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

FA No.185 of 2022

SARANJIT KAUR (HURA)
-versus-
INDER SINGH HURA

For the appellant	:	Mr. Uday Sankar Chattopadhyay, Mr. Suman Sankar Chatterjee, Mr. Pronay Basak, Ms. Rajashree Tah, Ms. Trisha Rakshit, Ms. Aishwarya Datta, Ms. Bidisha Chakraborty, Ms. Sadia Parveen
For the respondent	:	Mr. Kallol Basu, Mr. Atreya Chakraborty
Heard on	:	19.03.2026, 25.03.2026 & 30.03.2026
Reserved on	:	30.03.2026
Judgment on	:	06.04.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred by the appellant-wife against a judgment and decree dated December 9, 2021, whereby the respondent-husband's divorce suit was decreed against the appellant-wife on the ground

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of cruelty, also taking into account the irretrievable breakdown of the marriage between the parties.

2. Learned counsel for the appellant-wife argues that the plaintiff-husband failed to prove his case of cruelty as pleaded in the plaint. No independent witness (apart from the elder brother of the husband) corroborated the case of cruelty. Moreover, the details of the alleged acts of cruelty perpetrated by the appellant-wife or the specific dates of such acts have not been disclosed by the respondent-husband.

3. It is argued that admittedly, the appellant left her matrimonial home on November 02, 2009. The appellant-wife filed a criminal case against the husband on February 05, 2010, that is about 2½ months thereafter.

4. It is argued that the respondent-husband stated in his cross-examination that marital dispute arose between the parties after 1½ years of their marriage whereas in his cross-examination he stated that there were differences of opinion between the husband and his family on the one hand and the appellant-wife on the other from the very date of marriage, thus contradicting his earlier stand.

5. Whereas in the examination-in-chief of the respondent-husband he alleged that the appellant-wife picked up quarrel with him and his mother on November 2, 2009, in his cross-examination, he admitted that he was alone on that date and his mother had gone to the Gurudwara.

6. Apart from the above contradictions in the evidence of the respondent-husband, the respondent never lodged any complaint regarding the alleged

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assaults or cruel acts of the appellant-wife before the police or any other authority, thus belying the case of cruelty.

7. Learned counsel appearing for the appellant-wife next argues that mere acquittal of the respondent-husband in the criminal cases initiated by the wife does not amount to cruelty, more so, since the observations made by the criminal court are not binding on the civil court and since criminal and civil cases are decided on different yardsticks.

8. In her complaint, the appellant-wife did not say that the husband "set fire" but that he mercilessly assaulted her and *tried to* set fire to her and her child, due to which she was compelled to leave her matrimonial home. Thus, the allegation as to there being no explanation of the child's absence on the relevant date is not germane. The wife, it is argued, never stated that her husband is characterless; rather, the wife as well as her mother (DW-3) denied the suggestion in their cross-examinations that the appellant-wife was not interested to lead conjugal life.

9. Although DW-3, the mother of the appellant-wife, stated in her evidence that her daughter has been stubborn and adamant from her childhood, it has to be considered that DW-3 studied only up to Class-V and was aged about 65 years when she adduced evidence. Hence, her deposition has no evidentiary value.

10. The appellant further argues that the appellant-wife is aged about 44 years whereas the respondent-husband is 47 years old. Thus, second marriage of the appellant is hardly possible now; also, the parties have child.

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11. It is argued that there has been no irretrievable breakdown of marriage between the parties but conjugal life could not be resumed due to the pendency of cases between the parties. It is further argued that irretrievable breakdown of marriage is not a ground for divorce under Hindu Law.

12. In support of such contentions, learned counsel cites *Gurbux Singh v. Harminder Kaur*, reported at *(2010) 14 SCC 301*, a judgment of the Hon'ble Supreme Court, *Chiranjeevi v. Smt. Lavanya*, reported at *2006 SCC OnLine AP 228*, as well as a Gauhati High Court judgment in *Mihir Sarkar v. Soma Roy (Sarkar)*, reported at *(2006) 3 Gau LR 655*.

13. It is submitted that the husband failed to prove his case of cruelty on the yardstick of preponderance of probabilities.

14. Lastly, learned counsel for the appellant-wife submits that in the event the court affirms the judgment of the Trial Court, it is to be considered that the learned Trial Judge did not grant any permanent alimony to the appellant-wife whereas Section 25 of the Hindu Marriage Act empowers the court to do so at the time of granting a divorce decree. Learned counsel cites two judgments in that regard, which will be dealt with while deciding such issue.

15. *Per contra*, learned counsel for the respondent-husband argues that the wife has consistently ill-behaved towards the husband and his family members since the date of marriage, including but not restricted to abusive behaviour, non-cooperation in the marital sphere and levelling false allegations against the husband's character. The son of the parties has been consistently kept away from the husband since his birth by the appellant-wife. Moreover, it is alleged that the respondent-husband was not

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consulted in decisions regarding the son's education, including his admission to a boarding school at Mussoorie.

16. The wife, it is submitted, left the matrimonial home on November 2, 2009, on the false pretext of physical abuse to her and her son and attempt to set fire by the husband and his family. However, a police complaint in that regard was lodged under Section 498A of the Indian Penal Code (IPC) much later, on February 5, 2010, that is, 21 days after filing of the divorce suit. Thus, it is clear that the said complaint was a retaliation against the suit, which is also borne out from the cross-examinations of the wife and her mother as well as father.

17. Learned counsel appearing for the respondent next argues that the appellant-wife lodged two criminal cases, bearing Asansol P.S. Case No.31 of 2010 (under Section 498A, IPC) as well as Asansol P.S. Case No.15 of 2017 (under Sections 403, 406 and 120B, IPC). However, the respondent-husband was acquitted in both cases, respectively on October 9, 2010 and January 22, 2019, thus proving the falsity of such complaints. It is submitted that the acquittal in both the cases was on the basis of complete lack of evidence.

18. The respondent contends that due to the complaint of the appellant-wife, the respondent-husband was arrested from outside his workplace and detained in the police station for hours at a stretch. The wife's habit of lodging criminal complaints against the respondent-husband and his family at the drop of a hat was designed to cause harassment, loss of respect and to create mental agony to the husband and his family.

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19. It is argued that the acquittal of the respondent-husband in the criminal cases establishes clearly the cruelty perpetrated by the appellant-wife by lodging false complaints which gave rise to such criminal cases. In support of such submission, learned counsel cites *Rani Narasimha Sastry v. Rani Suneela Rani*, reported at *(2020) 18 SCC 247*, and an unreported judgment of this Court in *FAT No.193 of 2023 [Poulomi Biswas Vs. Shamik Biswas]*.

20. Learned counsel for the respondent-husband next argues that the wife was allegedly hospitalised in the month of November, 2009 despite no sign of external injury being found on her body. Such false complaints were lodged on the strength of the influence of the appellant's father, who has political affiliations in Asansol.

21. It is argued that the husband's claim regarding the wife's behaviour, including making reckless allegations regarding the character of the husband, adultery with his brother's wife and the pressure created by the appellant-wife on the husband for separate matrimonial home as well as her abusive behaviour are corroborated by the cross-examination of the wife's mother.

22. Lastly, learned counsel for the respondent-husband contends that the appellant-wife withdrew from the respondent-husband's society from November 2, 2009, barely four years after the marriage, and she has not made any attempt to return to her matrimonial home ever since. The parties, it is submitted, have been separated for about 17 years till date,

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which clearly indicates irretrievable breakdown of the marriage between the parties, which by itself amounts to cruelty, justifying a decree of divorce.

23. In support of such proposition, learned counsel cites a Division Bench judgment of this Court in *FA No.160 of 2022 [Sri Satadru Harh Vs. Smt. Dolon Harh]*, in which the Division Bench relied on *Rakesh Raman v. Kavita*, reported at *(2023) 17 SCC 433*, a judgment of the Hon'ble Supreme Court.

24. Thus, it is argued that the appeal ought to be dismissed.

25. Heard learned counsel for the parties. Three primary issues fall for consideration in the present case, which are as follows:

(I) Whether the appellant-wife is guilty of mental cruelty towards the respondent-husband and his family;

(IIA) Whether the marriage between the parties has broken down irretrievably;

(IIB) Whether such irretrievable breakdown can be a ground for divorce;

(III) Whether the learned Trial Judge ought to have granted permanent alimony.

26. The above issues are dealt with as follows:

(I) Whether the appellant-wife is guilty of mental cruelty towards the respondent-husband and his family

27. The alleged cruelty can be bifurcated into two components – pre-suit and post-suit cruelty.

28. Before entering into the merits of the case, certain foundational dates are required to be noted:

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29. The marriage between the parties took place according to Sikh rites and customs on April 27, 2005. A son was born to the parties on April 26, 2007. The appellant-wife left her matrimonial home on November 2, 2009.

30. The divorce suit was instituted by the husband on January 15, 2010. A criminal complaint, leading to initiation of a criminal case, was lodged by the wife on February 5, 2010.

Pre-suit Cruelty

31. Contrary to the arguments of the appellant, the plaint case has been corroborated not only by the husband, as PW-1, but also by his elder brother (PW-2). Merely because P.W.2 is the elder brother of the respondent-husband, his character as an independent and uninterested witness cannot automatically be demeaned, or PW-2 be labelled as an 'interested witness'; rather, since PW-2 is a family member of the husband and has been residing in the matrimonial home of the parties all along, he is in a position to have direct knowledge of the cruelty meted out by the wife, as opposed to the defendant's witnesses.

32. PW-2 corroborated the evidence of PW-1 in its entirety, in consonance with the plaint case. In cross-examination, the evidence-in-chief of PW-1 and PW-2 remained substantially unshaken. Going by the yardstick of preponderance of probabilities, the learned Trial Judge cannot be faulted for having accepted such evidence as substantial proof of cruelty on the part of the wife.

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33. Much stress has been laid by the appellant on the apparent contradiction in the deposition of PW-1 to the effect that at one place he had stated that there was difference of opinion between the parties from the inception of the marriage and, at another, that the marital dispute cropped up 1-1½ years after marriage. There is a qualitative difference between "difference of opinion" and "marital dispute". The fact that the parties were not *ad idem* on several issues from the very beginning of the marriage is not contradictory to or mutually exclusive with the marital discord turning into a dispute about 1-1½ years from the date of marriage.

34. Moreover, the learned Trial Judge considered the cross-examination of DW-3, the mother of the appellant-wife as well. As per the admission of DW-3 in her cross-examination, her daughter (the appellant-wife) was stubborn and adamant from childhood and being in the police force, was in the habit of imposing her will on others, including the members of her matrimonial family. Although in another place, it has been stated that the wife was a 'civic police', the apparent distinction between 'police' and 'civic police' is not germane and does not make a difference in the tenor of such admission of DW-3. The learned Trial Judge also considered the admission of DW-3 in her cross-examination to the effect that her daughter, the appellant-wife, insulted the respondent-husband by alleging that he was characterless and her statement that her son-in-law had illicit relation with his '*Bhabhi*' (elder brother's wife). DW-3 further stated in her cross-examination that she learnt about the illicit relation between the respondent-husband and his sister-in-law from her daughter. Such admission corroborates the plaint case as to

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the appellant-wife making allegations against the respondent-husband pertaining to his character.

35. In her examination-in-chief, DW-3 stated that the respondent-husband led a reckless life and was a vagrant and that he procured money from the appellant's father on various occasions, at one instance taking Rs.2,00,000/- for starting a business. DW-2, the father of the appellant-wife, admitted that he had no materials to prove that the respondent-husband took money from him. DW-3 also admitted in her cross-examination that she and her daughter desired that her daughter stay separately from her matrimonial home.

36. The nature of the allegations made against the respondent-husband was grave, but those could not be substantiated in evidence. No reasonable basis for making such allegations could even be established by the appellant-wife. Thus, such baseless assassination of the husband's character itself has the cumulative effect of perpetrating mental cruelty on the husband.

37. Learned counsel appearing for the appellant, during arguments in the appeal, has tried to mitigate the effect of the cross-examination of DW-3 on the ground that she studied only up to Class-V and was 65 years of age at the time of adducing evidence. The said two factors, however, are not relevant to alleviate the admissions by DW-3 in her deposition. The said witness was never sought to be declared hostile by the appellant-wife; rather, her evidence has been sought to be relied on by the appellant. Thus, the impact of the admissions of the said witness, who adduced evidence in support of the appellant's case, cannot be brushed aside.

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38. Hence, the learned Trial Judge was justified in underscoring the cruelty meted out by the wife against the husband and his family during their stay together.

Post-suit Cruelty

39. Another component of cruelty is borne out by the fact that the appellant-wife lodged a criminal complaint against the respondent-husband within a month after institution of the suit on January 15, 2010. Such complaint was lodged on February 5, 2010, alleging about incidents which took place on November 2, 2009, that is, three months previously. The timing of the said complaint, which was lodged immediately after the filing of the suit, and the delay of three months from the date of the alleged incident clearly bear out the fact that such complaint was a backlash to the suit.

40. Two criminal cases were lodged against the respondent-husband on the basis of the complaints of the appellant-wife. Asansol P.S. Case No.31 of 2010 (under Section 498A, IPC), and Asansol P.S. Case No.15 of 2017 (under Sections 403, 406 and 120B, IPC), both of which culminated in acquittal, respectively on October 9, 2010 and January 22, 2019.

41. The appellant relies on a Division Bench judgment of the Andhra Pradesh High Court in *Chiranjeevi (supra)*[1] to argue that mere acquittal in criminal cases does not establish cruelty. However, in the said case, the Andhra Pradesh High Court observed that the criminal case therein ended in acquittal on the ground that the prosecution failed to prove the case against

[1] ***Chiranjeevi v. Smt. Lavanya*, reported at *2006 SCC OnLine AP 228***

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the accused beyond all reasonable doubt and not on the ground of no evidence. As opposed thereto, in the present case, the criminal court categorically held that the wife had failed to establish the prosecution case. Notably, in the said prosecution case, only the wife, in her capacity as the *de facto* complainant, deposed as PW-1 in support of her allegations. PW-2 in the said case stated that he did not know the exact reason why the case was filed, whereas PW-3 and PW-4, other prosecution witnesses, did not state anything in favour of the prosecution case. PW-5 was merely the Investigating Officer. The criminal court recorded the above observations and on such premise acquitted the accused persons on the ground of no evidence. Thus, the ratio of *Chiranjeevi (supra)*[2] does not apply in the circumstances of the present case.

42. Rather, the judgment of *Rani Narasimha Sastry (supra)*[3] is apt in the circumstances. The Hon'ble Supreme Court held therein that when the husband is acquitted of allegations under Sections 498A, IPC after undergoing trial, it cannot be accepted that no cruelty was meted out on the husband. The self-same proposition was followed in *Poulomi Biswas (supra)*[4] by a co-ordinate Bench of this Court.

43. With regard to allegations of a serious nature levelled by one of the spouses against the other, the Court is to examine whether any reasonable premise of such accusations is made out. However, the judgments of acquittal of the

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[2] ***Chiranjeevi v. Smt. Lavanya*, reported at *2006 SCC OnLine AP 228***
[3] ***Rani Narasimha Sastry v. Rani Suneela Rani, reported at (2020) 18 SCC 247***
[4] ***FAT No.193 of 2023 [Poulomi Biswas Vs. Shamik Biswas]***

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husband and his family in both the cases clearly point out to the allegations made by the wife being baseless.

44. Also, the extremely serious allegation of illicit relationship of the husband with his sister-in-law, as made by DW-3, the mother of the appellant, in her cross-examination, which corroborated the plaint allegation that the wife used to assassinate the character of the husband, go on to show that the allegations made by the wife, which were of grave nature, were baseless, thus, tantamounting to mental cruelty.

45. The respondent-husband was detained by the police in the police station for 9 hours, after being arrested from outside his workplace, on the basis of another baseless complaint of the wife, which did not culminate in conviction.

46. The above facts clearly go on to show that the allegations against the husband were baseless and amount to cruelty.

47. The acquittal of the husband and his family from the criminal cases after filing of the suit clearly go on to show, in conjunction with the reckless allegations made against the husband by DW-3 in her evidence, that the wife was in the habit of levelling irresponsible allegations against the husband and her witnesses persisted in doing so during their deposition even during pendency of the suit.

48. The hospitalisation of the wife post her leaving the matrimonial home due to alleged torture by the husband and his family was called out to be a farce, since no sign of external injury on the body of the wife was found upon such hospitalisation. The backdrop of the hospitalisation was also explained by

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the admission of DW-2, the wife's father, in his cross-examination to the effect that he is a local leader of the ruling party in the State and has considerable political affiliations in Asansol, being "loved by his followers".

49. Also, there is no mention of the child of the parties being taken to the hospital with the wife, although as per the appellant-wife, the husband and his family attempted to set fire on her and her son on November 2, 2009, which prompted her to leave the matrimonial home and to be hospitalised.

50. The reckless allegations in the deposition of the appellant's witnesses bear out the allegations of cruelty by the wife against the husband even after the filing of the suit.

51. In *Gurbux Singh (supra)*[5], cited by the appellant, the Hon'ble Supreme Court observed *inter alia* that it is essential for the party who claims relief in a divorce suit to prove that a particular part of conduct or behaviour resulted in cruelty to him. It is held that a few instances cannot amount to cruelty in isolation but the cumulative conduct of the parties ought to be seen. In the present case, the above conduct of the wife and her family cannot be brushed aside as isolated acts of cruelty. The consistent efforts of the appellant-wife and her family was to malign the husband and his family by lodging one false complaint after the other, even after institution of the suit, thereby creating mental agony and loss of face in Society for the respondent-husband and his family members. The cumulative effect of the said attempts was sufficient to make it impossible for the parties to live together as

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[5] ***Gurbux Singh v. Harminder Kaur*, reported at *(2010) 14 SCC 301***

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spouses, which comes within the ambit of mental cruelty entitling the husband to divorce.

(IIA) <u>Whether the marriage between the parties has broken down irretrievably</u>

52. It is an admitted position, as borne out by the evidence of DW-3 as well, that the parties have parted ways since 2009 and the matrimonial relation between them has not been cordial at any point of time. The allegations made by DW-3, the appellant's mother, in her deposition clearly corroborate the deposition of PW-1 and PW-2, which is perfectly in line with the plaint allegations of cruelty. In the absence of any proof as to torture being meted out by the respondent or his family against the appellant or any attempt to set fire on the appellant and her son, the parting of the wife from the society of her husband on and from November 2, 2009 is denuded of any justification. It is an admitted position that since the said date till now, there has been no resumption of conjugal life between the parties. We do not find anything on record to establish that there was any *animus revertendi* on the part of the appellant-wife throughout this period. The son of the parties has already attained majority and thus, cannot now be said to be a bonding factor between the spouses.

53. Hence, the circumstances of the case clearly indicate that the rift between the parties has reached a point of no-return and their marriage has spent its shelf-life long back.

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(IIB) ***Whether irretrievable breakdown can be a ground for divorce***

54. In *Sri Satadru Harh (supra)*[6], this Court held that irretrievable breakdown of marriage by itself amounts to cruelty of the parties between each other and thus comes within the purview of mental cruelty, entitling the parties to a divorce decree. While holding so, the Court had relied on *Rakesh Raman (supra)*[7], where, in a landmark decision, the Hon'ble Supreme Court, for the first time, unequivocally held that although irretrievable breakdown of marriage is not by itself a ground of divorce, the same spells cruelty to both the parties and continuing such a marriage would perpetuate such cruelty between the parties as against each other. Thus, the term 'cruelty' in the context of matrimony was held for the first time by the Hon'ble Supreme Court to include irretrievable breakdown of marriage, bringing it within the fold of Section 13(1)(ia) of the Hindu Marriage Act. Such pronouncement was categorically a part of the ratio of the judgment and tantamounts to law laid down by the Hon'ble Supreme Court under Article 141 of the Constitution of India.

55. In *Rinku Baheti v. Sandesh Sharda*, reported at *(2025) 3 SCC 686*, the Hon'ble Supreme Court considered *Rakesh Raman (supra)*[7] but stopped short of holding that the said judgment was passed under Article 142, as opposed to the other judgments considered in *Rinku Baheti (supra)*[8] where divorce had been granted on the ground of irretrievable breakdown of marriage, which were explicitly opined to have been passed under Article

[6] ***FA No.160 of 2022 [Sri Satadru Harh Vs. Smt. Dolon Harh]***
[7] ***Rakesh Raman v. Kavita*, reported at *(2023) 17 SCC 433***
[8] ***Rinku Baheti v. Sandesh Sharda*, reported at *(2025) 3 SCC 686***

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142 of the Constitution. The context of *Rinku Baheti (supra)*[9] was a petition under Section 25 of the Code of Civil Procedure for transfer of a matrimonial *lis*, where the Hon'ble Supreme Court was considering whether it could pass a decree of divorce under Article 142 in such a proceeding. Importantly, *Rinku Baheti (supra)*[9] did not overrule, distinguish or deviate from the law laid down by the co-ordinate Bench of the Hon'ble Supreme Court in *Rakesh Raman (supra)*[8] or dilute it by labelling it to a decision under Article 142.

56. The respondent cites *Mihir Sarkar (supra)*[9], where the Gauhati High Court held that the decisions considered therein did not lay down any law to the effect that irretrievable breakdown of marriage on account of long separation between the spouses could be a ground for a decree of divorce, which proposition was also laid down in *Gurbux Singh (supra)*[10]. However, both the aforesaid judgments were rendered much prior to the pronouncement in *Rakesh Raman (supra)*[11].

57. The law relating to cruelty has undergone a sea change over the years. There were umpteen previous judgments, spread over decades, where the Hon'ble Supreme Court either mulled over appropriate changes to be incorporated in the statue book to include irretrievable breakdown of marriage as a ground for divorce or passed divorce decrees in exercise of its extraordinary powers under Article 142 on the ground that the marriage between the parties had broken down beyond repair. However, the law in that regard has ultimately

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[9] ***Mihir Sarkar v. Soma Roy (Sarkar), reported at (2006) 3 Gau LR 655***
[10] ***Gurbux Singh v. Harminder Kaur*, reported at *(2010) 14 SCC 301***
[11] ***Rakesh Raman v. Kavita*, reported at *(2023) 17 SCC 433***

been crystallised in *Rakesh Raman (supra)*[12], which is of seminal importance, where the Hon'ble Supreme Court, in no uncertain terms, held that irretrievable breakdown of marriage, although by itself not a ground of divorce, comes within the purview of cruelty under Section 13(1)(ia) of the Hindu Marriage Act.

58. Thus, although irretrievable breakdown of marriage, by itself, is not a ground for divorce, it comes within the ambit of cruelty and, as such, is a valid ground under Section 13 (1) (ia) of the Hindu Marriage Act for grant of a divorce decree.

59. This issue is accordingly decided against the appellant.

(III) Whether the learned Trial Judge ought to have granted permanent alimony

60. The appellant argues that the learned Trial Judge ought to have granted permanent alimony to the appellant-wife while passing the decree of divorce. However, both in *Rakhi Sadhukhan v. Raja Sadhukhan*, reported at *2025 SCC OnLine SC 1259*, and *M.V. Leelavathi v. Dr. C.R. Swamy*, reported at *2025 SCC OnLine SC 1724*, cited by the appellant in support of such contention, the Hon'ble Supreme Court evidently exercised its powers under Article 142 of the Constitution of India to fix a ballpark amount as the quantum of alimony. Moreover, in both the said cases, there had been an adjudication of permanent alimony by the Trial Court, which was modified

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

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by the Hon'ble Supreme Court. Thus, it is clear that there was a prayer for permanent alimony which was granted by the Trial Court.

61. As opposed thereto, no application under Section 25 of the Hindu Marriage Act was filed by the appellant-wife at all, either before the Trial Court or before this Court, at any stage.

62. As per the said provision, an application is required to be filed for the purpose of getting permanent alimony. It is now well-settled that in support of such application, affidavits-of-assets have to be filed by both parties and the court has to consider the same, in accordance with the prayer of permanent alimony made by the wife, upon taking into consideration not only the respective incomes of the parties but their assets as well. However, in the total absence of any such application and/or materials, there was/is no scope of either the Trial Court or this Court passing any order of permanent alimony. There is no judgment known to us or cited by the appellant which lays down the law that the court can, *suo moto*, pass an order of permanent alimony without there being any application seeking the same.

63. Hence, the argument of the appellant in that regard does not merit further discussion. Without an application to provide the contours and parameters of the prayer of permanent alimony and without materials being adduced by the wife in the first place in support of the same, there cannot be any scope of granting permanent alimony by the court of its own. Thus, such argument of the appellant is not tenable in the eye of law.

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64. However, nothing prevents the appellant-wife to make a proper application for permanent alimony even after this judgment, since as per the contemplation of Section 25(1) of the Hindu Marriage Act, such an application can be made either at the time of passing of the decree "or at any time subsequent thereto". Accordingly, this issue is decided in the negative.

CONCLUSION

65. In view of the above findings, this Court comes to the conclusion that the learned Trial Judge was justified in passing a decree of divorce on the ground of cruelty in favour of the respondent-husband and against the appellant-wife. There is no scope for this Court to substitute any alternative opinion of its own for that of the learned Trial Judge, since we do not find any illegality in the impugned judgment.

66. Thus, the appeal fails.

67. Accordingly, FA No.185 of 2022 is dismissed on contest, thereby affirming the impugned judgment and decree dated December 9, 2021 passed by the learned Additional District Judge, Fourth Court at Asansol, District – Paschim Bardhaman in Matrimonial Suit No.40 of 2011.

68. We make it clear that the appellant-wife will be at liberty to take out a proper application for permanent alimony under Section 25 of the Hindu Marriage Act before the competent civil court having jurisdiction. If such an application is made, the concerned court will be at liberty to decide the same in accordance with law, upon giving an opportunity to the respondent-husband to file written objection thereto as well as opportunity of hearing to

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both sides, on consideration of evidence adduced by the parties and in accordance with law.

69. There will be no order as to costs.

70. A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

Later

All interim orders stand vacated.

(Supratim Bhattacharya, J.) **(Sabyasachi Bhattacharyya, J.)**

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