



Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

F.A.T 234 of 2022

Sri Sanjib Tarafdar
Vs.
Smt. Mausumi Tarafdar

For the appellant	:	Mr. Chittaranjan Panda Mr. Narayan Chandra Bhandary Mr. Subhendra Mohan Saha Mrs. Satabdi Bhattacharya
For the respondent	:	Mr. Suranjan Mandal Ms. Mousumi Biswas
Heard on	:	16.07.2026 & 23.07.2026
Judgment on	:	23.07.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal arises at the behest of the plaintiff/husband, assailing a judgment whereby the suit of the appellant/husband, for declaration of the marriage between the parties to be a nullity due to non-consummation between the parties, alternatively for divorce on the grounds of cruelty and desertion, was dismissed.



2. Learned counsel appearing for the appellant/husband submits that the marriage between the parties took place on January 28, 2007. The parties separated on or about March 24, 2007. The present suit was filed on April 13, 2007 and the impugned judgment was ultimately passed on April 13, 2022.
3. Learned counsel submits that throughout the entire period of separation, there was no attempt by either of the parties to resume conjugal relationship between themselves.
4. As such, it is argued that *animus revertendi* is entirely absent.
5. Learned counsel submits that the learned Trial Judge ought to have considered from the materials on record that the consummation of the marriage between the parties could not be established, which was, according to the appellant, due to wilful refusal of the respondent/wife to do so.
6. Secondly, it is argued that certain medical prescriptions of the respondent/wife were produced by way of photocopies in the trial court by the appellant/husband to impress upon the trial court that the wife has been suffering from psychiatric disorder.
7. It is submitted that such ailment of the respondent/wife also entitles the appellant/husband to a decree of divorce.
8. However, the learned Trial Judge failed to take into consideration the fact that the originals of the said documents



were not lying with the appellant/husband and refused to permit the appellant to exhibit the said documents.

9. As such, it is argued that this Court, within the contemplation of Order XLI Rule 27 (1) (b) of the Code of Civil Procedure, ought to take into consideration the said photocopies as secondary evidence in order to hold that the marriage between the parties ought to be dissolved on such count as well.
10. Most importantly, learned counsel for the appellant argues that the marriage between the parties has broken down irretrievably. The matter was referred to mediation. From a report dated December 04, 2025 authored by the mediator, which is a part of the record, it is evident that the parties are not willing to settle their disputes.
11. Thus, it is contended that nothing remains in the marriage between the parties and, as such, the relationship is already dead.
12. Learned counsel for the appellant reiterates that the parties lived together only for about two months and have been separated for around two decades.
13. Learned counsel, in such context, cites *Rakesh Raman vs. Kavita*, reported at (2023) 17 SCC 433, and an unreported judgment in the matter of *Nayan Bhowmick vs. Aparna*



Chakraborty (Civil Appeal No. 5167 of 2012), wherein the Hon'ble Supreme Court granted divorce on the ground of irretrievable breakdown of marriage.

14. Thus, it is argued that the marriage should be dissolved by deeming the irretrievable breakdown of marriage between the parties to be cruelty, coming within the contemplation of Section 13(1)(ia) of the Hindu Marriage Act.
15. Learned counsel for the respondent/wife places reliance on the cross-examination of P.W.1, the plaintiff/appellant, dated June 25, 2015, where he admitted that it is not a fact that the marriage was not consummated.
16. It is submitted that by use of the double negative, the husband admitted that there was consummation.
17. Thus, the ground of nullity on the strength of the allegation that there was no consummation due to wilful abstinence of the respondent/wife was not established; rather, the contrary was admitted by the husband.
18. Insofar as the allegation of cruelty is concerned, learned counsel relies on the cross-examination of P.W.1 dated July 19, 2016, where the husband admitted that it is not a fact that "we" never inflicted mental or physical torture upon the wife on any ground,



thereby virtually admitting that mental and physical torture was meted out to the wife by the husband and his family.

- 19.** Hence, it is argued that the allegation of cruelty on the part of the respondent/wife is nullified by the said admission.
- 20.** Insofar as the medical prescriptions of the respondent/wife are concerned, learned counsel for the respondent denies that the respondent has the originals of the said medical prescriptions.
- 21.** Even otherwise, it is submitted that the said documents are irrelevant for the purpose of adjudication of the present appeal, since those do not establish any psychiatric disorder on the part of the wife.
- 22.** Although the parties have not resumed their conjugal rights for almost two decades, learned counsel for the respondents submits that the wife is still willing to go back to her husband, the appellant, and to resume conjugal life.
- 23.** As such, it is denied that the marriage has broken down irretrievably.
- 24.** Upon hearing learned counsel, we find that the ground of nullity has not been established by the plaintiff/appellant at all.
- 25.** Rather, as rightly contended by the respondent, the appellant/husband, in his cross-examination as PW1, admitted to the contrary.



- 26.** The ground of desertion also could not be established and, in any event, the suit was filed within the statutory moratorium period, thus disentitling the appellant/husband from getting a divorce decree on the ground of desertion.
- 27.** As far as cruelty is concerned, we are *ad idem* with the findings of the learned Trial Judge to the effect that the appellant/husband could not establish, by corroborative evidence, the allegations of cruelty and torture levelled against the respondent/wife.
- 28.** Regarding the production of the purported medical certificates of the wife, we find that the photocopies thereof were tendered in the trial court but were not exhibited because the originals thereof were not produced.
- 29.** We do not find any foundational evidence to justify the adduction of secondary evidence being furnished by the plaintiff/husband.
- 30.** Thus, in any event, the provisions of Order XLI Rule 27(1)(aa) of the Code are not satisfied in the present case.
- 31.** As to the applicability of Clause (b) of Order XLI Rule 27(1) of the Code, we do not find any requirement for the said documents to be permitted to be produced as additional evidence, for the simple reason that from a bare perusal of the photocopies



handed over to us, it does not appear that any serious psychiatric or psychological disorder of the respondent/wife, sufficient to entitle the appellant/husband to a divorce decree, is established by such documents.

- 32.** There is no corroborative evidence to show the effect of the medicines prescribed to the respondent/wife or the ailments for which those were prescribed.
- 33.** At least from one of the prescriptions dated March 24, 2007, we find that the treating Doctor diagnosed the problem of the wife to be anxiety, disturbed sleep and the like, which afflicts more than half of the population and cannot be construed to be a psychiatric disorder as such.
- 34.** Thus, we do not accede to the prayer of the appellant/husband to exercise our powers under Order XLI Rule 27(1)(b) of the Code to permit such evidence to be adduced since, in any event, the evidence is irrelevant for the present purpose.
- 35.** The only aspect which remains to be considered is whether irretrievable breakdown of marriage can be construed to afford a ground for divorce in the present case.
- 36.** In *Rakesh Raman (supra)*, the Hon'ble Supreme Court arrived at the landmark proposition, for the first time in the history of Indian jurisprudence, that irretrievable breakdown of marriage,



although not a ground for divorce by itself, tantamounts to cruelty to both the parties and as such, affords a ground for dissolution of marriage, coming within the ambit of cruelty as envisaged in Section 13(1)(i-a) of the Hindu Marriage Act.

- 37.** Prior to the said decision, the Hon'ble Supreme Court, in a plethora of judgments, nudged the Legislature to incorporate irretrievable breakdown as a ground of divorce.
- 38.** However, till date, the said ground has not been incorporated in either the Hindu Marriage Act or any other matrimonial law in India.
- 39.** Yet, we take note of the fact that under Article 141 of the Constitution of India, law laid down by the Hon'ble Supreme Court and propositions of law set forth in judgments of the Hon'ble Supreme Court have equal efficacy as statutory legislation. The same is the law of the land and is binding on all other courts in India.
- 40.** In paragraph nos. 22 and 23, the Hon'ble Supreme Court, in *Rakesh Raman (supra)*, categorically incorporated irretrievable breakdown of the marriage between the parties to be cruelty, coming within the purview of Section 13(1)(i-a) of the Hindu Marriage Act, thus affording a ground for divorce.
- 41.** The said two paragraphs are quoted hereinbelow:



“22. Irretrievable breakdown of a marriage may not be a ground for dissolution of marriage, under the Hindu Marriage Act, but cruelty is. A marriage can be dissolved by a decree of divorce, inter alia, on the ground when the other party “has, after the solemnization of the marriage treated the petitioner with cruelty”

23. In our considered opinion, a marital relationship which has only become more bitter and acrimonious over the years, does nothing but inflict cruelty on both the sides. To keep the façade of this broken marriage alive would be doing injustice to both the parties. A marriage which has broken down irretrievably, in our opinion spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is therefore a ground for dissolution of marriage under Section 13 (1) (i-a) of the Act.”

- 42.** However, *Nayan Bhowmik (supra)*, did not lay down the law in that regard and, as evident from paragraph no. 35 thereof, the Hon’ble Supreme Court exercised its powers under Article 142 of the Constitution of India to do complete justice between the parties, which power is not available either to the High Courts or to the District Courts.
- 43.** Hence, with respect, *Nayan Bhowmik (supra)* is not a binding precedent or a dictum of law but merely an exercise of the powers of the Hon’ble Supreme Court under Article 142 of the Constitution of India.



44. Be that as it may, in the light of the proposition laid down in *Rakesh Raman (supra)*, we have no hesitation to hold that irretrievable breakdown of marriage can be considered to be cruelty, as such, furnishing a ground for divorce under Section 13(1)(i-a) of the Hindu Marriage Act.
45. Coming to the facts of the present case, admittedly the mediation between the parties has failed, which is evident from the Mediator's report.
46. That apart, we do not find anything on record to show that in the long interregnum of two decades in between, from the year 2007 till date, any efforts have been taken by either of the parties to resume their conjugal relationship.
47. Thus, *animus revertendi* being entirely missing on the part of both parties in the present case, it cannot but be held that the marriage between the parties is a mere deadwood.
48. As held in *Rakesh Raman (supra)*, sustaining such marriage and keeping the facade of the broken marriage alive would be doing injustice to both the parties and operate as cruelty by both the parties against each other.
49. We take note of the fact that there is no offspring of the marriage between the parties and the parties resided together as spouses



only for two months immediately after marriage, while they are separated for about two decades.

- 50.** Keeping on balance such circumstances, this Court has no hesitation to hold that the marriage between the parties has broken down irretrievably, thereby attracting the ratio laid down in *Rakesh Raman (supra)*.
- 51.** In such view of the matter, the learned trial Judge ought to have granted divorce on the ground of cruelty in view of the irretrievable breakdown of the marriage between the parties.
- 52.** Accordingly, FAT 234 of 2022 is allowed on contest, thereby setting aside the impugned judgment and decree dated April 30, 2022 passed by the learned Additional District Judge, Tenth Court at Alipore, District- South 24 Parganas in Matrimonial Suit No. 40 of 2007, thereby decreeing the suit and granting a decree of divorce against the respondent/wife in favour of the plaintiff/husband on the ground of cruelty arising out of irretrievable breakdown of the marriage between the parties.
- 53.** Interim orders, if any, stand vacated.
- 54.** We, however, make it clear that nothing in this judgment shall preclude the respondent/wife from taking out an appropriate application under Section 25 of the Hindu Marriage Act, 1955 seeking permanent alimony from the jurisdictional (trial) court.



- 55.** If such an application is filed, the trial Court shall adjudicate the same in accordance with law on its own merits, upon giving adequate opportunity to both parties to file their pleadings and furnish materials in support of their respective contentions.
- 56.** There will be no order as to costs.
- 57.** A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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