

(2013) 09 CAL CK 0040

Calcutta High Court

Case No: F.A. No. 221 of 1996 and C.A.N. No. 9391 of 2011

Pankaj Chatterjee

APPELLANT

Vs

Chhanda Chatterjee

RESPONDENT

Date of Decision: Sept. 12, 2013**Citation:** (2013) 5 CHN 32**Hon'ble Judges:** Mrinal Kanti Chaudhuri, J; Ashim Kumar Banerjee, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

Ashim Kumar Banerjee, J.

Matrimonial discord is a menace in the society. It would weaken the society. Yet, we cannot avoid. In the case before us, we tried in vain to have a workable solution. Despite our best effort we could not succeed. If we closely examine the pleadings and the evidence we would search in vain the real cause. The parties would also not help us. If the contemporaneous writing could be relied, the villain of the piece was a pair of bangles that the husband allegedly took from the wife and failed to return.

2. 25 years passed, the couple got separated soon after the marriage. The husband would suggest; soon after the marriage, the wife left the matrimonial home without any reason whereas the wife would contend; she had to leave under compelling circumstance being physically and mentally tortured.

3. The couple Pankaj and Chhanda got married by performing Hindu Rites on June 27, 1988. After the marriage they started residing together at Premises No. 67 Garfa Sreepur Calcutta-78. According to the husband, the wife was unwilling to cohabit from the very beginning. After marriage every Sunday they would visit the wife's paternal home. They last visited together on August 29, 1988 when the wife stayed back. On September 10, 1988 he went there to take his wife back, the wife declined. He denied the suggestion of dowry or physical or mental torture. He also denied the suggestion, wife had left all ornaments at the matrimonial home or that he assured

independent arrangement for stay. He deposed, on August 29, 1988 wife took all her ornaments on the pretext of keeping it in the bank locker that her mother was maintaining. He alleged, on September 9, 1988 when he went to his wife's place the wife asked him to make independent arrangement for stay. Mother of the husband corroborated her son. She also deposed, the relatives and the office boss of the appellant made persuasion to take the respondent back but failed.

4. The respondent wife deposed, in her brief stay her mother-in-law tortured her, so was her brother-in-law Manoj, sisters-in-law Swapna and Krishna. There was discord on the issue of cooking. The relatives rebuked her when her husband took her side and protested about the behavior of the other relatives. She denied having refused co-habitation. In fact, her husband took her to her parent's place so that he could arrange independent accommodation for them that the husband failed to arrange. She denied having voluntarily deserted her husband.

LETTERS:

5. Altogether three letters were disclosed, one from the husband and two from the wife.

6. On September 21, 1988 the husband wrote a long letter to the wife complaining indifferent attitude of the wife. He complained of being tortured and insulted by his brother-in-law (wife's brother) on September 10, 1988 and complained, wife did not protest. He would also complain against mother-in-law who according to him, was making the situation more "complicated". He, however, did not blame his father-in-law as he was acting at the behest of his mother-in-law. The long letter would make complain of trifle nature and yet making a desperate attempt to persuade her so that she wife would come back to him.

7. The second letter dated March 14, 1989 was from the wife complaining of husband playing "trick". The letter would show, the wife was determined not to come.

8. The wife wrote to the husband on April 26, 1989 appearing at page 1 part-II of the paper book. She enquired about the telephone call that the husband made and the wife could not respond. The wife would complain, the telephone belonged to the neighbour and it was not comfortable for her to attend the call. In the brief letter she complained of non-return of her bangles and threatened to take steps if not returned within two to three days. She would again remind, she should not be forced to write any further letter on the issue.

JUDGMENT AND ORDER IMPUGNED:

9. The Court below declined divorce that the husband prayed u/s 13 of the Hindu Marriage Act. The learned Single Judge observed, merely because the wife was staying at her parent's place or refused to go back, would not suggest, Court would pass a decree of divorce. The circumstance, under which the wife was compelled to

leave, should be considered. The learned Judge observed, wife was always willing to reside with the husband but not in the house where the other relatives were staying. Hence, the case of desertion was not proved.

HEARING BEFORE US:

10. At the initial stage, we asked the parties to appear before us. We tried our best to have re-union that we failed. The husband did not agree to take back the wife after a long passage of time. He was however, agreeable to continue to pay maintenance as per the order of Court below. He also agreed to pay one time alimony to the extent of Rs. 3 lacs. He would insist on a divorce. We heard the parties at length.

OUR VIEW:

11. Irretrievable break down of marriage is still not considered to be a ground for divorce. The Apex Court in the case of the like nature, granted divorce however, those orders were passed by exercise of power under Article 142 of the Constitution. We do not have any such power. We have to follow the law as prevalent as on date.

12. We do not find any cogent reason of discord. From one of the letters it would appear, the bangle was the cause. The other letters, mentioned about exchange of hot words with the matrimonial relatives. If we take a sum total of it, we would not find any real reason for discord. The parties withheld the real cause both to be blamed however, that cannot be a ground of divorce. When husband approached the Court of law as the plaintiff it was his onus to prove, wife deserted him without any cause.

13. It is true, the wife would raise issues in the contemporaneous letters that were trifle in nature. Yet, that would not be a reasonable excuse to stay apart. Here we join issue with the learned Judge of the Court below. The wife deposed, she was tortured during her brief stay at the matrimonial place. She never complained contemporaneously. Two letters disclosed as exhibits, would not suggest any serious issue. Hence, we hold, the wife deserted the husband without reasonable cause and that the wife had no reasonable cause that would compel her to stay apart. Hence, in our view, the husband would be entitled to a decree for divorce only on the ground of desertion. The wife, in her evidence, categorically deposed, she did not have any reluctance to lead conjugal life. She made a condition. The husband must arrange for independent accommodation. We did not find any definite assertion on behalf of the wife to go back to the husband. The condition imposed by her was unreasonable. She deposed, "I did never express my reluctance or refusal to lead conjugal life with my husband. On 1988 when my husband took me to my father I made it clear to my husband that I would reside with him in a separate residence". Considering the above we feel, the learned Judge was possibly not correct to observe, the wife was not at fault or that wife was willing to reside with the petitioner. The condition imposed by her could not be a reasonable ground to

be considered for staying apart.

14. The appeal thus succeeds and is allowed. The husband/appellant Pankaj Chatterjee would be entitled to a decree of divorce as against Mrs. Chhanda Chatterjee the respondent above named on the ground of desertion.

15. We, however, pass a decree for maintenance and/or alimony on concession. The husband would pay and the wife would be at liberty to receive Rs. 3 lacs as permanent alimony. So long the husband could not pay the same he would be obliged to continue to pay Rs. 5000 per month till he would retire and thereafter at the rate of Rs. 3000 per month.

16. The appeal is disposed of without any order as to costs. Urgent Xerox certified copy of this order, if applied for, be given to the parties.

Dr. Mrinal Kanti Chaudhuri, J.

I agree.