IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5454/ 2023
(ARISING OUT OF SLP (C) No. 18000 OF 2022)

RAJIB KUMAR ROY ...APPELLANT

Versus

SUSHMITA SAHA ...RESPONDENT

O R D E R

Leave granted.

2. The appellant and the respondent before this Court are husband and wife who were married on 12.05.2007 as per Hindu rites and rituals, at the maternal house of the respondent at Udaipur in district Gomati, Tripura. The husband resides in Agartala (Tripura) where presently he is posted as DGM (Executive Engineer on adhoc basis) in Tripura State Electricity Corporation Limited (TSECL for short). The wife is also well-educated and qualified and is presently employed as a teacher in Brilliant Stars School at Udaipur.

3. Within three years of matrimonial life bitterness started creeping in the relationship between the couple. The husband alleges that the wife is disrespectful towards his old parents and gives preference to her job as a teacher ignoring her household responsibilities. Wife alleges torture and cruelty, and demand of dowry at the hands of her husband and in-laws, and has stated before the courts in no uncertain terms that she can live with her husband only if he comes and stays at Udaipur, Tripura. She is not willing to live with her husband at Agartala. The admitted fact as of now is that the two have been living separately, the husband at Agartala and the wife at Udaipur, for the last 12 years. The couple have a 12 year old daughter who lives with the mother.

As per the appellant, the respondent left her matrimonial house on 16.05.2010 ostensibly for spending vacations with her parents. At that time she was on the family way, having two months of pregnancy. Since then the respondent has not returned to her matrimonial home. She gave birth to a female child on 11.01.2011. In spite of many requests, she never returned to Agartala. The girl child is with the wife who is

presently teaching in a school where she earns around Rs.31,085/- (Rupees Thirty One Thousand Eighty Five per month) and the girl child, now twelve years of age, also studies in the same school, where her tuition fee is exempted.

4. Earlier the husband had filed a petition under Section 9 of the Hindu Marriage Act, 1955 (for Restitution of Conjugal Rights) on 09.11.2012 before Family Court, Agartala, Tripura (subsequently transferred to Family Court, Udaipur) which was dismissed on 29.08.2013. An appeal was filed before the High Court which was subsequently withdrawn. The petition for dissolution of marriage on ground of cruelty and desertion, was later filed by the appellant before the Family Court, West Tripura, Agartala on 15.02.2017 which was also dismissed on 08.03.2019. The appeal filed by the husband/appellant against that order was also dismissed by the High Court vide its order dated 28.02.2022. It is this order which is under challenge before this Court. The High Court has taken into consideration all aspects including the fact that the couple is living separately for the last more than 10 years but that in itself was not considered to be cruelty. This is what it said :-

> "True it is that, in some cases the High Courts considering the dead marriage as the generator of perennial trauma considered the same as cruelty and passed the decree of divorce. But in the case in hand, we find that the matrimonial bond is not ruptured beyond repair and moreover, we find that the parties were never at such bitterness of their relation that they cannot give a new lease of life to their relation. Hence, that plea also cannot be accepted in view of the law as enunciated in Samar Ghosh (supra)."

Regarding the plea of irretrievable breakdown of marriage the Court expressed its inability to grant divorce on that ground also. This is what it said :-

> "The question that has been raised by Mr. Kar Bhowmik, learned senior counsel for the appellant that the marriage has been broken irretrievably or beyond repair, cannot be accepted by us and we find life in the relation. Only thin walls, built up by emotions and ego, are keeping the spouses apart. Hence, the relation can very well be retrieved. As such, that ground stands discarded. In this juncture, we would hasten to add that the ground of irretrievable breaking down of marriage is not statutorily available for seeking dissolution of marriage. The decision as relied by Mr. Kar Bhowmik, learned senior counsel was passed by the apex court under their unique jurisdiction conferred by Article 142 of

> the Constitution of India which confers power to the apex court to do the complete justice. But such power is not available with the High Courts."

5. We have heard the learned counsel for the petitioner as well as the learned counsel for the respondent (wife) at length. Today, the parties are also before us through virtual mode, and we had a chance to interact with both. Considering the entire gamut of facts which are there before us, we have absolutely no doubt in our mind that this is a case of irretrievable breakdown of marriage.

The husband and wife have been living separately, the wife is at Udaipur (district Gomati), Tripura and husband at Agartala, Tripura for the last 12 years. Nothing would give us more satisfaction if the two could work out their differences and decide to live together, if only for the sake of their child. But under the circumstances, with the rigid attitude of both the parties, who have failed to appreciate the beauty of compromise, we have been forced to convince ourselves, *albeit* regrettably, that the two cannot now live together. Twelve years of separation, is a sufficiently long period of time to have sapped all emotions which

the two perhaps may have had once for each other. We therefore cannot take the same hopeful view as that of the High Court, which still believes that the matrimonial bond between the two has not ruptured beyond repair or that the two cannot still give a new lease of life to their relation. Frankly, no matter how much we would have liked this to happen but in reality, this is a possibility, which under the facts and circumstances of the case, can only be called wishful.

Continued bitterness, dead emotions and long separation, in the given facts and circumstances of a case, can be construed as a case of "irretrievable breakdown of marriage", which is also a facet of "cruelty". In **Rakesh Raman** v. **Kavita** reported in **2023 SCC OnLine SC 497,** this is precisely what was held, that though in a given case cruelty as a fault, may not be attributable to one party alone and hence despite irretrievable breakdown of marriage keeping the parties together amounts to cruelty on both sides. Which is precisely the case at hand.

Whatever may be the justification for the two living separately, with so much of time gone by, any marital love or affection, which may have been between the parties, seems to

have dried up. This is a classic case of irretrievable breakdown of marriage. In view of the Constitution Bench Judgment of this court in **Shilpa Sailesh** v. **Varun Sreenivasan** reported in **2023 SCC OnLine SC 544** which has held that in such cases where there is irretrievable breakdown of marriage then dissolution of marriage is the only solution and this Court can grant a decree of divorce in exercise of its power under Article 142 of the Constitution of India.

We therefore declare the marriage to have broken down irretrievably and therefore in exercise of our jurisdiction under Article 142 of the Constitution of India we are of the considered opinion that this being a case of irretrievable breakdown of marriage must now be dissolved by grant of decree of divorce.

6. All the same, we are also aware of the fact that the couple have a twelve year old daughter, towards whom the appellant owes his duty of bearing expenses for schooling and education. Consequently, we direct an amount of Rs.20,00,000/- (Rupees Twenty Lakh only) be deposited by the appellant in the account of respondent within a period of six months from today. The amount so deposited shall be kept in a Fixed Deposit (FD) so that

it can earn interest which can be given to the respondent on quarterly basis. The respondent would be at liberty to encash the amount deposited as F.D., at any time after 5 years from now, as that would be the time where expenditure is likely to be incurred for the higher education of the girl child. Till the amount of Rs.20,00,000/- as indicated by us is deposited, the appellant will continue to pay the respondent an amount of Rs.15,000/- (Rupees Fifteen Thousand per month) as maintenance. The appellant shall have the visitation rights towards his daughter (Abantika Roy) till she attains maturity. The terms and conditions of visitation rights shall be decided by the Mediation Centre attached to High Court of Tripura, Agartala, within three months from now. The parties are directed to appear before the Mediation Centre, at Agartala at 11.00 AM on September 1, 2023.

7. We hereby grant a decree of divorce on account of irretrievable breakdown of marriage. Let the decree of divorce be drawn, accordingly. The decree shall be handed over to the parties, only after deposit of the full amount as indicated by us above.

8. The Judgement dated 28.02.2022 passed by the High Court of Tripura at Agartala is hereby quashed and set aside. The present appeal is disposed of in terms of the above directions.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[SUDHANSHU DHULIA]

AUGUST 21, 2023
NEW DELHI

ITEM NO.31 COURT NO.2 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 18000/2022

(Arising out of impugned final judgment and order dated 28-02-2022 in MATAP No. 11/2019 passed by the High Court Of Tripura At Agarthala)

RAJIB KUMAR ROY Petitioner(s)

VERSUS

SUSHMITA SAHA Respondent(s)

Date : 21-08-2023 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Petitioner(s) Ms. Kiran Suri, Sr. Adv.
Mr. S.J. Amith, Adv.
Ms. Aishwarya Kumar, Adv.
Ms. Vidushi Garg, Adv.
Mr. Purvesh Buttan, Adv.
Dr. (Mrs.) Vipin Gupta, AOR

For Respondent(s) Mr. Rajesh Sen, Adv.
Ms. Shibani Bhattacharjee, Adv.
Mr. Vikas Jain, AOR
Mr. Kamal Pundhir, Adv.
Dr. Arun Jha, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

Pending application, if any, stands disposed of.

(ASHA SUNDRIYAL) (POONAM VAID)
ASTT. REGISTRAR-cum-PS COURT MASTER (NSH)

[Signed order is placed on the file]