel also relies on *K. Srinivas Rao v. D.A. Deepa*, reported at *(2013) 5 SCC 226*, where the Hon'ble Supreme Court observed that making unfounded indecent and defamatory allegations against the spouse or his/her relatives in the pleadings, filing of complaints which may have an adverse impact on the job of the spouse and filing repeated false complaints amount to causing mental cruelty to the other spouse.

14. It is further argued that the appellant substantiated his case of acts of mental cruelty by the respondent, in refusing to do household work and ill-behaving with her in-laws, by adducing evidence in support of such pleadings. The learned Trial Judge, it is contended, failed to consider in proper perspective such evidence to dismiss the suit.

15. It is argued by the appellant that he is a CISF employee, which is a part of the disciplined forces, and the serious allegations made in the pleadings of the respondent-wife might adversely affect the job of the appellant. Moreover, the consistent false allegations and cruel behaviour of the wife, it is argued, led to mental cruelty against the appellant.

16. Lastly, learned counsel for the appellant argues that the learned Trial Judge proceeded on the premise that the appellant did not file any application

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under Section 9 of the Hindu Marriage Act for restitution of conjugal rights to show his intention to bring back the respondent-wife. However, such premise is legally erroneous, since the filing of a restitution suit is not a pre-requisite for establishing mental cruelty of the other spouse and non-filing of such a proceeding could not come in the way of granting a divorce in favour of the appellant.

17. Learned counsel for the respondent contends that there was no specific cross-examination on the allegations of the wife relating to the illicit relationship of the husband, the attempt on the part of his family to kill the second daughter of the parties and regarding the husband inciting others to make indecent proposals to the respondent-wife over mobile phone. In the absence of counter suggestions in the cross-examination of the respondent and her mother by the appellant, such allegations ought to have been held to be premised on reasonable basis. Thus, such allegations did not amount to cruelty.

18. Learned counsel for the respondent next places before the Court the averments made in Paragraph No. 11 of the written statement to show that the respondent denied the plaint allegation that she had left her matrimonial home suddenly on December 15, 2018. In Paragraph No. 15 of the written statement, the respondent specifically alleged that the family members of the appellant-husband perpetrated cruelty against the respondent due to the birth of her second female child and on February 15, 2019 had tried to kill the daughter, when the respondent somehow managed

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to rescue the child and ran away from her matrimonial home. Again, in her evidence, the respondent substantiated her allegations.

19. It is next contended by the respondent that the appellant utterly failed to substantiate the plaint allegations of the respondent having perpetrated mental cruelty against the appellant and his family. Rather, in an application made by the appellant-husband before the Sub-Divisional Officer at Khatra, bearing Case No. 22 of 2019, the appellant admitted that the parties were living peacefully together at least till December 15, 2018. Thus, the said statement belied the appellant's plaint allegations of the respondent-wife having done cruel acts against the appellant and his family during her stay in her matrimonial home. Accordingly, it is argued that the learned Trial Judge was justified in dismissing the suit for divorce.

20. It is also argued that there was no independent witness apart from the appellant-husband who substantiated the allegations of cruelty made in the plaint.

21. Lastly, on instruction, learned counsel for the respondent-wife candidly submits that the respondent is otherwise willing to sever the matrimonial tie; however, in view of the divorce having been sought by the husband on the basis of several allegations of cruelty by the wife, in the event divorce is granted on the basis of the plaint case, the respondent-wife would suffer ignominy and social stigma.

22. During arguments, the appellant categorically alleges and the respondent tacitly agrees that the matrimonial tie between the parties has broken down beyond repair. Hence, the court put both parties on notice that it may

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consider the decision of the Hon'ble Supreme Court in *Rakesh Raman v. Kavita*, reported at *(2023) 17 SCC 433*, in such context. However, specific arguments were not advanced on the said judgment by either of the parties.

23. Upon having heard learned counsel for the parties, the court comes to the following conclusions:

24. Insofar as the allegations levelled in the plaint in respect of alleged cruelty by the respondent during her stay in her matrimonial home, we find that the learned Trial Judge was justified in observing that the said allegations could not substantiated by the appellant-husband by independent corroborative evidence. Some of the allegations, evidently, are vague in nature and do not come within the purview of mental cruelty, such as the respondent-wife not being willing to do household work and behaving improperly, without any explanation as to whether the latter fell within the ambit of regular wear and tear of matrimonial life or not. That apart, as rightly observed by the learned Trial Judge, no specific date or instance of cruelty was mentioned in the appellant-husband's plaint.

25. Although an apparent acquaintance of the appellant-husband adduced evidence as PW-2, he admitted in his cross-examination that he came to know about the incidents relating to the case the day before he adduced evidence, which would relegate his knowledge of the facts of the case to hearsay at best. On recall, PW-2 tried to salvage the damage done in his cross-examination. However, he reiterated again that it was not a fact that the respondent-wife used to quarrel with the family members of the appellant-husband. Thus, the evidence of PW-2 does not inspire confidence,

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nor could it be held to be sufficient corroboration of the plaint case or the evidence of PW-1.

26. Conspicuously, none of the family members of the appellant-husband, who would be the best witnesses to substantiate the case of mental cruelty levelled against the respondent and his family members, was brought forward as witness to support the plaint case. As such, adverse inference can be drawn against the appellant-husband in respect of the plaint allegations of cruelty by the wife during her stay at her matrimonial home.

27. However, the second aspect of the matter is whether the respondent-wife could substantiate her serious allegations against the appellant-husband and his family members in her pleadings and/or establish that there was reasonable basis for making such allegations.

28. Although, in Paragraph No. 15 of the written statement, the respondent categorically stated that the family members of the husband perpetrated cruelty on her and tried to kill her second daughter on February 15, 2019, the respondent-wife, as DW-1, categorically admitted in answer to Question No. 16 in her cross-examination that she did not go to her matrimonial house after December 15, 2018, which palpably belies the allegations that her daughter was sought to be killed by her in-laws on February 15, 2019.

29. Although initially the respondent denied in her cross-examination that the appellant had illicit relation with a lady called Sangita Mahata as well as that the appellant instigated other persons to give immoral proposals to her by giving her phone number to them, on recall, she grew wiser and denied both the said facts. However, not a single corroborative evidence, either oral

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or documentary, was brought forward by the respondent to substantiate the allegations of illicit relation to her husband with the said lady.

30. The contention of learned counsel for the respondent that counter suggestions were not put to the respondent in her cross-examination regarding the allegations levelled in her written statement against the husband and his family members cannot be accepted, since specific counter suggestions were put in that regard to the respondent, while deposing as DW-1. In fact, in her initial cross-examination dated August 17, 2023, she had denied such allegations herself, but made good such inconsistency on recall on November 28, 2023.

31. Regarding the allegations of cruelty against the appellant when the respondent came to know of the alleged illicit relation of the appellant with another lady, the criminal case filed by the respondent as long back as on May 19, 2020 on such count is still pending before the jurisdictional criminal court. On the yardstick of preponderance of probability, however, we do not find any evidence on record to substantiate the serious allegation of illicit affair of the appellant-husband with another lady, nor do we find evidentiary support for the allegations made in the written statement regarding the appellant having given the mobile phone number of the respondent to third parties and instigating them to make immoral proposals to the respondent-wife. No evidence whatsoever in that regard, including call records or any other documents or oral evidence, was sought to be adduced by the respondent-wife at all.

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32. Insofar as the allegation of the family members of the appellant having attempted to kill her second daughter on February 15, 2019, the same is demolished by her categorical admission in cross-examination to the effect that the respondent did not return to her matrimonial house after December 15, 2018, that is, three months prior to such alleged incident. Although recalled as a witness, the respondent-wife did not clarify or furnish any explanation for such admission even on recall.

33. The respondent stated in reply to Question No. 13 in her cross-examination that the appellant met her after December 15, 2018, but in answer to Question No. 15, the respondent stated that she could not say how many times the appellant came to meet her after December 15, 2018. The mother of the respondent, in her cross-examination, stated in reply to Question No. 14 that the respondent resided at her matrimonial home till her second daughter was three months old, evidently to suit the purpose of substantiating the allegation that the in-laws of her daughter tried to kill their second grandchild. Rather, such deposition of DW-2, the mother of the respondent-wife, stands in stark contradiction with the admission of her daughter in her cross-examination to the effect that she left her matrimonial house and never returned after December 15, 2018.

34. Thus, none of the allegations made in the written statement could be substantiated by the respondent, nor any reasonable basis for making such allegations was made out by any independent evidence.

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35. As held in *Vijaykumar Ramchandra Bhate (supra)*[1] and *K. Srinivas Rao (supra)*[2], reckless and defamatory/indecent allegations against one spouse by the other in pleadings and filing unsubstantiated complaints itself amounts to mental cruelty, entitling the subject-spouse to a decree of divorce against the other.

36. Hence, this Court is of the opinion that the learned Trial Judge erred in law in not taking into consideration such component of cruelty by the respondent-wife against the appellant-husband, as borne out by her unsubstantiated and reckless allegations in her pleadings. The appellant is justified in contending that the unfounded allegations in the written statement cast social stigma and mental agony not only of the appellant but his entire family. Also, the CISF, which is a part of the disciplined forces, where the appellant is employed, evidently would not tolerate such reckless allegations if substantiated. Hence, by making such serious allegations against the appellant-husband and his family members, the respondent-wife perpetrated mental cruelty by creating mental agony and social stigma to the appellant and his entire family and jeopardised the service of the appellant with the CISF, both of which constitute cruelty coming within the ambit of Section 13 of the Hindu Marriage Act.

37. Accordingly, on such ground alone, the appellant is entitled to a decree of divorce.

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[1] ***Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate, reported at AIR 2003 SC 2462***

[2] ***K. Srinivas Rao v. D.A. Deepa, reported at (2013) 5 SCC 226***

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38. The premise of the learned Trial Judge that the husband did not file a suit for restitution of conjugal rights to show his *bona fides* is erroneous in law, since there is no such requirement in law that in the event the parties combat each other in matrimonial duel, they have to initiate an action for restitution of conjugal rights as a pre-condition for grant of divorce. Furthermore, there is precious nothing on the part of the respondent-wife to show her *animus revertendi* during the entire period of separation since December 15, 2018.

39. The parties have not brought before the court any evidence of their having tried to unite in conjugal life during this long period of eight years of separation. Moreover, both parties have alleged during arguments that they do not want to resume conjugal life, which unerringly indicates that the marriage between the parties has broken down irretrievably.

40. In *Rakesh Raman (supra)*[3], the Hon'ble Supreme Court categorically observed that a marital relationship which has only become bitter and acrimonious over the years does nothing but inflict cruelty on both sides and to keep the façade of such broken marriage alive would be doing injustice to both the parties. A marriage which has broken down irretrievably, it was held, spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. Therefore, it was held, it is itself a ground for dissolution of marriage under Section 13 (1) (i-a) of the Hindu Marriage Act.

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[3] ***Rakesh Raman v. Kavita*, reported at *(2023) 17 SCC 433***

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41. The apprehension of social stigma in the mind of the respondent-wife, if the allegations of the appellant-husband against her are upheld, is unfounded, since we categorically observe, on the basis of our above discussions, that the appellant-husband failed to substantiate his allegations of cruelty on the part of the respondent. However, on the basis of the unfounded and unsubstantiated allegations of the respondent-wife in her written statement, and taking into consideration the irretrievable breakdown of marriage between the parties, the appellant-husband is entitled to a decree of divorce in any event.

42. In view of the above, this Court is of the opinion that the learned Trial Judge erred in law and in fact in refusing to grant a divorce decree in favour of the appellant-husband.

43. Accordingly, F.A.T. No. 443 of 2023 is allowed on contest, thereby setting aside the judgment and decree dated December 6, 2023 passed by the learned Additional District Judge, Khatra, District-Bankura in Matrimonial Suit No. 07 of 2020 and decreeing the said suit, thereby granting dissolution of marriage between the parties by way of divorce.

44. There will be no order as to costs.

45. A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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