

(2012) 03 CAL CK 0072
In the Calcutta High Court
Case No : F.A. No. 373 of 2009

Sri Kalyan Kanti Chowdhury

APPELLANT

Vs

Smt. Mithu Chowdhury (Nee Barua)

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Hindu Marriage (Amendment) Act, 1956 — Section 13

Citation : (2012) 5 CHN 503

Hon'ble Judges : Shukla Kabir Sinha, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Bhaskar Sen and Mr. Debabrata Dasgupta, for the Appellant; Tapas Kumar Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—Kalyan Kanti Chowdhury was married to Mithu Chowdhury on January 30, 2001 at Atpur in the district of 24-Parganas (North) according to Hindu rites and customs. The marriage was solemnized after a social negotiation. The parties did not know each other prior thereto. Out of the wedlock, a child was born in early part of 2003. Mithu gave birth to the child at her parental place. According to Kalyan, she left abruptly on July 5, 2002 after a discord. in 2006. On January 5, 2006 Kalyan filed suit for divorce being Matrimonial Suit No. 143 of 2006. Kalyan alleged mental cruelty on him by Mithu. Mithu used to abuse him with filthy languages. Kalyan prayed for decree of divorce on the ground of her desertion and refusal to come back to matrimonial home for performing conjugal rites. Mithu contested the suit by filing the written statement. According to her, the marriage was solemnized upon payment of dowry to the extent of rupees fifty thousand. She emphatically denied having used any filthy language towards her husband. On the contrary, she alleged that Kalyan used to abuse her with filthy language and threatened her to kill. She gave birth to the male child namely Ripon Chowdhury on April 15, 2003. The entire delivery expense was borne by her relatives. Kalyan did not pay

a "single furthing". She denied having withdrawn herself from the association of the petitioner. She neither refused to live with her husband nor committed any cruelty or desertion. The learned Additional District Judge, Fast Track Court, Barrackpur dismissed the said suit on contest vide judgment and order dated March 18, 2009 that gave rise to the present appeal by Kalyan. The appeal came up before us when upon going through the records we asked the parties to appear before us. Initially we tried our level best to settle the discord. We tried for a re-union but failed. After long deliberation the parties agreed that they would part with upon payment of permanent alimony payable by the husband to the wife. It was agreed that a sum of rupees four lacs would be paid as permanent alimony. With regard to the child, on our persuasion Kalyan agreed to pay rupees six lacs. He however prayed for sometime to pay off the said sum. Pertinent to note, Kalyan is an employee under the State Government and is presently receiving salary of rupees thirteen thousand eight hundred and seventy nine only (net) as would appear from his pay slip for the month of February 2012. Earlier, we adjourned the matter from time to time to enable Kalyan to clear off the arrear maintenance that was granted by the Court below. After two/three adjournments we could see that the arrear maintenance was clear before the start of hearing. We were inclined to give sometime to Kalyan to pay the amount of rupees six lacs in deferred manner provided he would clear the lumpsum alimony of rupees four lacs to the wife simultaneously on getting a mutual divorce. The wife was however, not agreeable to have a deferred payment. Hence, the entire effort failed and we took up the hearing.

2. Mr. Bhaskar Sen, Learned Counsel appearing for the appellant/husband contended that from the conduct of the wife it was clear that she was only interested in extortion of money. She was not willing for a re-union. She was not willing to go back. He referred to the evidence of PW-1 and 2 and contended that both the witnesses corroborated each other. Hence, the learned Judge should have relied upon the same. According to him, even in cross-examination the witnesses could not be shaken. The appellant/husband made out a consistent case on cruelty that would entitle him a Decree of Divorce.

3. Mr. Tapas Kumar Chatterjee, Learned Counsel appearing for the wife/respondent disputed the contentions raised by Mr. Sen. According to Mr. Chatterjee, even if it was held that the wife was not willing to go back to perform her marital obligations she could not be blamed as the atmosphere was not at all congenial for her in her matrimonial home. According to Mr. Chatterjee, it was duty of the husband to make the atmosphere congenial for the wife to live in the matrimonial home and perform matrimonial rites and obligations. He submitted that mere allegation of mental cruelty would not be sufficient to get a divorce. The appellant/husband miserably failed to show any document being letter and/or any communication to support his case. He also referred to the affidavit-evidence of PW-2 to show that it was a mechanical reproduction of the affidavit evidence of PW-1, the husband himself. According to him, a neighbour could not have witnessed a private conversation the couple had between themselves. He

contended that the wife never complained of any misbehaviour with any authority including the police authority. According to the husband, the wife deserted him in 2002 whereas he filed a suit for divorce in 2006. Admittedly, during this period the husband never paid any maintenance either to the wife or the child.

4. On the question of deferred payment, Mr. Chatterjee contended that the husband was trying to avoid the responsibility on the plea of maintaining his ailing mother. He was however silent about the fact that he had another brother to look after the ailing mother.

5. While giving reply, Mr. Sen referred to the pay slip to show that the husband did not have means to pay the permanent alimony as agreed upon referred to above at a time. He was however agreeable to pay it in case he was allowed to do so in a deferred manner.

6. It is most unfortunate that the couple could not maintain their marital relationship. It is also unfortunate that marriage being a sacred institution could not be preserved because of the discord between the couple. However, such discord, per se, would not permit a Court of Law to allow a Decree of Divorce unless the plaintiff could satisfy the Court that he would come within the ambit of Section 13 of the Hindu Marriage Act proving that his allegations were covered by the grounds mentioned in the said statutory provision. In the instant case, we tried our level best to have a re-union, we failed. We do not wish to fix the fault on any one. If someone is not willing that would not per se make him or her responsible for such a decision as the trust and confidence which the couple reposed on each other got destroyed in view of the discord. Unfortunately, the parties even agreeing for a mutual divorce could not ultimately succeed on that score for the reasons noted above. It is true that we do not see any immediate scope for a re-union or a settlement otherwise. However, irretrievable break down is still not considered to be one of the grounds to break the marital institution taking recourse to Section 13 of the Hindu Marriage Act, 1956.

7. Coming back to the factual matrix, we would find that the mere statement by the husband that the wife used filthy language towards him and deserted the matrimonial home would not, per se be termed as "mental cruelty" in absence of a definite proof. PW-2, a neighbour could not help us by throwing light on the marital life of the couple to come to a definite conclusion that one committed mental cruelty on the other. There were rival allegations against each other. None got proved during the trial. There was oath against oath that did not find any corroboration from any independent source. The learned Judge rightly declined divorce, so do we.

8. The appeal fails and is hereby dismissed. There would be no order as to costs.

9. We, however, observe that the order of dismissal of this appeal would not disturb the existing arrangement of payment of monthly maintenance as directed earlier. Urgent Photostat copy will be given to the parties, if applied for.

Shukla Kabir Sinha, J.

10. I agree.